



LAWS OF MALAYSIA

Act A1149

SECURITIES COMMISSION (AMENDMENT) ACT 2002

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Act A1149

SECURITIES COMMISSION (AMENDMENT) ACT 2002

An Act to amend the Securities Commission Act 1993.

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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 Commission (Amendment) Act 2002.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act or in respect of different classes or categories of persons and securities.

Amendment of section 17

2. The Securities Commission Act 1993 [*Act 498*], which is referred to as the “principal Act” in this Act, is amended in subsection 17(1) by substituting for the words “section 44” the words “section 159”.

Amendment of section 32

3. Section 32 of the principal Act is amended—

- (a) in subsection (6), by substituting for the words “paragraph (5)(b)” the words “paragraph (5)(a) or (b)”; and
- (b) in paragraph (7)(b), by substituting for the words “paragraph (5)(b)” the words “paragraph (5)(a) or (b)”.

Amendment of section 35

4. Section 35 of the principal Act is amended by deleting the definition of “foreign company”.

Amendment of section 41

5. Subsection 41(2) of the principal Act is amended by substituting for the words “A person” the words “Unless authorized in writing by the Commission, a person”.

New Part IVA

6. The principal Act is amended by inserting after Part IV the following Part:

“PART IVA

AGREEMENT OR ARRANGEMENT FOR TRANSFER OF BUSINESS

Definitions. 124A. In this Part, unless the context otherwise requires—

“business” means any activity which a licensed person, exempt fund manager or exempt futures fund manager carries on pursuant to its licence or which it is allowed to carry on as the case may be, and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity;

“exempt fund manager” has the same meaning as in the Securities Industry Act 1983;

“exempt futures fund manager” has the same meaning as in the Futures Industry Act 1993;

“liabilities” includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

“licensed dealer” means a person licensed under subsection 12(1) of the Securities Industry Act 1983;

“licensed fund manager” means a person licensed under subsection 15A(1) of the Securities Industry Act 1983;

“licensed futures broker” means a person licensed under subsection 16(1) of the Futures Industry Act 1993;

“licensed futures fund manager” means a person licensed under subsection 16A(1) of the Futures Industry Act 1993;

“licensed futures trading adviser” means a person licensed under subsection 17(1) of the Futures Industry Act 1993;

“licensed investment adviser” means a person licensed under subsection 14(1) of the Securities Industry Act 1983;

“property” means any movable or immovable property and includes—

- (a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, 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, future, vested or contingent; and

(f) any other tangible or intangible property;

“securities account” means an account established by a central depository for a depositor for the recording of securities and for dealings in such securities by the depositor;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent.

Application to High Court to facilitate agreement or arrangement for transfer of whole or part of business of licensed persons, exempt fund manager and exempt futures fund manager.

124B. (1) Where in the case of—

- (a) a licensed dealer or licensed futures broker, the Minister, on the recommendation of the Commission, has granted his approval;
- (b) a licensed fund manager, licensed investment adviser, licensed futures fund manager or licensed futures trading adviser, the Commission has granted its approval; and
- (c) an exempt fund manager or exempt futures fund manager, the Commission has granted its approval,

in relation to an agreement or arrangement—

- (A) for the sale, disposal or transfer in any manner of the whole or any part of the business of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager;
- (B) for the amalgamation or merger of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager with any other person; or

- (C) for the reconstruction of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager,

the entity whose business is to be transferred, referred to as “the transferor”, and the entity to whom the transfer is to be made, referred to as “the transferee”, may make a joint application to the High Court by way of *ex parte* originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement being given effect to.

- (2) In an application to the High Court under subsection (1) there may be sought all or any of the following orders:

- (a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as “the transfer date”);
- (b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities applicable to that matter respectively;
- (c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee;
- (d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor;

- (e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client;
- (f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal;
- (g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the transferee either alone or, as the case may be, jointly with the other person;
- (h) for any monies received from commission, interest and other sources payable by any person to the transferor to be payable by the person to the transferee;
- (i) for any negotiable instrument or order for payment of money drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been drawn on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee;
- (j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee;

- (k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee, and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date;
- (l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies, and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;
- (m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee;
- (n) for all such other incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.

(3) On the hearing of an application under subsection (2), the High Court may grant an order in the terms applied for, or with such modifications or variations as the High Court deems just or proper in the circumstances of the case.

(4) Where the order of the High Court granted under subsection (3) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law, and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

(5) The order of the High Court granted under subsection (3) shall, subject to the directions of the High Court, be published by the transferee in at least one national language daily newspaper and one English language national daily newspaper as approved by the Commission.

(6) The transferor shall, within thirty days from the date the order of the High Court was granted under subsection (3), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Minister or the Commission, as the case may be, with—

(a) the Registrar of Companies; and

(b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.

(7) Where an order of the High Court granted under subsection (3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

Act 56/1965.

(a) the High Court shall, where such alienated land is in Peninsular Malaysia, including the Federal Territory of Putrajaya, pursuant to subsection 420(2) of the National Land Code 1965, cause a copy of the order to be served on the Registrar of Titles or the Land Administrator immediately after the order is granted so that the Registrar of Titles or the Land Administrator can effect the provisions of subsections 420(2), 420(3) and 420(4) respectively;

Cap. 68.

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been granted, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah;

Cap. 81.

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under section 171 of the Land Code of Sarawak; or

P.U. (A) 291/84.

(d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984.

(8) An order of the High Court granted under subsection (3) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where the property or business is or, where there are no such arrangements, in accordance with the law applicable in such country, territory or place.”.

Amendment of section 165

7. Subsection 165(4) of the principal Act is amended—

- (a) in paragraph (c), by inserting after the words “before the commencement of this Act,” the words “where there was no such requirement before the commencement of this Act.”; and
- (b) after paragraph (c), by deleting the words “where there was no such requirement before the commencement of this Act.”.

