

## SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) ACT 1991

### SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) (FOREIGN OWNERSHIP) REGULATIONS 1996

- Act 453. IN exercise of the powers conferred by section 63 of the Securities Industry (Central Depositories) Act 1991, the Minister makes the following regulations:
- Citation and commencement. 1. These regulations may be cited as the **Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996** and shall come into force on 10 October 1996.
- Interpretation. 2. In these Regulations, unless the context otherwise requires —
- Act 125. “company” has the same meaning as is assigned to that expression under subsection 4(1) of the Companies Act 1965;
- “conversion of shares” means the conversion of shares which are not separately quoted on the official list of a stock exchange into local shares and foreign shares which are separately quoted on the official list of the stock exchange;
- “corporate action” means any action taken by an issuer in relation to or arising from its share capital including payment of dividend, issue of bonus shares and other rights and interests associated with the share capital, capital restructuring and share consolidation;
- Act 125. “corporation” has the same meaning as is assigned to that expression under subsection 4(1) of the Companies Act 1965;
- “foreign shares” means the shares of an issuer which are quoted separately as foreign shares on the official list of a stock exchange from the local shares of the issuer and identified as foreign shares by the use of the letter “F” after the stock code of the issuer as determined by the stock exchange;
- “foreigner” means —
- (a) an individual who is not a citizen of Malaysia;
  - (b) a body, corporate or unincorporated, which is incorporated or constituted, as the case may be, outside Malaysia;
  - (c) a trustee administering a trust which is constituted under any foreign law;
  - (d) a trust corporation which is incorporated under any foreign law;
  - (e) a society, including a co-operative society or any other institution, which is constituted, registered or incorporated

under any foreign law;

- (f) a nominee company incorporated in Malaysia which —
  - (i) is identified with the word “(Asing)” in its name; and
  - (ii) performs the service of a nominee, agent or trustee solely for or on behalf of legal or beneficial owners of securities who are foreigners; or
- (g) a company, other than a company described under paragraph (f), which is incorporated in Malaysia and where any one of the persons or a combination of the persons referred to in paragraph (a), (b), (c), (d) or (e) is entitled to exercise or control the exercise of more than fifty per centum of the voting rights of the company;

“local shares” means the shares of an issuer which are quoted separately on the official list of a stock exchange from the foreign shares of the issuer;

“prescribed limit” means a quota, restriction or limit on the ownership of shares by a foreigner imposed on the issuer by the memorandum and articles of association or any other constituent document of the issuer;

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“register of members” , means the register of members maintained by an issuer under section 158 of the Companies Act 1965;

“restricted shares” means shares, other than foreign shares, with a prescribed limit which have been deposited with a central depository;

“rights and obligations” means all the rights, benefits, powers, privileges, liabilities, duties and obligations refer to in subregulation 6(1);

“shares” means shares in the share capital of a corporation quoted on the official list of the stock exchange.

Restricted shares to be in suspense.

- 3. For the purposes of paragraph 41(1)(e) of the Act, all restricted shares in a securities account of a foreigner are specified as being in suspense.

Rights of foreigner in relation to restricted shares.

- 4. (1) Notwithstanding regulation 3, a foreigner—
  - (a) may acquire, dispose, transfer or charge restricted shares;
  - (b) may receive consideration in respect of the transaction referred to in paragraph (a); and

(c) may be entitled to such rights and obligations as may be determined by the issuer under subregulation 6(1).

(2) Nothing in these Regulations shall affect the rights, benefits, powers, privileges, liabilities, duties or obligations of the foreigner under any written law or rule of law which may arise from or in respect of the transaction referred to in paragraphs (1)(a) and (1)(b).

Written procedures.

5. (1) The issuer shall establish written procedures not inconsistent with these Regulations, which shall be certified by an external auditor appointed by the issuer, to govern any determination made under regulation 6.

(2) In the case of restricted shares which are quoted on the official list of a stock exchange at the date of commencement of these Regulations, the written procedures shall be established in accordance with subregulation (1) within six months from such date.

(3) In the case of restricted shares which are proposed to be quoted on the official list of a stock exchange after the date of commencement of these Regulations, the written procedures shall be established in accordance with subregulation (1) before the listing of the restricted shares.

(4) The issuer may, in accordance with subregulation (1), amend the written procedures.

(5) The external auditor shall, within one month from the establishment of the written procedures referred to in subregulation (1) or from any amendment of the written procedures under subregulation (4), as the case may be, lodge a copy of the external auditor's certificate together with a copy of the written procedures with the central depository.

Determination of entitlement to rights and obligations.

6. (1) An issuer shall determine whether a foreigner who has restricted shares in his securities account shall—

(a) be entitled to all rights, benefits, powers and privileges; and

(b) be subject to all liabilities, duties and obligations,

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in respect of or arising from such restricted shares, whether conferred or imposed by the Companies Act 1965 or the memorandum and articles of association of the issuer or otherwise, as if he were a member registered in the register of members.

- (2) A determination under subregulation (1) shall be made upon the happening of any of the following events;
  - (a) the lodging of an instrument of transfer by a foreigner together with the scrip representing the restricted shares for the purpose of effecting the transfer of the restricted shares to the foreigner;
  - (b) the receipt of an application by a foreigner for a cross-transfer under regulation 9;
  - (c) prior to the calling of any general meeting;
  - (d) prior to the undertaking of any corporate action by the issuer;
  - (e) the receipt of an application for the withdrawal of restricted shares; or
  - (f) the conversion of shares
- (3) Without prejudice to subregulation (2), the issuer may make a determination under subregulation (1) in any other situation as the issuer considers necessary.
- (4) In making a determination under subregulation (1), the issuer shall comply with—
  - (a) the rules of the central depository; and
  - (b) the written procedures established under regulation 5.

And where the rules of the central depository conflict with the written procedures, the former shall prevail.

- (5) In making a determination under subregulation (1), the issuer shall ascertain as at the date of the determination, whether the quantity of restricted shares acquired or lodged for transfer, as the case may be, by the foreigner fall within the prescribed limit.
- (6) Where the quantity of restricted shares acquired or lodged for transfer, as the case may be, by the foreigner falls with the prescribed limit, the issuer shall accord entitlement to the rights and obligations in respect of such restricted shares to the foreigner.
- (7) Where the prescribed limit has been exceeded, the issuer shall consider the following matters before making a determination under subregulation (1):
  - (a) the time of acquisition of the restricted shares by the foreigner appearing in the record of depositories, as determined under the rules of the central depository; or
  - (b) the time of lodgement of the instrument of transfer of the restricted shares by the foreigner under paragraph (2)(a).

as the case may require, and subject to subregulation (6), shall accord entitlement to the rights and obligations in respect of such restricted shares to the foreigner who has acquired the restricted shares or lodged the instrument of transfer of the restricted shares earlier in time.

- (8) Notwithstanding subregulations (6) and (7), where the foreigner was registered as a member in the register of members maintained by the issuer before the physical deposit of the scrip representing the restricted shares by the foreigner by the foreigner with the central depository, the issuer shall accord entitlement to the rights and obligations in respect of such restricted shares to the foreigner.
- (9) An issuer shall maintain a list which shall contain the details of all the foreigners who are determined to be entitled to the rights and obligations under this regulation and such list shall be available for inspection without charge by any member of the issuer or any foreigner who has acquired restricted shares of that issuer.
- (10) For the purposes of paragraph (2)(a) and subregulations (5), (6) and (7), "restricted shares" includes restricted shares which have not been deposited with the central depository.

Rights and obligations where issuer being wound up. Act 125.

- 7. Notwithstanding regulation 6, where an issuer is wound up in accordance with the Companies Act 1965, a foreigner who has restricted shares in his securities account as at the date of distribution of the surplus assets to the members of the company shall be entitled to all the rights and obligations in respect of such restricted shares irrespective of whether the prescribed limit has been exceeded.

Issuer to administer rights and obligations of non-entitled foreigner

- 8. Where an issuer has made a determination under subregulation 6(1) that a foreigner is not entitled to the right and obligations, the issuer shall determine the manner in which such rights and obligations are to be dealt with.

Cross-transfer of  
shares

9. The issuer shall, on an application by a foreigner, transfer local shares which are restricted shares held by the foreigner to foreign shares in accordance with the rules of the central depository where—

- (a) the foreigner has local shares in his securities account;
- (b) the issuer has taken into consideration the time of acquisition of the local shares which are the subject-matter of the application;
- (c) the quantity of the local shares are within the prescribed limit at the time of receipt of the application; and
- (d) the acceptance of the application will not result in the total issued foreign shares exceeding the prescribed limit.

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