



LAWS OF MALAYSIA

Act A1039

**SECURITIES INDUSTRY (CENTRAL DEPOSITORIES)
(AMENDMENT) (NO. 2) ACT 1998**

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LAWS OF MALAYSIA

Act A1039

**SECURITIES INDUSTRY (CENTRAL DEPOSITORIES)
(AMENDMENT) (NO. 2) ACT 1998**

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

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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) (No. 2) Act 1998.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

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

(a) in the national language text, in the definitions of "belian-masuk" and "jualan-keluar" by substituting for the word "tempat" the word "pusat";

(b) by inserting after the definition of "authorised depository agent" the following definition:

“authorised nominee” means a person who is authorised to act as a nominee as specified under the rules of a central depository;’;

(c) by inserting after the definition of "bearer security" the following definition:

“beneficial owner”, in relation to deposited securities, means the ultimate owner of the deposited securities who is the person who is entitled to all rights,

benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description;’;

(d) in the definition of “securities account”, by deleting the words “or withdrawal”; and

(e) by inserting after the definition of “securities account” the following definition:

Act 280. ‘“securities laws” means this Act, the
Act 498. Securities Industry Act 1983, the Securities
Act 499. Commission Act 1993 and the Futures Industry
Act 1993 and, unless expressly stated otherwise,
includes any subsidiary legislation made under
those laws;’.

Amendment of section 4

3. Subparagraph 4(2)(f)(iv) of the principal Act is amended by deleting the words “off market”.

Amendment of section 11

4. Section 11 of the principal Act is amended in the definition of “prescribed date” by substituting for the words “section 14” the words “subsection 14(3)”.

Amendment of section 12

5. Paragraph 12(1)(a) of the principal Act is amended by deleting the words “and withdrawal”.

Amendment of section 13

6. Section 13 of the principal Act is amended—

(a) in paragraph (1)(a), by deleting the words “and withdrawal”; and

(b) in the national language text in paragraph (2)(b) by substituting for the word “tempat” the word “pusat”.

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Amendment of section 14

7. Section 14 of the principal Act is amended—

✓ (a) by substituting for subsection (1) the following subsection:

“(1) Subject to subsections (2) and (3), a stock exchange shall prescribe all securities listed or proposed to be listed for quotation on its official list that are required to be deposited with a central depository.”;

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

“(3A) The requirement under subsections (1), (2) and (3) 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.”; and

(c) by inserting after subsection (5) the following subsections:

“(6) Upon prescription of any securities under subsection (1), a holder of such prescribed securities shall deposit such securities on or before the prescribed date.

(7) If a holder of a prescribed security fails to deposit such securities on or before the prescribed date, the share registrar of the issuer shall, after the prescribed date, transfer the securities to the Minister by way of an entry in a securities account in the name of the Minister.

(8) Any person whose securities are transferred under subsection (7) may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities.

(9) If the Commission is satisfied as to the reasons for the failure to deposit the securities, the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (8) by way of an entry in a securities account.



(10) If after the expiry of the period specified in subsection (8), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(11) If any share registrar fails to transfer any securities as required under subsection (7), the High Court shall, on the application of the Commission, make an order transferring such securities to the Minister, and such transfer shall be effected by way of an entry in a securities account in the name of the Minister who may then sell or dispose of such securities in such manner and at such time as he thinks fit and deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(12) Any share registrar who fails to effect the transfer required under subsection (7) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit for every security which is the subject matter of the offence."

Deletion of sections 15 and 16

8. The principal Act is amended by deleting sections 15 and 16.

Amendment of section 17

9. Section 17 of the principal Act is amended—

(a) by deleting subsection (2); and

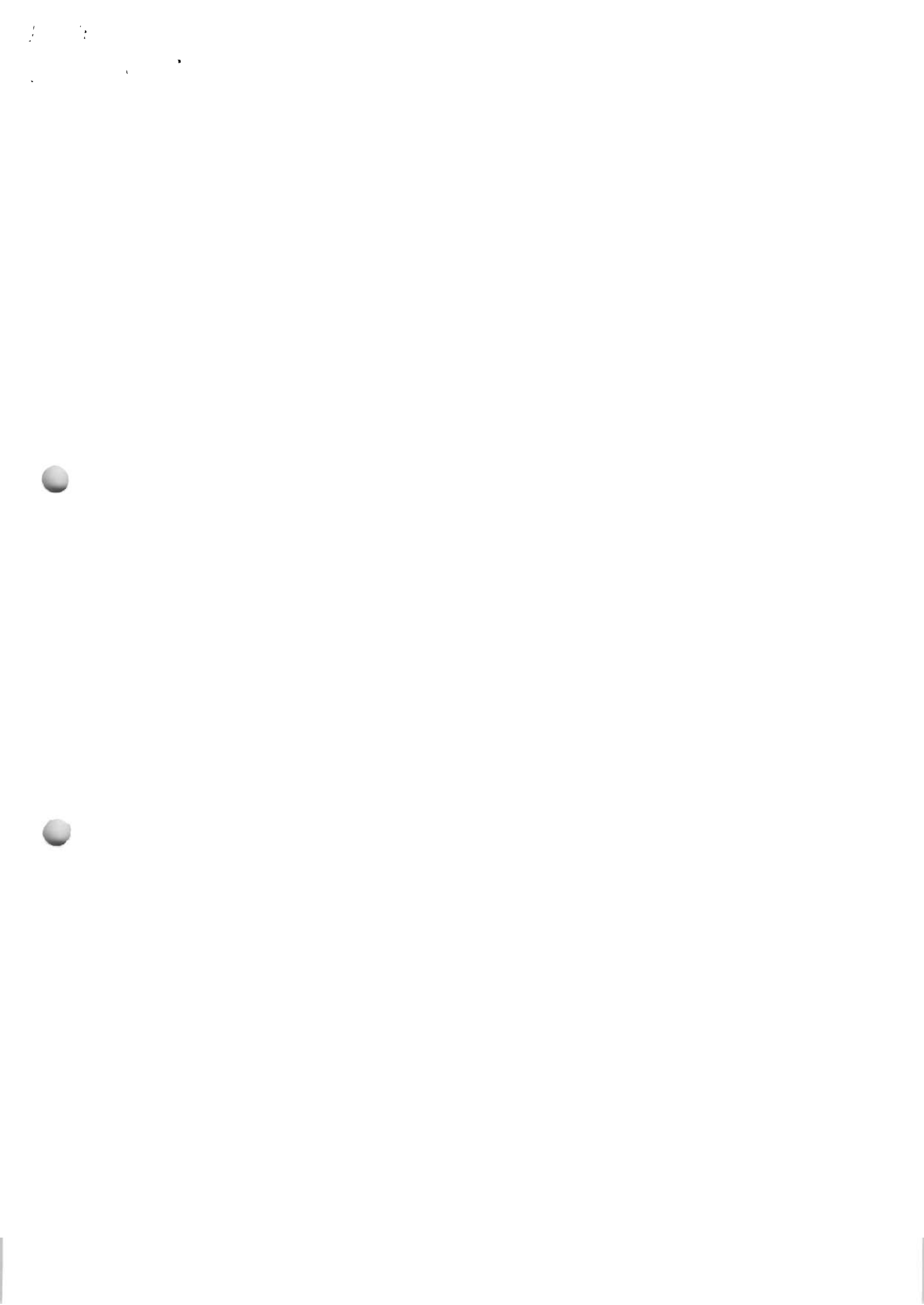
(b) in subsection (3), by substituting for the words "Notwithstanding the provisions of subsection (2), a" the word "A".

Amendment of section 18

10. Subsection 18(5) of the principal Act is amended by deleting the words "and subsection 15(4)".

Deletion of sections 22 and 23

11. The principal Act is amended by deleting sections 22 and 23.



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Substitution of section 24

12. The principal Act is amended by substituting for section 24 the following section:

“Prohibition of withdrawal.” 24. A depositor shall not withdraw the securities which have been deposited with a central depository except in such manner as may be specified in the rules of the central depository.”.

Amendment of section 25

13. Section 25 of the principal Act is amended by inserting after subsection (3) the following subsections:

“(4) Every securities account opened with a central depository shall be in the name of the beneficial owner of the deposited securities or in the name of an authorised nominee.

(5) The person opening the securities account shall make a declaration in such manner as may be specified in the rules of the central depository that he is the beneficial owner of the deposited securities or the authorised nominee, as the case may be.

(6) Any person who contravenes subsection (1), (2) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

New section 25A

14. The principal Act is amended by inserting after section 25 the following section:

“Authorised nominee shall hold deposited securities for one beneficial owner in respect of each securities account.” 25A. (1) Where an authorised nominee opens a securities account under subsection 25(4), such authorised nominee shall only hold deposited securities for one beneficial owner in respect of each securities account.

(2) An authorised nominee shall, in such manner and within such period as may be specified in the rules of the central depository, furnish to the central depository

the name and other particulars of the beneficial owner of the securities deposited in the securities account, opened in the name of the authorised nominee.

(3) An authorised nominee who contravenes subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

Amendment of section 27

15. Paragraph 27(1)(d) of the principal Act is amended by deleting the words “, and particulars showing withdrawals of such securities”.

Amendment of section 28

16. Section 28 of the principal Act is amended—

- (a) in subsection (3), by deleting the words “it is not satisfied with such report or where”;
- (b) in subsection (4), by substituting for the words “and conducts, or appoints an approved company auditor to conduct, a stock of scrips pursuant to subsection (3),” the words “the Commission may conduct or appoint an approved company auditor to conduct the stock count pursuant to that subsection, and”; and
- (c) in paragraphs (5)(b) and (c), by inserting after the words “(3)” the words “or (4)”.

New section 29A

17. The principal Act is amended by inserting after section 29 the following section:

“Dealings in deposited securities shall be effected by beneficial owners or authorised nominees. 29A. All dealings in respect of deposited securities shall only be effected by the beneficial owners of such deposited securities or an authorised nominee, as the case may be.”.

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Substitution of section 31

18. The principal Act is amended by substituting for section 31 the following section:

“Entries in securities accounts in respect of direct business, etc.” 31. (1) Subject to subsection (2), a central depository and an authorised depository agent shall make an entry in the securities account in respect of direct business or other transactions executed in accordance with the rules of the central depository or the rules of the stock exchange, as the case may be.

(2) The central depository or an authorised depository agent, as the case may be, may, before making an entry under subsection (1), require the production of any document or instrument evidencing such dealing.

(3) For the purpose of subsection (1), “direct business” has the same meaning as is assigned to that expression in the rules of the stock exchange.”

Amendment of section 35

19. Section 35 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the word “or” at the end of paragraph (b);
- (ii) by substituting for the comma at the end of paragraph (c) the words “; or”; and
- (iii) by inserting after paragraph (c) the following paragraph:

“(d) a person included in any other register maintained by the issuer in respect of or arising from any other securities issued by the issuer,”; and

(b) in subsection (2)—

- (i) by deleting the word “or” at the end of paragraph (c);

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- (ii) by substituting for the full stop at the end of paragraph (d) the words “; or”; and
- (iii) by inserting after paragraph (d) the following paragraph:
 - “(e) any other register maintained by an issuer in respect of or arising from any other securities issued by the issuer.”.

Amendment of section 37

20. Subsection 37(2) of the principal Act is amended by substituting for the words “the successful” the words “all successful”.

Amendment of section 38

21. Subsection 38(1) of the principal Act is amended—

- (a) by substituting for the words “deposited security,” the words “prescribed security”; and
- (b) by substituting for the words “the allottees” the words “all allottees”.

Amendment of section 39

22. Section 39 of the principal Act is amended by substituting for the word “Any” the words “Subject to sections 25 and 25A, any”.

Amendment of section 41

23. Section 41 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by inserting after paragraph (a) the following paragraphs:
 - “(aa) where the central depository has reason to believe or is satisfied that there is a breach of the rules of the central depository, stock exchange or recognised clearing house;

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(ab) where the central depository has been served with a notice by the Commission that the Commission suspects or has reason to believe that a provision of a securities law has been contravened and that a securities account of a depositor is relevant to its investigations regarding the contravention;";

(ii) by deleting paragraph (d); and

(iii) in paragraph (e), by deleting the word "in"; and

(b) in subsection (2), by substituting for the words "paragraph (1)(e)" the words "subsection (1)".

Amendment of section 45

24. The national language text of paragraph 45(1)(j) of the principal Act is amended by substituting for the word "tempat" the word "pusat".

Amendment of section 51

25. Section 51 of the principal Act is amended by substituting for the words "five hundred thousand" the words "one million".

Substitution of section 58

26. The principal Act is amended by substituting for section 58 the following section:

"Power of Court to make certain orders. 58. (1) Where—

(a) on the application of the Commission, it appears to the High Court that a person—

(i) has committed an offence under this Act relating to any dealing in deposited securities;

(ii) has contravened the rules of a central depository; or

(iii) is about to do an act with respect to any dealing in deposited securities that, if done, would be an offence under this Act or would be in contravention of the rules of a central depository; or

(b) on the application of a central depository, it appears to the High Court that a person has contravened the rules of the central depository,

the High Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:

- (aa) in the case of persistent or continuing breaches of this Act, or of the rules of a central depository, an order restraining a person from acting as an authorised depository agent or from holding himself out as so acting;
- (bb) an order restraining a person from disposing of or otherwise dealing with any deposited securities that are specified in the order;
- (cc) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;
- (dd) an order appointing a receiver of the property of an authorised depository agent or of property that is held by an authorised depository agent for or on behalf of another person whether on trust or otherwise;
- (ee) an order vesting securities that are specified in the order in the Commission or a trustee appointed by the High Court;
- (ff) an order declaring the whole or any part of a contract relating to securities including a contract for the acquisition or disposal of securities, to be void, and if the High Court thinks fit, to have been void *ab initio* or at all times on or after a specified date before the order is made;

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- (gg) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under the Act, an order requiring such person to do such act or thing;
- (hh) in a case of a contravention by a person of the rules of a central depository, an order giving directions concerning compliance with or enforcement of those rules to—
 - (i) the person; and
 - (ii) if the person is a body corporate, the directors of the body corporate;
- (ii) in a case where the person is a director, an order removing him from office and that he be barred from becoming a director of any other public company for such period of time as may be determined by the High Court;
- (jj) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and
- (kk) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) Where an application is made to the High Court for an order under paragraph (1)(gg), the High Court may grant the order—

- (a) where the High Court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the High Court that the person intends to again refuse or fail,

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or continue to refuse or fail, to do the required act or thing; or

- (b) where it appears to the High Court that in the event that such an order is not granted it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(4) Where an application for an order under subsection (1) is made by the Commission or any person duly authorised by the Commission, or a central depository, the High Court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission or the central depository.

(5) A person appointed by order of the High Court under paragraph (1)(dd) as a receiver of the property of an authorised depository agent—

- (a) may require the authorised depository agent to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with, including dispose of, any property that he has acquired or of which he has taken possession in any manner in which the authorised depository agent might lawfully have dealt with the property; and
- (d) shall have such other powers in respect of the property as the High Court specifies in the order.

(6) For the purposes of paragraph (1)(dd) and subsection (5) "property", in relation to an authorised depository agent, includes monies, securities, and

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documents of title to securities or other property entrusted to or received on behalf of any other person by the authorised depository agent or another person in the course of or in connection with the business of the authorised depository agent.

(7) The Commission or a trustee appointed by an order of the High Court under paragraph (1)(*ee*)—

- (a) may require the authorised depository agent to deliver to the Commission or trustee, as the case may be, the securities specified in the order and to give to the Commission or trustee all information concerning the securities that may reasonably be required;
- (b) may acquire and take possession of the securities specified in the order;
- (c) may deal with, including dispose of, the securities specified in the order in any manner as it deems fit; and
- (d) shall have such other powers in respect of the securities as may be specified in the order.

(8) The proceeds of the dealing in or disposal of property under paragraph (5)(*c*) and of securities under paragraph (7)(*c*) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the High Court, apply to the High Court for payment out of the proceeds to him.

(9) A person who contravenes or fails to comply with—

- (a) an order under subsection (1) that is applicable to him;
- (b) a requirement of a receiver appointed by order of the High Court under paragraph (1)(*dd*); or
- (c) a requirement of the Commission or trustee appointed by order of the High Court under paragraph (1)(*ee*).

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shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(10) Subsection (9) does not affect the powers of the High Court in relation to the punishment for contempt of court.

(11) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order."

New section 58A

27. The principal Act is amended by inserting after section 58 the following section:

"Appli-
cation for
winding
up.
Act 125.

58A. (1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection 58(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the Court on the petition of the Commission or a central depository in accordance with the provisions of the Companies Act 1965.

(2) The Court may order the winding up on a petition made under subsection (1) if the person referred to in subsection 58(1)—

- (a) has been appointed as an authorised depository agent under section 13 and that appointment has been terminated; or
- (b) has contravened any rules of the central depository or any provision of the securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in prosecution."

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Amendment of section 63

28. Paragraph 63(2)(e) of the principal Act is amended by substituting for the words "nominee companies" and "companies" the words "authorised nominees" and "nominees", respectively.

Mandatory deposit by person holding undeposited securities

✓ 29. (1) Where immediately before the coming into operation of this Act, any person holds any securities which have not been deposited with a central depository licensed under the principal Act he shall, within one month from the date of the coming into operation of this Act, deposit such securities with a central depository.

(2) After the expiry of the period specified in subsection (1), the share registrar of the issuer shall transfer to the Minister all securities which have not been deposited as required under subsection (1) by way of an entry in a securities account in the name of the Minister.

(3) Any person whose securities are transferred under subsection (2) may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities.

(4) If the Commission is satisfied as to the reasons for the failure to deposit the securities, the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (3) by way of an entry in a securities account.

(5) If after the expiry of the period specified in subsection (3), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(6) If any share registrar fails to transfer any securities as required under subsection (2), the High Court shall, on the application of the Commission, make an order transferring such

securities to the Minister, and such transfer shall be effected by way of an entry in a securities account in the name of the Minister who may then sell or dispose of such securities in such manner and at such time as he thinks fit and deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(7) This section shall not apply to such securities or class of securities as may be specified in the rules of a central depository.

(8) Any share registrar who fails to effect the transfer required under subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Securities account to be opened in the name of beneficial owner

30. (1) Where immediately before the coming into operation of this Act, a securities account has been opened with a central depository in the name of a person other than the beneficial owner or an authorised nominee, such person shall, within one month from the date of coming into operation of this Act—

(a) except where such beneficial owner already has an existing securities account with a central depository, apply to a central depository to open a securities account in the name of the beneficial owner of such securities; and

(b) apply to the central depository for the transfer of such securities to the securities account of the beneficial owner of such securities.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) The central depository shall on an application being made under subsection (1) cause the securities account to be opened and the transfer to be effected in accordance with such application.

(4) After the expiry of the period specified in subsection (1), the central depository shall transfer to the Minister such securities,

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in a securities account by way of an entry in a securities account in the name of the Minister, which the central depository has reasons to believe are deposited in a securities account opened not in the name of the beneficial owner of the securities or an authorised nominee as required under subsection (1).

(5) Any person whose securities are transferred under subsection (4) may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities in accordance with subsection (1).

(6) If the Commission is satisfied as to the reasons for such failure the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (5) by way of an entry in a securities account in accordance with subsection (1).

(7) If after the expiry of the period specified in subsection (5), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed money.



