

**SECURITIES INDUSTRY (CENTRAL DEPOSITORIES)
(AMENDMENT) ACT 2003**

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SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) (AMENDMENT) ACT 2003

An Act to amend the Securities Industry (Central Depositories) Act 1991.

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Securities Industry (Central Depositories) (Amendment) Act 2003.
- (2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act or in respect of different classes or categories of persons or securities.

Amendment of section 2

2. The Securities Industry (Central Depositories) Act 1991 [*Act 453*], which is referred to as the "principal Act" in this Act, is amended in subsection 2(1)—

(a) by substituting for the definition of "rules" the following definition:

' "rules", in relation to—

(a) a central depository, means the rules of a central depository, and includes—

- (i) rules contained in the memorandum and articles of association or other constituent document of the central depository;
- (ii) rules to ensure compliance by its authorized depository agents, users or depositors of any obligations imposed by this Act or any other written law;
- (iii) rules in relation to the provision of services for the deposit, holding, transfer and withdrawal of securities, and the suspension or withdrawal of such services;
- (iv) rules to provide for the persons who may participate in one or more of the services referred to in subparagraph (iii); and
- (v) rules in respect of such other matters as are necessary or desirable for the proper and efficient operation and management of the central depository, including rules setting fees and charges; and

(b) an exchange holding company, means the memorandum and articles of association, including rules regulating the activities and conduct of the company in its capacity as an exchange holding company;';

(b) by inserting after the definition of "official list" the following definition:
' "participating organization" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;';

(c) by deleting the definition of "member company"; and

(d) by inserting after the definition of "depositor" the following definition:
' "exchange holding company" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;'.

Amendment of section 4

3. Section 4 of the principal Act is amended—

(a) in paragraph (2) (g), by inserting after the words "the Minister" the words "or the Commission";

(b) by inserting after subsection (2) the following subsection:
"(2A) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister."; and

(c) in subsection (3), by inserting after the words "the Minister" the words "or the Commission".

Amendment of section 5

4. Section 5 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the words "in writing," the words "on the recommendation of the Commission,"; and

(ii) in paragraph (a), by inserting after the word "and" the words "an exchange holding company or"; and

(b) by inserting after subsection (2) the following subsection:

"(3) Without limiting the generality of the requirements and conditions specified under subsection (2), the Minister may in writing, on the recommendation of the Commission, amend or revoke any requirement or condition imposed under that

subsection or impose new requirements and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of depositors or the public interest or for the proper regulation of the stock market.”.

New sections 5A, 5B and 5C

5. The principal Act is amended by inserting after section 5 the following sections:

“Withdrawal of approval of a central depository

5A. (1) The Minister may, on the recommendation of the Commission, by notice published in the *Gazette*, and by such other means as the Commission considers appropriate—

- (a) withdraw an approval granted under section 5 to the central depository, with effect from the date specified in the notice; or
- (b) direct the central depository to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of depositors or in the public interest or for the proper regulation of the markets in securities, where any one or more of the following circumstances occur:

- (a) the central depository ceases to operate a system for the central handling of securities;
- (b) the central depository is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
- (c) the central depository has contravened any term or condition of its approval or is charged with any offence under any of the securities laws;
- (d) the central depository has failed to comply with a condition, requirement or direction given under section 61B of this Act or section 11L of the Securities Industry Act 1983;
- (e) any information provided for the purposes of section 4 was false or misleading in a material particular;

- (f)* a judgment debt of the central depository has not been satisfied in whole or in part;
 - (g)* a receiver, a receiver and manager, or an equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the central depository;
 - (h)* the central depository has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
 - (i)* the central depository on its own accord applies to the Minister to withdraw the approval granted to it under section 5, and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a central depository shall be deemed to have ceased to operate a system for the central handling of securities if it has ceased to operate such system for a period of one month unless it has obtained the prior approval of the Minister to do so.
- (4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the central depository to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purposes of—
- (a)* closing down the operations of the central depository or ceasing to provide the services specified in the notice; or
 - (b)* protecting the depositors or the public interest.
- (5) Where the Minister has granted permission to a central depository under subsection (4), the central depository shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 3.
- (6) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

Effect of withdrawal

5B. Any withdrawal of approval or direction issued under section 5A shall not operate so as to—

- (a)* avoid or affect any agreement, transaction or arrangement entered into on the computer system operated by the central depository, whether the

agreement, transaction or arrangement was entered into before or, where subsection 5A(4) applies, after the withdrawal of the approval or issuance of the direction under section 5A; or

- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Arrangements as to the discharge of duties of exchange holding company and central depository

5C. The relevant provisions of sections 11D and 11J of the Securities Industry Act 1983 shall apply to an exchange holding company and a central depository that is a subsidiary of an exchange holding company.”.

Amendment of section 13

6. The principal Act is amended by substituting for paragraph 13(2)(c) the following paragraph:

“(c) a participating organization;”.

Amendment of section 14

7. Section 14 of the principal Act is amended—

(a) in subsection (3A)—

- (i) by substituting for the words “The requirement” the words “Subject to subsections (3B) and (3C), the requirement”; and
- (ii) by inserting after the words “central depository” the words “subject to such terms and conditions as may be specified by the central depository”;

(b) by inserting after subsection (3A) the following subsections:

“(3B) Where a holder of prescribed securities to whom subsection (3A) applies fails to comply with any term or condition specified by the central depository, the share registrar of the issuer shall transfer to the Minister all such securities or class of securities by way of an entry in a securities account in the name of the Minister.

(3C) Where any securities or class of securities are transferred under subsection (3B), the provisions of subsections (8), (9), (10), (11) and (12) shall apply to such securities or class of securities.”; and

(c) in subsections (8), (11) and (12), by inserting after the word “subsection” wherever they appear the words “(3B) or”.

Amendment of section 19

8. Subsection 19(2) of the principal Act is amended by substituting for the words “member company” the words “participating organization”.

Amendment of section 58

9. Section 58 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for paragraphs (a) and (b) the following paragraphs:

“(a) on an application by the Commission, it appears to the High Court that—

- (i) there is reasonable likelihood that any person will contravene a relevant requirement;
- (ii) any person has contravened a relevant requirement; or
- (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,

whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;

(b) on an application by an exchange holding company or a central depository, as the case may be, it appears to the High Court that—

- (i) any person has contravened a relevant requirement; or
- (ii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or mitigate the effect of such contravention; or”;

(ii) by inserting after paragraph (b) the following paragraph:

“(c) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the High

Court that—

- (i) the other person has contravened the relevant requirement; and
- (ii) the applicant is aggrieved by the contravention;”;

(iii) by substituting for paragraph *(bb)* the following paragraph:

“*(bb)* an order restraining the person from acquiring, disposing of or otherwise dealing with assets which the High Court is satisfied such person is reasonably likely to dispose of or otherwise deal with;”;

(iv) in paragraph *(gg)*, by substituting for the words “the Act” the words “a relevant requirement”; and

(v) by inserting after paragraph *(ii)* the following paragraphs:

“*(iia)* an order restraining the contravention;

(iib) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the High Court may direct to remedy it or mitigate its effect, including making restitution to any other person aggrieved by such contravention;”;

(b) by inserting after subsection (11) the following subsections:

“(12) For the purposes of this section, “relevant requirement”—

(a) in relation to an application by the Commission under this section, means a requirement—

- (i) which is imposed by or under this Act or any securities laws;
- (ii) which is imposed as a condition or restriction of any approval that is given under or pursuant to this Act;
- (iii) which is imposed by or under the rules of a central depository;
or
- (iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has power to prosecute with the consent in writing of the Public Prosecutor;

(b) in relation to an application by the exchange holding company or central depository, means a requirement which is imposed by or under the rules

of the central depository, as the case may be; and

(c) in relation to an application by the aggrieved person, means a requirement—

- (i) which is imposed by or under this Act;
- (ii) which is imposed as a condition or restriction of any approval that is given under or pursuant to this Act; or
- (iii) which is imposed by or under the rules of a central depository.

(13) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, central depository or aggrieved person, as the case may be, under any securities laws, any other law or rules.”.

New section 61B

10. The principal Act is amended by inserting after section 61A the following section:

“Powers concerning compliance with rules of the central depository, *etc.*

61B. (1) Where any person fails to comply with, observe, enforce or give effect to any requirement or provision of this Act or any regulations made under this Act, or any conditions of an appointment or approval under or pursuant to this Act or any rules of a central depository, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such requirements or provisions, that person has committed a breach.

(2) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

- (a) direct the person in breach to comply with, observe, enforce or give effect to the requirements or provisions of this Act or any regulations made under this Act or any conditions of an appointment or approval under or pursuant to this Act or rules of a central depository which he has failed to comply with, observe, enforce or give effect to;
- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed one million ringgit;

"Indemnity

62. No civil liability shall be incurred by—

- (a) an exchange holding company or a central depository; and
- (b) any person acting on behalf of an exchange holding company or central depository, including—
 - (i) any member of the board of the exchange holding company or central depository, or any member of any committee established by any such board;
 - (ii) any officer of the central depository or exchange holding company; and
 - (iii) any agent of, or any person acting under the direction of the central depository or exchange holding company,

for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under this Act or the rules or in the exercise or intended exercise of any power under this Act or the rules, where such act, statement or omissions was done in good faith."

Amendment of Securities Industry (Central Depositories) (Amendment) (No. 2) Act 1998

12. Section 29 of the Securities Industry (Central Depositories) (Amendment)(No. 2) Act 1998 [*Act A1039*] is amended—

- (a) in subsection (3), by inserting after the words "subsection (2)" the words "or (7A)";
- (b) in subsection (6), by inserting after the words "subsection (2)" the words "or (7A)";
- (c) by substituting for subsection (7) the following subsection:
 - "(7) Subject to subsection (7A), the requirement under this section to deposit prescribed securities on or before the prescribed date shall not apply to such securities or class of securities as may be specified in the rules of a central depository subject to such terms and conditions as may be specified by the central depository."; and

(d) by inserting after subsection (7) the following subsection:

“(7A) Where a holder of prescribed securities to whom subsection (7) applies fails to comply with any term or condition specified by the central depository, the share registrar of the issuer shall transfer to the Minister all such securities or class of securities by way of an entry in a securities account in the name of the Minister, whereupon the provisions of subsections (3), (4), (5), (6) and (8) shall apply to such securities or class of securities.”.

Savings and transitional

13. (1) All regulations, rules, orders, directions, notifications, approvals, decisions, guidelines, actions and other executive acts, made, given, taken or done under, or in accordance with, or by virtue of the principal Act before the commencement of this Act, to the extent that they are affected by this Act, shall be deemed to have been made, given, taken or done under, or in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act, and shall continue to remain in full force and effect in relation to any person to whom they apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act.
- (2) Nothing in the principal Act or this Act shall affect any person's liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.
- (3) Any right, privilege, obligation or liability acquired, accrued or incurred before the commencement of this Act, or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability, shall, in so far as it is not inconsistent with the provisions of this Act, continue to remain in force unless amended, revoked or rescinded under, in accordance with or pursuant to the provisions of the principal Act as amended by this Act, the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003[Act 632] or any regulations made under the principal Act or the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003, pursuant to the coming into operation of this Act.
- (4) If immediately before the commencement of this Act a person was a member company for the purposes of the principal Act, such person shall be regarded as a participating organisation for the purposes of the principal Act as amended by this Act and shall have all the rights, powers, privileges, obligations and duties of a participating organisation as set out in the principal Act as amended by this Act.

Prevention of anomalies

- 14.** If any difficulty arises with respect to the application of anyone or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in anyone or more of those provisions as may appear to him to be necessary to prevent anomalies.