

## PART II

### SECURITIES COMMISSION MALAYSIA

*[Part Title Am. Act A1489/2015]*

#### 3. Establishment of the Commission

There is hereby established a body corporate by the name of "Securities Commission Malaysia" with perpetual succession and a common seal, and which may sue and be sued in its corporate name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Commission upon such terms as it deems fit.

*[Gen. Am. Act A1489/2015]*

#### 4. Board of Commission

- (1) There shall be a Board of the Commission.
- (2) The Board shall consist of the following members who shall be appointed by the Minister:
  - (a) a Chairman;
  - (b) a Deputy Chief Executive; and
  - (c) seven other members, who may include persons representing the government and private sector.
- (3) The Board shall—
  - (a) be responsible for monitoring the overall governance of the Commission;

- (b) be responsible for reviewing and approving the strategic plan and budget of the Commission;
  - (c) be responsible for reviewing and adopting appropriate systems and controls to manage the enterprise risks of the Commission;
  - (d) have oversight of the affairs and business of the Commission and keep under constant review the performance of the Commission in giving effect to its objects, carrying out its functions and the use of the financial resources of the Commission; and
  - (e) be responsible for such other matters as may be provided under the securities laws.
- (4) A member of the Board shall at all times act honestly and in the best interest of the Commission and use reasonable diligence in the discharge of his functions.
- (5) A member of the Board shall not make improper use of any information acquired or exercise any improper influence by virtue of his position to gain directly or indirectly an advantage for himself or for any other person.

*[Subs. Act A1489/2015]*

#### **4A. Appointment of members of Board**

- (1) A person to be appointed as the Chairman or the Deputy Chief Executive under section 4 shall be a person of integrity and impeccable reputation with proven experience and recognized knowledge in the financial or capital markets.
- (2) The Minister, in appointing other members of the Board under subsection 4(2), shall have regard to—
- (a) diversity of the Board members in terms of interest, knowledge, skills and experience; and

(b) the person's probity and standing and his knowledge, skills and experience in law, economics, finance, accounting or in any other relevant discipline, which will enable him to discharge his functions as a member of the Board.

*[Ins. Act A1489/2015]*

#### **4B. Chairman and Deputy Chief Executive**

- (1) The Chairman shall be entrusted with the day-to-day administration and management of the Commission and may, unless otherwise provided under the securities laws or any other written law, exercise all powers and do all acts which may be exercised or done by the Commission under the securities laws or any other written law.
- (2) During the absence of the Chairman or inability of the Chairman to act due to any cause, the Deputy Chief Executive shall carry out the functions of the Chairman.
- (3) For the purposes of subsection (2), in the case where the Deputy Chief Executive is absent or unable to act due to any cause, a senior member of management of the Commission designated by the Board shall carry out the functions of the Chairman.
- (4) Notwithstanding subsection (1), the Chairman may bring any matter in relation to the Commission's functions to the Board for deliberation or direction, where he deems it necessary.

*[Ins. Act A1489/2015]*

#### **5. Disqualification of Board members**

- (1) No person shall be appointed to be or remain as a member of the Board if he—
  - (a) is or becomes a full-time officer in any public listed company;
  - (b) is or becomes an officer or a director of an entity that is licensed, registered, recognized or approved under the securities laws;

- (c) is or becomes a member of the Senate or House of Representatives or any Legislative Assembly;
  - (d) is convicted of a criminal offence involving fraud, dishonesty, corruption or violence;
  - (e) is or becomes a bankrupt or suspends payment or compounds with his creditors; or
  - (f) is or becomes involved in any activity which may interfere with his independence in discharging his functions.
- (2) The prohibition in paragraph (1)(a) shall not apply to a member of the Board who is from the Ministry that is charged with the responsibility for finance.

*[Subs. Act A1489/2015]*

## **6. Tenure of office**

- (1) The Chairman shall be appointed for a term of three years and shall be eligible for reappointment for the same term.
- (2) The Deputy Chief Executive and any other member of the Board shall be appointed for a term of two years and shall be eligible for reappointment for the same term.

*[Subs. Act A1489/2015]*

## **7. Resignation**

A member of the Board may, at any time, resign his office by giving notice in writing to the Minister.

*[Subs. Act A1489/2015]*

## **8. Revocation of appointment**

The Minister may, at any time, revoke the appointment of a member of the Board if the member—

- (a) becomes of unsound mind or otherwise becomes incapable of discharging his functions;
- (b) is absent from three consecutive meetings of the Board, in the case of the Chairman, without leave of the Minister and in the case of the Deputy Chief Executive or other members of the Board, without leave of the Chairman;
- (c) conducts himself in such a way as to bring disrepute to the Commission;
- (d) fails to comply with his obligations under section 13; or
- (e) is disqualified under section 5.

[Subs. Act A1489/2015]

## **9. Remuneration or allowance**

Members of the Board or any other person invited to attend any meeting or deliberation of the Board under section 11 may be paid such remuneration or allowance as the Minister may determine.

[Am. Act A1489/2015]

## **10. Meetings**

- (1) The Board shall meet as often as may be necessary for the performance of its functions.

[Am. Act A1489/2015]

- (1A) The Chairman shall preside at all meetings of the Board.

[Ins. Act A1489/2015]

- (2) The quorum of the Board shall be five.

[Am. Act A1489/2015]

- (3) Subject to the provisions of this Act, the Board shall determine its own procedure.

[Am. Act A1489/2015]

## **11. Board may invite others to meeting**

The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising the Board on any matter under discussion, but the person so invited shall not be entitled to vote at the said meeting or deliberation.

[Subs. Act A1489/2015]

## **12. Common seal**

- (1) The Commission shall have a common seal and such seal may from time to time be broken, changed, altered and made a new as the Commission may think fit.
- (2) Until a seal is provided by the Commission, a stamp bearing the words "Securities Commission Malaysia" may be used and shall be deemed to be the common seal of the Commission.

[Gen. Am. Act A1489/2015]

- (3) The common seal shall be kept in the custody of the Chairman or such other person as may be authorized by the Commission, and shall be authenticated by either the Chairman or such authorized person or by any officer authorized by the Chairman in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed:

Provided that any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be

executed by the Commission, and any such document or instrument may be executed on behalf of the Commission by any officer or servant of the Commission generally or specifically authorized by the Commission in that behalf.

- (4) The common seal of the Commission shall be taken judicial notice of for all official purposes.

### 13. Disclosure of interest

- (1) A member of the Board or any member of the Board committee who has or acquires a direct or indirect interest in relation to any matter under discussion by the Board or Board committee shall disclose to the Board or Board committee, as the case may be, the existence of his interest and the nature of that interest.

*[Subs. Act A1489/2015]*

- (2) [Deleted]

*[Del. Act A926/1995]*

- (3) A disclosure under subsection (1) shall be recorded in the minutes of the Board or Board committee, as the case may be, and, after the disclosure, the member-

*[Am. Act A1489/2015]*

- (a) shall not take part nor be present in any deliberation or decision of the Board or Board committee, as the case may be; and

*[Am. Act A1489/2015]*

- (b) shall be disregarded for the purpose of constituting a quorum of the Board or Board committee, as the case may be,

relating to the matter.

*[Am. Act A1489/2015]*

- (4) Any member of the Board or Board committee who fails to disclose his interest as provided under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding five years or to both.

*[Am. Act A1489/2015]*

- (5) No act or proceedings of the Board or Board committee shall be invalidated on the ground that any member of the Board or Board committee has contravened the provisions of this section.

*[Am. Act A1489/2015]*

- (6) [Deleted]

*[Del. Act A926/1995]*

#### **14. Minutes**

- (1) The Board or Board committee shall cause minutes of all their meetings to be maintained and kept in a proper form.

*[Am. Act A1489/2015]*

- (2) Every meeting of the Board or Board committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

*[Subs. Act A1489/2015]*

#### **15. Functions of the Commission**

- (1) The Commission shall have the following functions:

- (a) to advise the Minister on all matters relating to the capital market;

*[ Am. Act A1489/2015]*



(b) to regulate all matters relating to the capital market;

*[Am. Act 1489/2015]*

(c) to ensure that the provisions of the securities laws are complied with;

(d) to regulate the take-overs and mergers of companies;

(e) to promote and regulate all matters relating to fund management, including unit trust schemes and private retirement schemes;

*[Am. Act 1489/2015]*

(f) to be responsible for supervising and monitoring the activities of any exchange holding company, stock exchange, derivatives exchange clearing house and central depository;

*[Am. Act 1489/2015]*

(g) to take all reasonable measures to maintain the confidence of investors in the capital market by ensuring adequate protection for such investors;

*[Am. Act 1489/2015]*

(h) to promote and encourage proper conduct amongst participating organisations, participants, affiliates, depository participants and all licensed or registered persons of an exchange, clearing house and central depository, as the case may be;

*[Subs. Act A1217/2003]*

(i) to suppress illegal, dishonourable and improper practices in the capital market, and the provision of investment advice or other services relating to the capital market;

*[Am. Act 1489/2015]*

(j) to consider and make recommendations for the reform of the securities laws;

*[Am. Act 1489/2015]*

(k) to encourage and promote the development of the capital market in Malaysia including research and training in connection thereto;

*[Am. Act 1489/2015]*

(l) to encourage and promote self-regulation by professional associations or market institutions in the capital market;

*[Am. Act 1489/2015]*

(m) to license, register, authorize, approve and supervise all persons engaging in regulated activities or providing capital market services as may be provided for under any securities law;

*[Am. Act 1489/2015]*

(n) to promote and maintain the integrity of all licensed persons registered persons, approved persons and participants in the capital market;

*[Am. Act 1489/2015]*

(o) to register or recognize all auditors of public interest entities or schedule funds for the purposes of this Act, and to exercise oversight over any person who prepares a report in relation to financial information of public interest entities or schedule funds, in relation to capital market activities;

*[Subs. Act 1489/2015]*

(oa) to promote confidence in the quality and reliability of audited financial statements in Malaysia, and to promote and develop an effective and robust audit oversight framework in Malaysia;

*[Ins. Act 1489/2015]*

(p) to take all reasonable measures to monitor, mitigate and manage systemic risks arising from the capital market;

*[Am. Act 1489/2015]*

(q) to promote and regulate corporate governance and approved accounting standards of listed corporations; and

*[Ins. Act A1403/2011]*

(r) to set and approve standards for professional qualification for the capital market;

*[Am. Act A1489/2015]*

(2) [Deleted]

*[Del. Act A987/2015]*

(3) The Commission shall have the functions and powers conferred upon it by or under the securities laws.

(4) Nothing in paragraph (1)(l) shall limit or otherwise affect the functions of the Commission.

*[Subs. Act A926/1995]*

(5) For the purposes of this section, "depository participants" means persons to whom section 9 of the Securities Industry (Central Depositories) Act 1991 apply.

*[Ins. Act A1217/2003]*

## **16. Powers of the Commission**

The Commission shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws.

*[Subs. Act A926/1995]*

**17. Delegation of Board's and Chairman's functions**

*[Subs. Act A1489/2015]*

(1) The Board may delegate any of its functions to—

- (a) any of the members of the Board;
- (b) any Board committee established by the Board; or
- (c) any officer of the Commission.

*[Subs. Act A1489/2015]*

(1A) The Chairman may delegate any of his functions to—

- (a) any committee established by the Chairman; or
- (b) any officer of the Commission.

*[Ins. Act A1489/2015]*

(2) A delegation under this section shall not prevent the concurrent performance or exercise by the Board or Chairman of the functions or powers delegated.

*[Am. Act A1489/2015]*

**18. Board committee**

*[Am. Act A1489/2015]*

(1) The Board may establish such committee, in any form and by whatever name called, as the Board considers fit or necessary to assist the Board in the performance of its functions under the securities laws.

*[Am. Act A1489/2015]*

(2) A Board committee established under subsection (1) may comprise—

(a) any Board member; and

(b) any other person,

as may be appointed by the Board.

*[Subs. Act A1489/2015]*

(2A) In appointing a person under paragraph (2) (b), the Board shall have regard to the person's integrity, reputation, knowledge, skills and experience, which will enable him to discharge his functions as a member of the Board committee.

*[Ins. Act A1489/2015]*

(2B) The functions of a Board committee established under subsection (1) shall be determined by the Board.

*[Ins. Act A1489/2015]*

(3) [Deleted] *[Del. Act A1489/2015]*

(4) [Deleted] *[Del. Act A1489/2015]*

(5) [Deleted] *[Del. Act A1489/2015]*

(6) [Deleted] *[Del. Act A1489/2015]*

(7) [Deleted] *[Del. Act A1489/2015]*

#### **18A. Procedures of Board committee**

(1) The Board committee may elect any of its members to be the chairman and may regulate its own procedure and, in the exercise of its powers under this

subsection, such committee shall be subject to and act in accordance with any direction given to the Board committee by the Board.

- (2) Meetings of the Board committee established under section 18 shall be held at such time, place and in such manner as the chairman of the Board committee may, subject to subsection (1), determine.
- (3) The Board committee may invite any person to attend any meeting of the Board committee for the purpose of advising the Board committee on any matter under discussion but the person so invited shall not be entitled to vote at any such meeting.
- (4) The members of the Board committee or any person invited to attend any meeting of the Board committee may be paid such allowances and other expenses as the Board may determine.

*[Ins. Act A1489/2015]*

#### **19. Power of the Minister to give directions and require information**

- (1) The Minister may, from time to time, give to the Commission directions of a general character not inconsistent with this Act relating to the Commission's functions and such directions shall be binding on the Commission.
- (2) The Commission shall furnish the Minister with such returns, accounts and information with respect to the performance of any of its functions under the securities laws as the Minister may from time to time require.

*[Subs. Act A926/2015]*

#### **20. Appointment of officers of the Commission**

*[Am. Act A1489/2015]*

- (1) The Commission may from time to time employ persons who shall be paid such remuneration and allowances and shall hold their employment on such other terms and conditions as the Commission shall determine.

- (2) The Commission may make arrangements for the payment to its officers and their dependants of such retirement benefits, gratuities or other allowances as it may determine.

*[Am. Act A1489/2015]*

**21. Commission may issue policies on discipline and ethical behaviour**

The Commission may, from time to time, issue policies with respect to discipline and ethical behaviour, by whatever name called or in any form, for officers of the Commission or any business stakeholders dealing with the Commission.

*[Subs. Act 1489/2015]*

**22. Power to grant loans and make advances to its officers**

*[Am. Act A1489/2015]*

- (1) The Commission may grant loans and grant make advances, including study loans and scholarships, to its officers or to other persons on such terms and conditions as the Commission may determine.

*[Am. Act A1489/2015]*

- (2) In this section, the term "officers " includes the Chairman and the Deputy Chief Executive.

*[ Am. Act A1489/2015]*

**22A. Commission may establish or participate in body corporate**

- (1) The Commission may, with the approval of the Minister, establish or participate in any body corporate for the purpose of promoting research and training in relation to the capital market, or for the purpose of carrying out its functions under this Act.

- (2) The Commission may—
- (a) receive a grant or donation;
  - (b) make a grant or donation; or
  - (c) provide any other form of assistance,

for the establishment or operations of the body corporate under subsection (1).

- (3) Monies received under paragraph (2)(a) shall be kept in a designated trust account.
- (4) The Commission shall disburse the monies in the designated trust account to the person entitled in accordance with the purpose for which the monies were received by the Commission.
- (5) Where the Commission establishes a body corporate under subsection (1), the Commission may take any action or do all such things as may be necessary or expedient for—
- (a) the interest of the public or for the protection of investors;
  - (b) the effective administration of the securities laws; or
  - (c) ensuring compliance with any conditions or restrictions as imposed on the body corporate under the securities laws.

*[Subs. Act A1489/2015]*