

CAPITAL MARKETS AND SERVICES ACT 2007

CAPITAL MARKETS AND SERVICES (DISPUTE RESOLUTION) (AMENDMENT)
REGULATIONS 2024

IN exercise of the powers conferred by subsection 378(1) and subsection 379(5) of the Capital Markets and Services Act 2007 [Act 671], the Commission, with the approval of the Minister, makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Capital Markets and Services (Dispute Resolution) (Amendment) Regulations 2024**.

(2) These Regulations come into operation on 1 January 2025.

Amendment of regulation 2

2. The Capital Markets and Services (Dispute Resolution) Regulations 2010 [P.U. (A) 437/2010], which are referred to as the “principal Regulations” in these Regulations, are amended in regulation 2—

(a) by inserting after the definition of “Act” the following definition:

‘ “adjudicator” means an individual appointed by an approved body corporate to conduct the process of settlement of any dispute or claim referred to the approved body corporate;’;

(b) in the definition of “rules”, by substituting for the words “memorandum of association, the articles of association and the terms of reference of an approved body corporate, or” the words “constituent document,”;

(c) in the definition of “dispute”, by substituting for the words “terms of reference” the word “rules”; and

(d) by deleting the definition of “terms of reference”.

Substitution of regulation 3

3. The principal Regulations are amended by substituting for regulation 3 the following regulation:

“Approved body corporate

3. (1) The Commission may approve a body corporate to be an approved body corporate under subsection 379(1) of the Act if—

- (a) the body corporate is able to act as a dispute resolution body by receiving a reference in relation to any dispute or claim and resolving the referred dispute or claim effectively in accordance with the principles of independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness;
- (b) the body corporate has sufficient financial, human and other resources to carry out its functions and duties as provided in these Regulations;
- (c) the board of directors of the body corporate consists of persons who fulfill the fit and proper criteria as referred to in Schedule 3;
- (d) the governance framework of the body corporate is provided in writing, including—
 - (i) organizational arrangements that provide for segregation of duties and internal control to ensure independence of the approved body corporate and minimize the risk of mismanagement or malpractice; and

(ii) code of practice relating to the conduct of officers of the body corporate;

(e) the body corporate has in place rules and procedures to enable it to perform its functions and duties as a dispute resolution body; and

(f) the body corporate is able to take appropriate action against its members for any breach of its rules and procedures.

(2) The Commission may, in granting an approval to a body corporate under subsection 379(1) of the Act, impose such conditions or restrictions as the Commission thinks fit.

(3) The Commission may refuse an application to obtain approval from a body corporate without giving any grounds for refusal.

(4) The Commission shall, as soon as possible after granting approval to a body corporate under subsection 379(1) of the Act, notify the name of the approved body corporate and the date of commencement of its operations in such manner as the Commission deems appropriate.”.

Amendment of regulation 4

4. Regulation 4 of the principal Regulations is amended—

(a) in the shoulder note, by substituting for the word “**granting**” the word “**obtaining**”;

(b) in subregulation (1), by substituting for the words “the grant of” the word “obtaining”;

(c) in subregulation (3), by substituting for the words “the grant of” the word “obtaining”; and

- (d) by deleting subregulations (4) and (5).

Amendment of regulation 5

5. Regulation 5 of the principal Regulations is amended—

- (a) by deleting subregulation (1); and
- (b) by inserting after subregulation (3) the following subregulation:

“(4) Any person who becomes a member under these Regulations shall, at all times, comply with the terms of membership of the approved body corporate as provided in its rules.”.

Substitution of regulation 6

6. The principal Regulations are amended by substituting for regulation 6 the following regulation:

“Rules of an approved body corporate

- 6. (1) The approved body corporate shall publish its rules and any amendment made to the rules on the approved body corporate’s website.
- (2) The rules referred to in subregulation (1) shall include the following matters:
 - (a) the scope and category of clients who are eligible to refer a dispute or claim to the approved body corporate;
 - (b) the procedures for membership and the circumstances in which a member may be expelled or suspended;
 - (c) the types of dispute or claim that are eligible for reference to the approved body corporate;

- (d) the procedures, form and manner, and the time period within which a dispute or claim may be referred to the approved body corporate;
- (e) the subscription fee, levy and other fee or payment payable by its members, or by any class of its members or by any person referred to in subregulation 8(3) and that different levies may apply to different class of members or different class of person referred to in subregulation 8(3);
- (f) fee payable by clients to the approved body corporate;
- (g) the circumstances in which a dispute or claim may be refused or dismissed by the approved body corporate without referring the dispute or claim for mediation or adjudication;
- (h) the circumstances in which a dispute or claim would be mediated or adjudicated;
- (i) the types of awards that may be made with respect to a dispute or claim;
- (j) the manner in which the decision of a dispute or claim may be notified to the client, the relevant member and the person referred to in subregulation 8(3); and
- (k) the procedures to ensure that the eligible client and the member comply at all times with the duty of confidentiality as provided under regulation 15.”.

Amendment of regulation 7

7. Regulation 7 of the principal Regulations is amended—

- (a) in the shoulder note, by inserting after the word **“Withdrawal”** the words **“or suspension”**;
- (b) by renumbering subregulation 7(1) as regulation 7;
- (c) in the renumbered regulation 7—
 - (i) by inserting after the word “withdraw” the words “or suspend”;
 - (ii) in paragraph (c), by substituting for the words “subregulation 4(4)” the words “subregulation 3(2)”;
 - (iii) in paragraph (h), by deleting the word “or” at the end of the paragraph;
 - (iv) in paragraph (i)—
 - (A) in the national language text, by substituting for the words “PeraturanPeraturan” the words “Peraturan-Peraturan”; and
 - (B) by substituting for the full stop at the end of the paragraph the words “; or”; and
 - (v) by inserting after paragraph (i) the following paragraph:
 - “(j) the Commission is of the opinion that—
 - (i) the approved body corporate has not acted honestly; or

- (ii) the approved body corporate is operated in a manner that is, or is likely to be, contrary to public interest or inconsistent with its rules.”.

Amendment of regulation 8

8. Regulation 8 of the principal Regulations is amended—

- (a) in subregulation (1), by substituting for the words “in an accessible, efficient and effective manner, based on the principle of fair and reasonableness” the words “in accordance with the principles of independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness”; and
- (b) in paragraph (2)(a), by substituting for the words “provided under subregulation (1)” the words “and functions effectively under any provision of the Act, these Regulations or its rules.”.

Amendment of regulation 9

9. Regulation 9 of the principal Regulations is amended—

- (a) in the shoulder note, in the English language text, by substituting for the words “**list members**” the words “**list of members**”;
- (b) in subregulation (1), by substituting for the word “report” the words “submit a report to the Commission of ”; and
- (c) by substituting for subregulation (3) the following subregulation:

“(3) The approved body corporate shall—

- (a) maintain a list of its members and publish the list on its website;

- (b) publish the information regarding the dispute resolution services provided periodically on its website to raise public awareness; and
- (c) provide any document or other information in such a form or manner as determined by the Commission.”.

Substitution of regulation 11

10. The principal Regulations are amended by substituting for regulation 11 the following regulation:

“Appointment of members of board of directors of an approved body corporate

11. (1) An approved corporate body shall not appoint any person as a member of its board of directors unless—

- (a) a written approval from the Commission has been obtained; and
- (b) such person fulfills the fit and proper criteria as specified in Schedule 3.

(2) A member of the board of directors of the approved body corporate shall, at all times, fulfill the fit and proper criteria as specified in Schedule 3.

(3) The approved body corporate shall immediately terminate the appointment of any member of the board of directors who no longer fulfills the fit and proper criteria as specified in Schedule 3.

(4) Where an issue arises whether a member of the board of directors fulfills the fit and proper criteria as specified in Schedule 3, the Commission shall have full discretion to determine the issue.”.

New regulations 11A and 11B

11. The principal Regulations are amended by inserting after regulation 11 the following regulations:

“Composition of board of directors of an approved body corporate

11A. (1) The board of directors of the approved body corporate shall consist of not less than seven members but not more than eleven members at all times, commensurate with the nature and scope of the operations of the approved body corporate.

(2) The chairman of the board of directors of the approved body corporate shall be elected by the members of the board of directors of the approved body corporate from amongst themselves.

(3) The chairman and the majority of members of the board of directors of the approved body corporate shall—

- (a) not be under the active employment or service or hold any position in any member; and
- (b) not have any significant interest in any member.

Responsibilities of board of directors of an approved body corporate

11B. (1) The board of directors of an approved body corporate shall be responsible for the management and oversight of the operations of the approved body corporate.

(2) Without prejudice to the generality of subregulation (1), the responsibilities of the board of directors of the approved body corporate shall include—

- (a) ensuring that the strategic direction, policies and objectives of the approved body corporate are consistent with its rules;

- (b) overseeing the internal procedures to ensure that the approved body corporate is operated in accordance with the principles of independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness;
- (c) ensuring that the approved body corporate is financially sound by supervising an appropriate funding strategy and approving the budget;
- (d) ensuring the sufficiency of competent resources and infrastructure to enable smooth and effective operations of the approved body corporate;
- (e) review the efficiency and effectiveness of the approved body corporate;
- (f) ensuring that the operations of the approved body corporate are in compliance with the Act and these Regulations; and
- (g) having in place procedures to identify and deliberate on matters which may be systemic in nature for the purposes of paragraph 8(2)(b).

(3) The board of directors of an approved body corporate shall at all times act in the best interests of the approved body corporate.

(4) The board of directors of the approved body corporate shall not be involved in the handling of any dispute including in making decisions on such disputes.”.

Amendment of regulation 13

12. Regulation 13 of the principal Regulations is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“Award”;

- (b) by inserting after subregulation (1) the following subregulation:

“(1A) The award granted by the adjudicator may include the following matters:

- (a) a monetary award of up to two hundred and fifty thousand ringgit as deemed fair and reasonable by the adjudicator as compensation for any loss suffered by a client;
 - (b) a direction that requires a member to take certain steps in relation to a dispute or claim as deemed appropriate by the adjudicator;
 - (c) a direction that requires a member to repay the actual cost incurred by the eligible client in relation to a dispute, subject to the limit as specified in the rules of the approved body corporate; or
 - (d) such other matters as determined by an adjudicator subject to the rules of the approved body corporate.”;
- and

- (c) by inserting after subregulation (4) the following subregulation:

“(5) A dispute which involves a monetary claim exceeding the maximum amount of two hundred and fifty thousand ringgit may be referred to the approved body corporate if the eligible client and the member involved in the dispute agree—

- (a) to refer such dispute to the approved body corporate; and
- (b) that the monetary award may exceed the maximum amount of two hundred and fifty thousand ringgit.”.

Amendment of regulation 13A

13. Subregulation 13A(2) of the principal Regulations is amended by inserting after the words “subregulation 8(3)” the words “, including failure to pay any fee or charge payable under the rules”.

Amendment of regulation 14

14. Regulation 14 of the principal Regulations is amended by inserting after subregulation (2) the following subregulation:

“(3) For the purposes of subregulation (1), the disclosure of any document or information of a confidential nature to other dispute resolution body or body is subject to regulation 15.”.

New regulation 16

15. The principal Regulations are amended by inserting after regulation 15 the following regulation:

“Independent review of an approved body corporate

16. (1) The approved body corporate shall appoint an independent party with the relevant expertise to conduct an independent review of the approved body corporate, which shall include a qualitative and quantitative assessment of the performance of the approved body corporate, three years from the date of commencement of its operations and subsequently, at least once in every five years.

(2) The approved body corporate shall consult the Commission on the scope of the independent review and the terms of appointment of the independent reviewer.

(3) The approved body corporate shall—

(a) co-operate with the independent reviewer and afford access to all documents and information requested; and

(b) bear the costs and expenses of the independent review.

(4) Notwithstanding subregulation (1), the Commission may, at any time, direct that an independent review be carried out or direct that the scope of the independent review be extended.”.

Deletion of Schedule 1

16. The principal Regulations are amended by deleting Schedule 1.

New Schedule 3

17. The principal Regulations are amended by inserting after Schedule 2 the following schedule:

“SCHEDULE 3

[Paragraph 3(1)(c) and regulation 11]

Fit and proper criteria

In assessing the fitness and propriety of a person as a member of the board of directors of the approved body corporate, the following criteria shall be considered individually and collectively, taking into account their relative importance:

1. Probity, integrity and reputation

- (a) whether the person is or has been subjected to any proceedings of a disciplinary or criminal nature, or has been notified of any impending investigations which might lead to such proceedings;
- (b) whether the person has contravened any provision under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
- (c) whether the person has contravened any requirement, standard or any other directive issued by the Government, a regulatory authority or professional body;
- (d) whether the person or any business in which he has a controlling interest or significant influence, has been investigated, subjected to any proceedings, disciplined, suspended or reprimanded by a regulatory authority, professional body, court or tribunal, whether publicly or privately, including commencement of any enforcement action;
- (e) whether the person has engaged in any business practices which are deceitful, oppressive or improper (whether unlawful or not), or reflect discredit on his professional conduct;
- (f) whether the person has been dismissed, asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position for the reason of his honesty and integrity being questioned;

- (g) whether the person has been associated, in an ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorization, membership or a licence to conduct any trade, business or profession, or has had the registration, authorization, membership or licence to conduct any trade, business or profession revoked, withdrawn or terminated, as the case may be;
- (h) whether the person has held a position of responsibility in the management of a business which, during his tenure of office, is placed under receivership, insolvency or involuntary liquidation;
- (i) whether the person has been a director of or directly concerned in the management of any corporation, whether in or outside Malaysia, which is being or has been wound up;
- (j) whether the person has been a director of or directly concerned in the management of any entity that is licensed, registered or otherwise approved under the Act whose licence, registration or approval has been revoked;
- (k) whether the person has acted unfairly or dishonestly in his dealings with the clients, employer, auditors or regulatory authority;
- (l) whether the person has, at any time, shown a strong objection or refused to co-operate with the regulatory authority resulting in the failure or potential failure to comply with legal, regulatory or professional requirements or standards;

- (m) whether the person has contributed significantly to the failure of an organization or a business unit;
- (n) whether the person has, at any time, shown a strong objection or a lack of willingness to maintain effective internal control systems and risk management practices;
- (o) whether the person has been involved in any matter which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a member of the board of directors;
- (p) whether the person has been convicted of any offence involving fraud, dishonesty or violence; and
- (q) whether the person has engaged, associated or conducted himself in a manner which may cast doubt on his fitness, competence and soundness of judgment.

2. Competency and capability

- (a) whether the person has appropriate qualification, competency, training, skills, practical experience and commitment to effectively fulfill the role and responsibilities of the position;
- (b) whether the person gives emphasis to sound governance practices, having broad experience in or knowledge of capital market products and services, investment related issues including investor protection, and is capable of providing an objective perspective on issues of investors and public interest;

- (c) whether the person has satisfactory past performance, expertise or competency in the nature of the business being carried out;
- (d) whether the person has experience in strategic decision-making and board-level governance; and
- (e) whether the person has background in, or an understanding of, law, finance, investment, audit and accountancy, Government policy and public policy.

3. Financial integrity

- (a) whether the person is able to fulfill his financial obligations, whether in or outside Malaysia, as and when the obligations fall due;
- (b) whether the person has been the subject of a judgment debt which is unsatisfied, either in whole or in part, and whether in or outside Malaysia; and
- (c) whether the person has been declared, and not discharged as, a bankrupt.”.

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DATO' MOHAMMAD FAIZ BIN AZMI
Chairman
Securities Commission Malaysia

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Finance Minister II