

DEMUTUALISATION (KUALA LUMPUR STOCK EXCHANGE) ACT 2003

An Act to provide for the conversion of Kuala Lumpur Stock Exchange from a company limited by guarantee to a public company limited by shares and to provide for matters incidental thereto and connected therewith.

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Demutualisation (Kuala Lumpur Stock Exchange) 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 different provisions of this Act.

Interpretation

In this Act, unless the context otherwise requires—

"Exchange" means Kuala Lumpur Stock Exchange;

"rights" means all rights, powers, privileges and immunities, whether present or future, actual, contingent or prospective, and whether enforceable in Malaysia or elsewhere;

"property" means any movable or immovable property and includes—

- (a) in relation to property, any interest, easement or right, whether equitable or legal, title, claim, chose-in-action, power or privilege, whether present or future, vested or contingent, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property, of which the person executing the conveyance is proprietor, possessed or entitled to a contingent right either for the whole interest or for any less interest;
- (c) securities;

- (d) any negotiable instrument, including any bank note, bearer note, Treasury Bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, vested or contingent; and
- (f) any other tangible or intangible property;

"rules" has the meaning assigned to it in the Securities Industry Act 1983 [*Act 280*];

"liabilities" includes debts, charges, duties and obligations of every description, whether present or future, vested or contingent;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"Registrar" has the meaning assigned to it in the Companies Act 1965 [*Act 125*];

"Commission" means the Securities Commission established under the Securities Commission Act 1993 [*Act 498*];

"company limited by shares" has the meaning assigned to it in the Companies Act 1965;

"transferee company" means a company designated by the Minister under section 8;

"vesting date" means the date appointed by the Minister under section 9;

"conversion date" means the date on which the Exchange is converted to a public company limited by shares as appointed by the Minister under subsection 3(3);

"vested", in relation to property, includes having rights to property which are future or contingent and rights in reversion and remainder.

Part II

CONVERSION TO PUBLIC COMPANY LIMITED BY SHARES

Conversion to public company limited by shares

3. (1) The Exchange shall not apply to convert itself from a company limited by

guarantee to a public company limited by shares unless the written approval of the Minister, on the recommendation of the Commission, is obtained.

(2) Notwithstanding any of the provisions in the memorandum and articles of association of the Exchange immediately before the conversion date, the Companies Act 1965 and any other law, but subject to the provisions of this Act, the Exchange may apply to convert itself from a company limited by guarantee to a public company limited by shares by lodging with the Registrar—

- (a) a copy of the Minister's written approval referred to in subsection (1);
- (b) copies of special resolutions, passed in accordance with the articles of association of the Exchange immediately before the conversion date, approving the conversion of the Exchange to a public company limited by shares and adopting the amended memorandum and articles referred to in paragraph (c);
- (c) a copy of the memorandum and articles of association of the Exchange duly amended to reflect that it is a public company limited by shares;
- (d) a copy of the Commission's written approval on the amended memorandum and articles referred to in paragraph (c); and
- (e) information on the number and types of shares, as defined in the Companies Act 1965, to be issued upon its conversion.

(3) Upon the Registrar being satisfied that the lodgement required in subsection (2) has been effected, the Registrar shall so inform the Minister, and the Minister may, by notification published in the *Gazette*, appoint a conversion date and on such date the conversion of the Exchange to a public company limited by shares shall take effect.

(4) On the conversion date, the Registrar shall appropriately alter the details of the registration of the Exchange and issue a new certificate of incorporation which reflects the conversion of the Exchange from a company limited by guarantee to a public company limited by shares in such form as the Registrar considers appropriate and upon the issue of such new certificate of incorporation, the previous certificate of incorporation of the Exchange as a company limited by guarantee shall be deemed cancelled.

(5) Notwithstanding any of the provisions in the Companies Act 1965, the new certificate of incorporation issued pursuant to subsection (4) shall be a valid certificate of incorporation of the Exchange as a public company limited by shares for the purposes of the Companies Act 1965 or for any other purpose.

Effect upon conversion

4. (1) Upon the conversion of the Exchange to a public company limited by shares pursuant to section 3—

- (a) the amended memorandum and articles referred to in paragraph 3(2)(c) shall be the memorandum and articles of association of the Exchange;
- (b) the Exchange shall cease to be a company limited by guarantee and shall be deemed to be a public company limited by shares in accordance with the amended memorandum and articles of association referred to in paragraph 3(2)(c);
- (c) the liability of each member of the Exchange under the articles of association of the Exchange immediately before the conversion date and past member of the Exchange as a guarantor immediately before the conversion date shall be deemed to be extinguished;
- (d) voting shares in the Exchange as a public company limited by shares shall be issued to such persons and in such proportions as may be specified by the Minister on the recommendation of the Commission;
- (e) the board or the governing body, by whatever name called, of the Exchange immediately before the conversion date shall be deemed to be the inaugural board of the Exchange as a public company limited by shares until a new board or governing body is appointed in accordance with the amended memorandum and articles of association referred to in paragraph 3(2)(c), provided that the inaugural board shall operate for a period not exceeding one year or until the date on which the Exchange as a public company limited by shares is listed, whichever is the earlier; and
- (f) subject to subsection (2), any member who is on the register of members of the Exchange immediately before the conversion date shall cease to be such member.

(2) The persons to whom voting shares are issued under paragraph (1)(d) shall be deemed to be members in the register of members of the Exchange as a public company limited by shares and their names shall be entered as such in the register of members on the conversion date.

(3) Sections 32, 33B and 41 of the Securities Commission Act 1993 and sections 50, 52, 54 and 142 of the Companies Act 1965 shall not apply to any matters relating to the allotment, issue and acquisition of voting shares pursuant to paragraph (1)(d) and the conversion of the Exchange to a public company limited by shares.

(4) Unless the approval of the Minister, on the recommendation of the Commission, is

obtained no person shall dispose of any voting shares issued under paragraph (1)(d) unless and until such voting shares have been listed.

(5) In the event of a breach of subsection (4), the Commission may impose a moratorium on, or prohibit any trading of, or any dealing in, the voting shares referred to in paragraph (1)(d).

(6) For the purposes of this section, "listed" has the meaning assigned to it in the Securities Commission Act 1993.

Alteration of memorandum and articles of association, etc

5. Nothing in this Part shall prevent or limit the Exchange as a public company limited by shares from altering its memorandum and articles of association or changing its type, share capital, shareholders and directors in accordance with the provisions of any law that is applicable to it after its conversion to a public company limited by shares.

Status of member company upon conversion

6. Upon the conversion of the Exchange under this Part, a person who immediately before such conversion—

(a) is a company which carries on a business of dealing in securities and is recognised as a member company under the relevant rules of the Exchange shall be recognised as a participating organization by the transferee company and shall be subject to the rules of the transferee company, after the conversion date; or

(b) is in the employment of, or acting for or by arrangement with, the member company referred to in paragraph (a) and performs for that member company any of its business of dealing in securities and is recognised or registered by the Exchange as such, shall be recognised or registered to act in such capacity by the transferee company, and shall be subject to the rules of the transferee company, after the conversion date.

Other effects of conversion

7. It is hereby declared that the conversion of the Exchange under this Part—

(a) shall not create a new legal entity or prejudice or affect its identity or continuity;

(b) shall not render defective or affect any legal, disciplinary or other proceedings that could have been continued or commenced by or against it

prior to the conversion, notwithstanding any change in its name or status in consequence of its conversion;

- (c) shall not affect any instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document howsoever called, made, given or done by the Exchange prior to its conversion, under, in accordance with or by virtue of the provisions in the securities laws, the rules or any applicable written law, and such instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document, shall remain valid, binding and have effect in relation to the persons to whom such instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document, applies until it is amended, repealed or until it expires;
- (d) shall not affect any instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document howsoever called, made, given or done by the Commission to or against the Exchange prior to its conversion, under, in accordance with or by virtue of the provisions in the securities laws, the rules or any applicable written law, and such instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document, shall remain valid, binding and have effect in relation to the persons to whom such instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document, applies until it is amended, repealed or until it expires;
- (e) shall not affect any right, privilege, obligation or liability acquired or accrued under the provisions of the securities laws, the rules or any applicable written law prior to the conversion date and shall not affect any legal, disciplinary or other proceedings, remedy, investigation or inquiry in relation to such right, privilege, obligation or liability, and any such legal, disciplinary or other proceedings, remedy, investigation or inquiry may be instituted, continued or enforced after its conversion; and
- (f) shall not affect any action that has been or may be taken by the Exchange for any breach of its rules before its conversion.

PART III - TRANSFeree COMPANY

Designation of a transferee company by the Minister

8. (1) Upon the conversion of the Exchange to a public company limited by shares, the Minister may, by notification published in the *Gazette*, designate a wholly owned subsidiary of such Exchange to be the transferee company for the purposes of this Act.

(2) For the purposes of this section, "wholly owned subsidiary" has the meaning assigned to it in section 5B of the Companies Act 1965.

Vesting provisions

9. (1) Subject to the provisions of this Act, the Minister may, from time to time, by order published in the *Gazette*, appoint a date which is not earlier than the conversion date as a vesting date, and on such date, all property, rights or liabilities as specified by the Minister in such order shall, by virtue of this Act, be transferred to or vested in the transferee company without any conveyance, assignment or transfer.

(2) Where an order is made under subsection (1), all property, rights and liabilities vested in or held by the Exchange upon its conversion, either alone or jointly with any other person, shall, by virtue of the order, on and after the vesting date, become vested in or held by the transferee company either alone or jointly with such other person, as the case may be, and the order shall have effect according to its terms notwithstanding anything in any law, and shall be binding on any person thereby affected, regardless that the person so affected had no notice of the order made under this section or of other related proceedings.

(3) Every property vested by virtue of subsection (1) in the transferee company shall be so vested for the like title, estate or interest and on the like tenure as the property was vested or held immediately before the vesting date.

(4) Every chose-in-action vested by virtue of subsection (1) in the transferee company may, on and after the vesting date, be sued on, recovered or enforced by the transferee company in its own name and it shall not be necessary for a notice to be given to the person bound by the chose-in-action of the vesting effected under subsection (1).

(5) Every right and liability vested by virtue of subsection (1) in the transferee company may, on and after the vesting date, be sued on, recovered or enforced by or against the transferee company in its own name and it shall not be necessary for a notice to be given to the person whose right or liability is affected by the vesting effected under subsection (1).

(6) Any pending legal, disciplinary or other proceedings which relate to any property, right or liability transferred to or vested in the transferee company by virtue of subsection (1) may, on and after the vesting date, be continued by or against the transferee company.

(7) On and after the vesting date, any agreement relating to any property, rights and liabilities transferred to or vested in the transferee company under subsection (1) immediately before the vesting date, whether in writing or not, and whether or not of such a nature that such property, rights and liabilities under the agreement could be assigned, shall have effect as if the transferee company had been a party to the agreement.

(8) On and after the vesting date, references to the Exchange in any instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document howsoever called, made, given or done by any person before the vesting date in relation to the property, rights or liabilities transferred to or vested in the transferee company by virtue of subsection (1) shall be construed as references to the transferee company.

(9) On and after the vesting date, any instruction, order, approval, notification, direction, act, requirement, condition, consent, guideline, circular, undertaking, declaration, indemnity, waiver, exemption, restriction or decision, or other document howsoever called, made, given or done by or to the Exchange, in relation to the property, rights or liabilities transferred to or vested in the transferee company by virtue of subsection (1) shall be construed as having been made, given or done by or to the transferee company.

The transferee company operating as a stock exchange

10. Subject to any terms and conditions as may be imposed by the Minister, on the recommendation of the Commission, the approval of the Minister granted under section 8 of the Securities Industry Act 1983 to the Exchange before the conversion date shall be deemed to have been transferred to the transferee company on the vesting date.

Power of Minister to make regulations

11. The Minister may, on the recommendation of the Commission, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

Immunity

12. No civil liability shall be incurred by—

- (a) the Minister, the Commission, the Registrar or the Exchange; or
- (b) any person acting on behalf of the Minister, the Commission (including any member of the Commission or any member of any committee established by the Commission), the Registrar or the Exchange (including any member of the board of the Exchange, and any member of any committee established by such board), including—
 - (i) any officer of the Minister, the Commission, the Registrar or the Exchange; or
 - (ii) any agent of, or any person acting under the direction of the Minister, the Commission, the Registrar or the Exchange,

for, on account of, or in respect of any act or omission done, or any statement made or omitted to be made, in connection with the purpose of, or incidental to the implementation or carrying into effect or proposed implementation or carrying into effect of, the provisions of this Act or the regulations made under this Act, where such act, omission or statement was done or made in good faith.

PART IV - TRANSITIONAL PROVISIONS

Prevention of anomalies

13. (1) Subject to subsection (2), if any difficulty arises with respect to the application of any one or more of the provisions of this Act, the Minister may, by order published in the *Gazette*, make such modification in any one or more of those provisions as may appear to the Minister necessary for preventing anomalies.

(2) The Minister shall not exercise the power conferred in subsection (1) after the expiration of four years from the date of the commencement of this Act.