

P.U.(A) 437 /2010

Incorporating latest amendment - P.U.(A)233 /2016 (C.I.F: 5 September 2016)

CAPITAL MARKETS AND SERVICES ACT 2007

CAPITAL MARKETS AND SERVICES (DISPUTE RESOLUTION) REGULATIONS 2010

IN exercise of the powers conferred under subsection 378(1) and paragraph 379(b) 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) Regulations 2010**.

(2) These Regulations come into operation on 30 December 2010.

Interpretation

2. For the purposes of these Regulations—

“Act” means the Capital Markets and Services Act 2007;

“approved body corporate” means a body corporate that is approved by the Commission pursuant to section 379 of the Act; [Subs. P.U.(A) 233/2016]

“award” means an award granted or a decision made by an approved body corporate; [Amd. P.U.(A) 233/2016]

“claim” means any monetary claim arising from a dispute referred to an approved body corporate;

“client” means an individual or a sole proprietor who is eligible to refer a dispute to the approved body corporate;

“dispute” means an eligible dispute as defined in the terms of reference of an approved body corporate;

“member”, unless the context otherwise requires, means a member of an approved body corporate as specified in subregulations 5(2) and (3); [*Amd. P.U.(A) 233/2016*]

“officer” means any director, secretary or employee of an approved body corporate;

“reference” means any reference involving a dispute or claim referred to an approved body corporate for resolution;

“rules” means the memorandum of association, the articles of association and the terms of reference of an approved body corporate, or guidelines or directives, by whatever name called and wherever contained, governing the operations of an approved body corporate, its membership or the conduct of its members;

“terms of reference” means the rules put in place in pursuance of paragraph 379 (3)(b) of the Act which define the scope, application, operations and procedures of a dispute resolution mechanism of an approved body corporate.

[*Amd. P.U.(A) 233/2016*]

Approved body corporate

3. (1) [*Deleted P.U.(A) 233/2016*].

(2) The Commission may approve a body corporate to be an approved body corporate if the Commission is satisfied that the body corporate—

[*Amd. P.U.(A) 233/2016*]

- (a) will be able to act as a dispute resolution body by receiving references in relation to disputes or claims and resolving such disputes or claims in an accessible, efficient and effective manner, based on the principle of fair and reasonableness;
- (b) has sufficient financial, human and other resources to carry out its functions and duties as provided in these Regulations;
- (c) has in place rules and procedures to enable it to perform its functions and duties as a dispute resolution body; and
- (d) is able to take appropriate action against its members for any breach of its rules and procedures.

Application for granting approval

4. (1) An application for the grant of approval as an approved body corporate shall be made to the Commission in such form and manner as the Commission may specify.

(2) The Commission may require the body corporate who makes an application under subregulation (1) to furnish the Commission with such information or document as the Commission considers necessary for the purpose of the application.

[Amd. P.U.(A) 233/2016]

(3) An application for the grant of approval shall be accompanied by a prescribed fee which shall be paid in such manner as may be specified by the Commission.

(4) The Commission may, in approving the body corporate, impose such condition or restriction as the Commission deems fit.

(5) The Commission may refuse an application for the grant of approval of a body corporate without giving any grounds for refusal.

Members of an approved body corporate

5. (1) The approved body corporate shall be as set out in Schedule 1.

[Subs. P.U.(A) 233/2016]

(2) Subject to subregulation 13(3), every holder of a Capital Markets Services License that is specified in Schedule 2 shall be deemed to be a member of an approved body corporate on the date of coming into force of these Regulations.

(3) Notwithstanding subregulation (2), the Commission may direct any licensed person or registered person to be a member of the approved body corporate. [Ins. P.U.(A) 233/2016]

Term of reference of an approved body corporate

6. (1) [Deleted. P.U.(A) 233/2016]

(2) [Deleted. P.U.(A) 233/2016]

(3) The approved body corporate shall publish the terms of reference and any amendment thereof on the approved body corporate's website. [Amd. P.U.(A) 233/2016]

(4) The terms of reference shall include the following:

(a) the scope and category of clients who are eligible to refer a dispute or claim to the approved body corporate;

(b) the procedure for membership and the circumstances in which a member may be expelled or suspended;

(c) the types of dispute or claims that are eligible for reference to the approved body corporate;

(d) the procedure, form and manner and the time period within which a dispute or claim may be referred to the approved body corporate;

(da) the scope, criteria and process for an appeal against a decision made by the approved body corporate pursuant to an adjudication, which is to be heard by an appeal committee as determined by the Commission;

[Ins. P.U.(A) 233/2016]

(e) the subscription fees, levies and other fees 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);

[Amd. P.U.(A) 233/2016]

(f) fees payable by clients to the approved body corporate;

(g) the circumstances in which a dispute or claim would 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; and

(j) the manner in which the outcome of an adjudication of a dispute or claim may be notified to the client the relevant member and the person referred to in subregulation 8(3).

[Amd. P.U.(A) 233/2016]

Withdrawal of approval

7. (1) The Commission may, after giving an approved body corporate an opportunity to be heard, withdraw an approval granted to an approved body corporate where—

(a) the approved body corporate fails to commence operations within six months from the date of approval;

- (b) the Commission is satisfied that the approved body corporate ceases to perform or is unable to perform its duties as a dispute resolution body;
- (c) the approved body corporate has contravened or failed to comply with any condition or restriction imposed by the Commission under subregulation 4(4);
- (d) the approved body corporate is being wound up or otherwise dissolved;
- (e) a judgment debt made against the approved body corporate has not been satisfied in whole or in part;
- (f) a receiver, a receiver and manager, or an equivalent person has been appointed, in relation to any property of the approved body corporate;
- (g) the approved body corporate has been determined by the Commission to have ceased operating as an approved body corporate;
- (h) any information or document furnished to the Commission for the purposes of these Regulations was false or misleading in a material particular; or
[Amd. P.U.(A) 233/2016]
- (i) the approved body corporate has failed to comply with any direction of the Commission issued under these Regulations.

Duties of an approved body corporate

8. (1) An approved body corporate shall have in place a dispute resolution mechanism that resolves disputes or claims, in an accessible, efficient and effective manner, based on the principle of fair and reasonableness.

(2) An approved body corporate shall immediately notify the Commission—

- (a) of any matter that may be adversely affect or is likely to affect its ability to carry out its duties provided under subregulation (1); and

(b) of any dispute or claim—

- (i) that may result in erosion of public confidence in the integrity of the capital market; or
- (ii) that involves serious misconduct or breach of the securities laws.

[Subs. P.U.(A) 233/2016]

(3) Notwithstanding any provision in these Regulations, an approved body corporate shall receive and resolve such disputes or claims against any person, other than its members, who is involved in any dealing or transaction involving capital market products or services, as may be directed by the Commission, if the Commission considers that it is in the interest of the public to do so.

Duty to publish report and maintain list members

9. (1) An approved body corporate shall, within 3 months after the end of each of its financial year, report its activities during that financial year and publish it on the approved body corporate's website,.

[Amd. P.U.(A) 233/2016]

(2) For the purpose of subregulation (1), the report shall include—

- (a) disputes or claims referred to the approved body corporate and the awards granted;
- (b) audited annual accounts of the approved body corporate; and
- (c) any other matters as may be directed by the Commission.

(3) The approved body corporate shall maintain a list of its members and publish the list on the approved body corporate's website.

[Amd. P.U.(A) 233/2016]

Rules of an approved body corporate

10. [Deleted. P.U.(A) 233/2016]

Appointment of directors or chief executive officer of an approved body corporate

11. No appointment of director or chief executive officer of an approved body corporate may be made without the prior approval of the Commission.

Powers of Commission to issue directions

12. The Commission may, if it thinks it necessary or expedient for—

- (a) ensuring that the dispute resolution mechanism operated by an approved body corporate is accessible, efficient and effective, based on the principle of fair and reasonableness;
- (b) the interests of the public or for the protection of investors;
- (c) the effective administration of these Regulation; or
- (d) ensuring compliance with any conditions or restrictions as imposed on the approved body corporate pursuant to these Regulations,

give an approved body corporate such directions, whether of a general or specific nature, and the approved body corporate shall give effect to such directions.

Failure to comply with award

13. (1) A member of an approved body corporate or a person referred to in subregulation 8(3) shall comply with any award granted by the approved body corporate against such member or person.

(2) An approved body corporate shall immediately notify the Commission of any failure to comply with an award by a member or a person referred to in subregulation 8(3).

(3) In the event a member of an approved body corporate fails to comply with an award granted by the approved body corporate, the approved body corporate may, with the prior approval of the Commission, expel or suspend the member.

(4) A monetary award granted by the approved body corporate can be sued for and recovered as a contractual debt.

Failure to comply with rules of approved body corporate

13A. (1) A member or a person referred to in subregulation 8(3) shall comply with the rules of the approved body corporate.

(2) The approved body corporate shall notify the Commission of any failure to comply with the rules of the approved body corporate by any member or person referred to in subregulation 8(3).

(3) The Commission may, upon being notified of the failure to comply with the rules of the approved body corporate by any member or person referred to in subregulation 8(3), give any direction as it considers fit to the approved body corporate.

(4) The approved body corporate shall take such action as the Commission may direct under subregulation (3).

[Ins. P.U.(A) 233/2016]

Cooperation and coordination

14. (1) For the purpose of discharging its functions and duties under these Regulations, an approved body corporate may enter into any arrangements to cooperate and coordinate with any other dispute resolution body or body and to obtain or share any information or document with such other dispute resolution body or body as the approved body corporate consider necessary for the purpose of settlement of disputes or claims.

[Amd. P.U.(A) 233/2016]

(2) An approved body corporate shall give cooperation to the Commission or any other regulatory authority as directed by the Commission by providing such assistance to the Commission or the regulatory authority including the provision of information relating to the operations of the approved body corporate or any other information as the Commission may required for the administration of the securities laws.

[Amd. P.U.(A) 233/2016]

Confidentiality

15. No person who has access to any information or document relating to any dispute or claim referred to an approved body corporate may disclose such information or document unless—

- (a) the disclosure is made with the consent of the person who provides the information or document;
- (b) the disclosure is is required or permitted under the Act or these Regulations;
- (c) the disclosure is required or directed by any court or the Commission;
- (d) the disclosure is required for the purposes of the implementation or enforcement of an award under these Regulations;
- (e) the disclosure is for the purpose of the enforcement of any civil or criminal action under any written law;
- (f) the disclosure is for the purpose of a judicial review against the approved body corporate; or
- (g) the information or document is already in the public domain.

[Ins. P.U.(A) 233/2016]

SCHEDULE 1

[Subregulation 5(1)]

Approved body corporate

1. Securities Industries Dispute Resolution Center (SIDREC)

SCHEDULE 2

[Subregulation 5(2)]

List of Capital Markets Services Licence holders

Unless otherwise specified by the Commission, holders of the Capital Markets Services Licence or Islamic Bank and licensed bank as provided under Part 1 of Schedule 4 to the Act for the following regulated activities shall be deemed to be a member of an approved body corporate:

1. dealing in securities;
2. dealing in derivatives;
3. fund management;
4. dealing in private retirement scheme.

[Subs. P.U.(A) 233/2016]

Made 9 December 2010

[RS(A&R)/ADR.14/10(022)-IC;PN(PU²)662/V]

ZARINAH ANWAR
Chairman
Securities Commission Malaysia

Approved 24 December 2010

[KK/BPKA/K1/(S)/483/128/1/1;PN(PU2)662/V]

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