



LAWS OF MALAYSIA

Act A1074

SECURITIES COMMISSION (AMENDMENT) ACT 2000

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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 2000.

(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 or securities.

Amendment of section 2

2. The Securities Commission Act 1993 [Act 498], which in this Act is referred to as the “principal Act”, is amended—

(a) by renumbering section 2 as subsection 2(1);

(b) in the renumbered subsection 2(1)—

(i) by substituting for the definition of “associate” the following definition:

‘ “associated person” shall be construed as
Act 280. provided under section 3 of the Securities Industry
 Act 1983;’

(ii) by inserting after the definition of “associated person” the following definitions:

‘ “borrower”, in relation to a debenture, means the corporation that is or will be liable to repay money under the debenture;

Act 519. "Central Bank of Malaysia" means the Central Bank established under the Central Bank of Malaysia Act 1958;';

- (iii) in the definition of "committee", by substituting for the word "appointed" the word "established";
- (iv) by inserting after the definition of "dealing in securities" the following definitions:

“deventure” includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed moneys, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;
- (b) a cheque, banker's draft or any other bill of exchange or a letter of credit;
- (c) a banknote, an insurance policy or a guarantee;
- (d) a statement, passbook or other document showing any balance in a current, deposit or savings account;
- (e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or
- (f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*;

“director” includes a reference to—

- (a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;
- (b) a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;
- (c) an alternate or substitute director; or
- (d) in the case of a corporation formed or incorporated or existing outside Malaysia—
 - (i) a member of the corporation’s board of directors or governing body;
 - (ii) a person occupying or acting in the position of a member of the corporation’s board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; or
 - (iii) a person in accordance with whose directions or instructions the members of the corporation’s board are accustomed to act;

“document” has the same meaning as in the
Act 56. Evidence Act 1950;;

- (v) by inserting after the definition of “exchange company” the following definition:

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

- (vi) by inserting after the definition of “futures market” the following definitions:

“guarantor”, in relation to a debenture, means a person who guarantees or has agreed to guarantee the repayment of any money secured or payable under the debenture;

“issue” means—

- (a) in relation to securities, to bring or cause to be brought into existence those securities; and
- (b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

“issuer” means—

- (a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;
- (b) in the case of units of a unit trust scheme or prescribed investment scheme, the management company;
- (c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;’;

(vii) by inserting after the definition of “listed” the following definitions:

“management company” means a company by which or on whose behalf a unit of a unit trust scheme or prescribed investment scheme has been or is proposed to be issued or offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been

made and includes any person for the time being exercising the functions of the management company;

“member company” has the same meaning as in the Securities Industry Act 1983;’;

- (viii) in the definition of “officer”, by substituting for the words “section 35” the words “section 125”;
- (ix) by inserting after the definition of “officer” the following definition:

‘ “official list”, in relation to a stock market of a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock market of the stock exchange;’;

- (x) by inserting after the definition of “prescribed” the following definitions:

Act 125. ‘ “prescribed investment” means an interest as defined under subsection 84(1) of the Companies Act 1965 that has been exempted under section 96 of the Companies Act 1965 and in respect of which the Minister has made a prescription under subsection 2B(3);

“prescribed investment scheme” means an undertaking, scheme, enterprise, contract or arrangement in relation to a prescribed investment;’;

- (xi) by inserting after the definition of “stock exchange” the following definition:

‘ “stock market” has the same meaning as in the Securities Industry Act 1983;’;

- (xii) by substituting for the definition of “securities” the following definition:

“securities” means—

- (a) debentures, stocks or bonds issued or proposed to be issued by any government;
- (b) shares in or debentures of, a body corporate or an unincorporated body; or
- (c) unit trusts or prescribed investments,

and includes any right, option or interest in respect thereof;’;

(xiii) by inserting after the definition of “trade” the following definitions:

“unit”. in relation to a unit trust scheme or prescribed investment scheme, means any right or interest therein by whatever name called and includes any sub-unit thereof;

“unit holder” means the unit holder of a unit trust scheme or prescribed investment scheme, as the case may be;’;

(xiv) by substituting for the definition of “unit trust scheme” the following definition:

“unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of—

- (i) securities;
- (ii) futures contracts; or
- (iii) any other property;’;

(xv) by inserting after the definition of “unit trust scheme” the following definition:

“unlisted recreational club” means a corporation which provides the holders of its

shares or debentures the right to use or enjoy any recreational, holiday or other related facilities and whose shares or debentures are not listed or proposed to be listed for quotation on any stock market of a stock exchange.'; and

(c) by inserting after subsection (1) the following subsection:

“(2) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend Schedule 2, Schedule 3 or any prescription made under paragraph 38(1)(b) or 39(1)(b), as the case may be, and upon such publication, Schedule 2, Schedule 3 or the prescription, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.”.

New section 2B

3. The principal Act is amended by inserting after section 2A the following sections:

“Prescription of securities. Act 499. 2B. (1) Notwithstanding the definition of “securities” under this Act, “futures contract” under the Futures Industry Act 1993 and “interest” as defined in subsection 84(1) of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette*, prescribe any instrument or product or class of instruments or products to be—

- (a) securities for the purposes of this Act or the Securities Industry Act 1983 or any particular provision of this Act or the Securities Industry Act 1983; or
- (b) futures contracts for the purposes of this Act or the Futures Industry Act 1993 or any particular provision of this Act or the Futures Industry Act 1993.

(2) Where an exemption has been granted under section 96 of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette*, prescribe an exempted interest or a class or category of exempted interests to be—

- (a) securities for the purposes of this Act or the Securities Industry Act 1983 or any particular provision of this Act or the Securities Industry Act 1983; or
- (b) a futures contract for the purposes of this Act or the Futures Industry Act 1993 or any particular provision of this Act or the Futures Industry Act 1993.

(3) Where the Minister has made a prescription under subsection (1) or (2) in respect of securities or futures contracts, the Minister may prescribe—

- (a) in the case of securities, any provision of Part IV to apply to such securities;
- (b) in the case of futures contracts, any provision of the Futures Industry Act 1993 to apply to such a futures contract.

(4) For the purposes of this section, “interest” means an interest as defined in subsection 84(1) of the Companies Act 1965.

Regulations
on
procedure
and manner
of registra-
tion or
lodgement.

2c. Where any instrument or document is required to be registered by or lodged with the Commission under this Act, the Commission, with the approval of the Minister, may make such regulations as may be expedient or necessary relating to the procedure or manner of registration or lodgement of such instrument or document.

Registers.

2d. (1) The Commission may keep such registers as it considers necessary in such form as it deems fit.

(2) Any person may, on payment of the prescribed fee—

- (a) inspect any prospectus or deed relating to a unit trust scheme or prescribed investment scheme that is lodged with the Commission; or

(b) require a copy of or extract from any document that he is entitled to inspect pursuant to paragraph (a).

(3) If a reproduction or transparency of a document is produced for inspection, a person is not entitled pursuant to paragraph (2)(a) to require the production of the original of that document.

(4) The reference in paragraph (2)(b) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document.

(5) A copy of or extract from any document, including a copy produced by way of microfilm, lodged with the Commission and certified to be a true copy or extract by any officer authorised by the Commission shall in any proceedings be admissible in evidence as of equal validity with the original document.

(6) A reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

Electronic
filing of
documents.

2E. (1) The Commission may provide a service for the electronic filing or lodging of documents required by this Act to be filed or lodged with the Commission.

(2) A person who intends to use the service provided under subsection (1) shall become a subscriber to the service by paying the prescribed fee and by complying with such terms and conditions as may be determined by the Commission.

(3) Only a subscriber to the service provided under subsection (1) may electronically file or lodge documents with the Commission.

(4) A document electronically filed or lodged under this section shall be deemed to have satisfied the requirement for filing or lodgement if the document is communicated or transmitted to the Commission in such manner as may be prescribed by regulations or approved by the Commission.

(5) The Commission may specify the documents that may be electronically filed or lodged.

(6) A document that is required to be stamped, signed or sealed shall, if it is to be electronically filed or lodged, be certified or authenticated in such manner as may be prescribed by regulations or approved by the Commission.

(7) A copy of or an extract from any document electronically filed or lodged with the Commission under subsection (1), supplied or issued by the Commission and certified to be a true copy thereof or extract therefrom by any officer authorised by the Commission, shall be admissible in evidence in any proceedings as of equal validity as the original document.

(8) Where a document is electronically filed or lodged with the Commission, the Commission or its authorised agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission, of whatever nature or however arising, appearing in any document obtained by any person under the service referred to in subsection (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Commission or of its authorised agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.”

Amendment of section 32

4. Section 32 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “the Schedule” the words “Schedule 1”; and
- (ii) by deleting the definition of “Central Bank of Malaysia”;

(b) in paragraph (2)(g)—

- (i) by deleting the words “effect a restructuring exercise involving”; and
- (ii) by substituting for the words “an acquisition or disposal of” the words “acquire or dispose”;

(c) in paragraph (5)(a), by inserting after the word “proposal” the words “subject to such terms and conditions as it deems fit”;

(d) in paragraphs (9)(a) and (9)(b), by substituting for the words “Part IV of the Companies Act 1965” wherever they appear the words “this Act”; and

(e) in subsection (13)—

- (i) by substituting for the words “liable to” the words “punished with”; and
- (ii) by deleting the word “to” wherever it appears.

Amendment of section 32A

5. Section 32A of the principal Act is amended—

(a) in paragraph (1)(a), by substituting for the words “the Schedule” the words “Schedule 1”;

(b) in subsection (2), by inserting after the words “subsection (1)” the words “or in making any order under subsection (4)”;

(c) by inserting after subsection (3) the following subsection:

“(4) The Minister may, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend Schedule 1 and upon such publication, Schedule 1 as varied, deleted, added to, substituted for or otherwise amended, shall come into

full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.”.

Amendment of section 32B

6. Subsection 32B(4) of the principal Act is amended—
- (a) by substituting for the words “liable to” the words “punished with”; and
 - (b) by deleting the word “to” wherever it appears.

Amendment of section 33B

7. Subsection 33B(4) of the principal Act is amended—
- (a) by substituting for the words “liable to” the words “punished with”; and
 - (b) by deleting the word “to” wherever it appears.

Amendment of section 33E

8. Subsection 33E(3) of the principal Act is amended—
- (a) by substituting for the words “liable to” the words “punished with”; and
 - (b) by deleting the word “to” wherever it appears.

New Divisions 3, 4 and 5 of Part IV

9. The principal Act is amended in Part IV by inserting after Division 2, the following Divisions:

“ DIVISION 3

PROSPECTUS

- Definitions.** 35. In this Division and Divisions 4 and 5 of this Part, unless the contrary intention appears—

“approved company auditor” means a person approved by the Minister under subsection 8(2) of the Companies Act 1965 as a company auditor and whose approval has not been revoked;

“excluded invitation” or “excluded offer” means an invitation or offer which is specified in Schedule 2 or which is prescribed by the Minister to be an excluded invitation or excluded offer under paragraph 38(1)(b);

“excluded issue” means an issue which is specified in Schedule 3 or which is prescribed by the Minister to be an excluded issue under paragraph 39(1)(b);

“foreign company” has the same meaning as in the Companies Act 1965;

“listing requirements” has the same meaning as in the Securities Industry Act 1983;

“preliminary prospectus” means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

“promoter” means—

- (a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;
- (b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or
- (c) in relation to a prospectus in any other case, a person,

who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“prospectus” means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

“related corporation”, in relation to a corporation, means a corporation that is related to the first-mentioned corporation by virtue of section 6 of the Companies Act 1965;

“shelf prospectus” means a prospectus issued under a shelf registration scheme;

“shelf registration scheme” means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

“supplementary shelf prospectus” means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

Invitation. 36. In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

Offer for subscription or purchase. 37. For the purposes of this Division and Division 5 of Part IV, the expression “offer for subscription or purchase” or “making an invitation to subscribe for or purchase”, in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units.

Excluded offers and invitations. 38. (1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—

(a) the offer or invitation is so specified in Schedule 2; or

(b) the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*,

to be an excluded offer or an excluded invitation.

(2) A prescription made under paragraph (1)(b) may specify the provisions of this Act to which an offer or invitation so prescribed to be an excluded offer or an excluded invitation shall not apply.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

- (a) any excluded offer or excluded invitation specified in Schedule 2; or
- (b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) For the purposes of this section, section 39, Schedules 2 and 3, “underwriting” includes sub-underwriting.

(6) Paragraph 17 of Schedule 2 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Excluded
issues.

39. (1) An issue of securities is an excluded issue if—

- (a) the issue is so specified in Schedule 3; or
- (b) the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*,

to be an excluded issue.

(2) A prescription made under paragraph (1)(b) may specify the provisions of this Act to which the issue so prescribed to be an excluded issue shall not apply.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

- (a) any excluded issue specified in Schedule 3; or
- (b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 17 of Schedule 3 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Exceptions. 40. (1) The provisions of this Division as specified in Schedule 2 or 3 or as may be so prescribed by the Minister pursuant to paragraph 38(1)(b) or 39(1)(b) shall not apply to—

- (a) an excluded offer;
- (b) an excluded invitation; or
- (c) an excluded issue.

(2) The provisions of this Part shall not apply to the making available of, the offer for subscription or purchase of, or an invitation to subscribe for or purchase, shares or debentures by any unlisted recreational club.

Requirement
to register
prospectuses
in relation
to
securities.

41. (1) A person shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, any securities unless—

(a) a prospectus in relation to the securities has been registered by the Commission under section 42; and

(b) the prospectus complies with the requirements or provisions of this Act.

(2) A person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 42.

(3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(4) A person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding ten million ringgit or imprisonment for a term not exceeding ten years or both.

Registration
of
prospectus.

42. (1) The Commission shall refuse to register a prospectus if—

(a) the Commission is of the opinion that the prospectus does not comply with any requirement or provision of this Act;

(b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates does not comply with any other requirement or provision of this Act;

(c) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;

- (d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates—
 - (i) requires the approval of the Commission under section 32 and such approval has not been given; or
 - (ii) does not comply with any term or condition imposed under subsection 32(5);
 - (e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or
 - (f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 1965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.
- (2) No prospectus shall be registered unless it is submitted to the Commission together with—
- (a) a written application for its registration;
 - (b) true copies of all consents required under subsection 53(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
 - (c) true copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and
 - (d) all such information or documents as may be required by the Commission.

(3) An issuer shall cause a true copy of—

- (a) any consent required under subsection 53(1) in relation to the issue of the prospectus; and
- (b) every material contract or document referred to in the prospectus,

to be deposited—

- (aa) at the registered office of the issuer in Malaysia, and if it has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and
- (bb) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose,

within three days after the registration of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

Requirement
to lodge
prospectus
with
Registrar.

43. An issuer shall cause a copy of the prospectus registered by the Commission under this Act and a copy of the form of application accompanying such prospectus—

- (a) in relation to securities other than a unit trust scheme or prescribed investment scheme, to be lodged with the Registrar;
- (b) in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission,

before the date of issue of the prospectus.

Contents of
prospectus.

44. (1) Without prejudice to section 45, a prospectus—

- (a) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;

(b) shall state that—

(i) the prospectus has been registered by the Commission;

(ii) in respect of securities other than a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Registrar and in respect of a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Commission; and

(iii) the registration of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus,

(c) shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period after the date of issue of the prospectus as the Commission may specify;

(d) shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(e) shall not contain the name of any person named in the prospectus as having made a statement—

(i) that is included in the prospectus; or

(ii) on which a statement made in the prospectus is based,

unless the requirements of subsection 53(1) are satisfied; and

(f) shall set out such information, matters or reports as may be specified by the Commission.

(2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 45, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 41 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.

(4) In making an order under subsection (3), the Commission may impose such terms and conditions as it deems fit.

(5) The Commission shall not make an order under subsection (3) unless it is satisfied that—

- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (3).

(7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(8) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (4) shall be guilty of an offence.

General duty
of disclosure
in
prospectus.

45. (1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 55(1) or subsection 57(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;
- (b) the rights attaching to the securities; and
- (c) the merits of investing in the securities and the extent of the risk involved in doing so.

(2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under subsection (1) is information—

- (a) which is known to all or any of the following persons:
 - (i) a person who was a director of the issuer at the time of issue of the prospectus;
 - (ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
 - (iii) a promoter;
 - (iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or

invitation to subscribe for or purchase, securities;

(v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;

(vi) a person named in the prospectus, with his consent, as a stockbroker, sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; or

(b) which any of the persons referred to in paragraph (2)(a) would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) Without prejudice to the generality of subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be had to—

(a) the nature of—

(i) the securities;

(ii) the business of the issuer of the securities;
and

- (iii) the unit trust scheme or prescribed investment scheme;
- (b) the persons likely to consider acquiring such securities;
- (c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 45(1) may reasonably be expected to consult; and
- (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of a stock exchange, if applicable, or otherwise.

Abridged
prospectus
for
renounceable
rights
issues.

46. (1) A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and in respect of which an application has been or will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is registered by the Commission.

(2) Any abridged prospectus registered pursuant to subsection (1) shall contain such particulars or information as may be specified by the Commission.

(3) Nothing in this section shall be construed as preventing a full prospectus from being registered containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in subsection (1).

Supplemen-
tary
prospectus.

47. (1) This section applies—

- (a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or
- (b) in any other case, where a prospectus has been registered but before the issue of securities,

and where the issuer becomes aware that—

(aa) a matter has arisen and information in respect of that matter would have been required by—

- (i) section 44 or 45;
 - (ii) any requirement under this Act;
 - (iii) any guidelines issued by the Commission;
- or

(iv) any listing requirement of a stock exchange, to be disclosed in the prospectus if the matter had arisen at the time the prospectus was prepared;

(bb) there has been a significant change affecting a matter disclosed in the prospectus;

(cc) the prospectus contains a material statement or information that is false or misleading; or

(dd) the prospectus contains a statement or information from which there is a material omission.

(2) As soon as practicable after becoming aware of a matter referred to in subsection (1), the issuer shall submit a supplementary prospectus to the Commission for registration.

(3) The issuer shall lodge the supplementary prospectus—

- (a) in relation to securities other than a unit trust scheme or prescribed investment scheme, with the Registrar immediately upon registration by the Commission; and

(b) in relation to a unit trust scheme or prescribed investment scheme, with the Commission immediately upon registration by the Commission.

(4) Subsection (1) shall apply with respect to matters contained in a supplementary prospectus previously registered under this section in respect of the securities in question.

(5) There shall be, on each page of a supplementary prospectus, a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with—

- (a) the original prospectus; and
- (b) if other supplementary prospectuses have been issued in relation to the original prospectus - those supplementary prospectuses.

(6) A supplementary prospectus shall be regarded as being a part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.

(7) Where a supplementary prospectus has been registered by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.

(8) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from or approving any variation of the requirements of this section.

(9) In making an order under this section, the Commission may impose such terms and conditions as it deems fit.

(10) The Commission shall not make an order under subsection (8) unless it is satisfied that—

- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(11) Any person who contravenes subsection (2), (3), (5) or (7) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(12) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (9) shall be guilty of an offence.

Consequences of registering a supplementary prospectus.

48. (1) This section applies—

- (a) where a person (“the applicant”) applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and—
 - (i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or
 - (ii) in any other case, before the issue of securities; and
- (b) the issuer delivers to the Commission for registration a supplementary prospectus that relates to the prospectus.

(2) As soon as practicable after the registration of the supplementary prospectus by the Commission, the issuer shall—

(a) give to the applicant a written notice or such other notice as may be specified by the Commission—

(i) advising the applicant that a supplementary prospectus has been registered by the Commission;

(ii) giving the applicant no less than 14 days from the date of receipt of the notice an opportunity to withdraw his application; and

(b) ensure that the written notice referred to in paragraph (2)(a) is accompanied by a copy of a supplementary prospectus.

(3) If the applicant withdraws his application pursuant to subparagraph (2)(a)(ii), the issuer shall immediately pay to the applicant any moneys that the applicant has paid to the issuer on account of the application.

(4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(5) In making an order under this section, the Commission may impose such terms and conditions as it deems fit.

(6) The Commission shall not make an order under subsection (4) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(7) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(8) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (5) shall be guilty of an offence.

Regulations
for shelf
prospectuses,
supplementary
shelf
prospectuses,
short form
prospectuses,
profile
statements,
etc.

49. (1) Notwithstanding the provisions of sections 44 and 45, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force—

(a) a shelf prospectus as updated by a supplementary shelf prospectus;

(b) a short form prospectus; or

(c) a profile statement,

relating to all matters which the Commission, with the approval of the Minister, may provide by way of regulations made under this Act with respect to a shelf prospectus, a supplementary shelf prospectus, a short form prospectus or a profile statement, as the case may be.

(2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters:

(a) a shelf prospectus, including a supplementary shelf prospectus;

(b) a short form prospectus;

- (c) a profile statement;
- (d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, a short form prospectus or profile statement, as the case may be;
- (e) the form and content of a prospectus referred to in paragraph (a), (b) or (c);
- (f) the persons or classes of persons to which any prospectus referred to in paragraph (a), (b) or (c) may apply; or
- (g) the securities or classes of securities to which any prospectus referred to in paragraph (a), (b) or (c) may apply.

(3) Where the Commission makes regulations under subsection (1) with respect to a shelf prospectus, a supplementary shelf prospectus, a short form prospectus or a profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

Restrictions
in
advertising.

50. (1) A person shall not publish a notice that—

- (a) issues, offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; or
- (b) refers, whether directly or indirectly, to—
 - (i) a prospectus in respect of securities of a corporation;

- (ii) in the case of a unit trust scheme or prescribed investment scheme, a prospectus in respect of any unit of the unit trust scheme or prescribed investment scheme, as the case may be;
- (iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or
- (iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.

(2) Subsection (1) shall apply to such notices mentioned therein which are issued in relation to the securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(3) Subsection (1) shall not apply to—

- (a) such notices referred to in subsection (4) or (5);
- (b) such preliminary prospectuses referred to in subsection (6);
- (c) such reports referred to in subsection (7); or
- (d) such notices or reports as may be specified by the Commission.

(4) Subsection (1) shall not apply to a notice that is issued or published before the registration of a prospectus—

- (a) with the consent of the Commission and subject to such terms and conditions as it may impose; and
- (b) which does not contain any information or matter other than the following:
 - (i) the name of the issuer of securities;

- (ii) in the case of a unit trust scheme or prescribed investment scheme, the name of the unit trust scheme or the prescribed investment scheme, and the names of the trustee and the management company in relation to the unit trust scheme or prescribed investment scheme, as the case may be;
- (iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;
- (iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors;
- (v) the names and addresses of stockbrokers, sharebrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (vi) in the case of debentures, the name and address of the trustee for debenture holders;
- (vii) a brief description of the listing status of the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the corporation, unit trust scheme or prescribed investment scheme, as the case may be, will be listed;

- (viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus;
- (ix) in the case of a unit trust scheme or prescribed investment scheme, a description of the persons from whom the units are available for purchase or subscription; and
- (x) such other information or matters which the Commission may specify in writing.

(5) Subsection (1) shall not apply to a notice that is issued or published after the registration of a prospectus that—

- (a) states that a prospectus in relation to any securities has been registered;
- (b) specifies the date of the prospectus;
- (c) specifies where a copy of the prospectus can be obtained;
- (d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and
- (e) states such other information or matters which the Commission may specify in writing.

(6) Subsection (1) shall not apply to a preliminary prospectus where the following requirements are met:

- (a) a copy of the preliminary prospectus is delivered to the Commission prior to its issue;

- (b) the preliminary prospectus is issued to any person referred to in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (22), (23), (24), (25), (26) or (27) of Schedule 2 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing;
- (c) the preliminary prospectus contains on its front page a conspicuous notice that—
 - (i) it is not a prospectus;
 - (ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and
 - (iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus;
- (d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation;
- (e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person;
- (f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and
- (g) where a prospectus which is registered in relation to securities to which the preliminary prospectus relates differs from the preliminary prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission:

Provided that the Commission may, either of its own accord or on a written application by an issuer, make an order approving any variation of the requirements of this subsection.

(7) Subsection (1) shall not apply to the issuing or publishing of all or any of the following reports:

- (a) a report that relates to the affairs of a corporation, a unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme, as the case may be;
- (b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a prescribed investment scheme where the body corporate, unit trust scheme or prescribed investment scheme is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting;
- (c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to—
 - (i) a prospectus that has been registered or information that is contained in such a prospectus; or
 - (ii) a report referred to in paragraph (a) or (b),

if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:

- (aa) the person making the report or comment;
- (bb) an agent or employee of the person making the report or comment;
- (cc) where the report or comment is published in a newspaper or periodical - the publisher of the newspaper or periodical; or
- (dd) where the report or comment is published by broadcasting or televising - the licensee of the broadcasting or television station by which it is published.

(8) A notice that is issued or published under subsection (4) or (5), a preliminary prospectus that is issued under subsection (6) or a report that is issued or published under subsection (7) shall not constitute a prospectus.

(9) Nothing in this section shall limit or diminish the liability that a person may incur under any other law.

(10) Where it appears to the Commission that a notice, preliminary prospectus or report referred to in this section—

- (a) contravenes subsection (1);
- (b) contains a statement or information that is false or misleading;
- (c) contains a statement or information from which there is a material omission; or
- (d) contains a material misrepresentation,

the Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report—

- (aa) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or
- (bb) direct the person to take such other action as may be specified in the order.

(11) In this section, "notice" includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.

(12) A person who—

- (a) issues or publishes a notice in contravention of subsection (1);
- (b) issues or publishes a notice in contravention of subsection (4) or (5);
- (c) issues a preliminary prospectus in contravention of subsection (6); or
- (d) issues or publishes a report in contravention of subsection (7),

shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Document
containing
offer of
securities
for
purchase
deemed to
be a
prospectus.

51. (1) Subject to subsection (3), where an issuer allots or issues or agrees to allot or issue to any person any securities with a view to all or any of them being offered for purchase—

- (a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and
- (b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers therefor.

(2) Nothing in subsection (1) shall prejudice the liability of the persons by whom the offer for purchase is made in respect of statements in, or omissions from, the document by which the offer for purchase is made or otherwise.

(3) Subsection (1) shall not apply in relation to an offer for purchase or an invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on a stock market of a stock exchange.

(4) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment or issue of, or an agreement to allot or issue, any securities was made with a view to the securities being offered for purchase if it is shown that—

- (a) an offer of the securities for purchase was made within such period as may be specified by the Commission under paragraph 44(1)(c) after the allotment or issue or agreement to allot or issue; or
- (b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.

(5) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of the issuer.

(6) In addition to complying with the other requirements of this Division, the document by which the offer for purchase is made shall state—

- (a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.

(7) Where an offer to which this section relates is made by a corporation or a firm, the document by which the offer for purchase is made shall—

- (a) in the case of a corporation, be signed on behalf of the corporation by two directors of the corporation; and

- (b) in the case of a firm, be signed by not less than half of the members of the firm,

and any such director or member may authorise his agent in writing to sign on his behalf.

(8) For the purpose of this section, an invitation to make an offer to purchase securities shall be deemed to constitute an offer of the securities for purchase, and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for purchase that is so deemed to be constituted by the invitation.

(9) The provisions of this section shall not apply to an offer for purchase which is an excluded offer, an excluded invitation or an excluded issue.

Allotment
of securities
where
prospectus
implies that
application
for
permission
to list on
stock
exchange
had been
made.

52. (1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia, any allotment made on an application to subscribe for securities in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if—

- (a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; or
- (b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.

(2) Where permission has not been applied for, or has not been granted by the exchange referred to in subsection (1), the issuer shall, subject to subsection (3), forthwith repay without interest all moneys received from applicants

in pursuance of the prospectus, and if any such money is not repaid within fourteen days after the issuer so becomes liable to repay it, then, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of ten percent per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

(3) Where in relation to any securities—

- (a) permission is not applied for as specified in paragraph (1)(a); or
- (b) permission is not granted as specified in paragraph (1)(b),

the Commission may, on the application of the issuer, by order published in the *Gazette*, before the securities are purported to be allotted, exempt the allotment of securities from the operation of subsection (1) or (2).

(4) An officer of the issuer shall not be so liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding an applicant for any securities to waive compliance with this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect—

- (a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and
- (b) in relation to a prospectus offering securities for purchase, as if—
 - (i) a reference to purchase were substituted for a reference to allotment;

- (ii) the persons by whom the offer is made, and not the issuer, were liable under subsection (2) to repay moneys received from applicants, and references to the issuer's liability under that subsection were construed accordingly; and
- (iii) a reference in subsection (7) to the issuer and every officer of the issuer who is in default under subsection (2) were substituted with a reference to any person by or through whom the issue, offer or invitation is made and who knowingly authorises or permits the default.

(7) All moneys received from the applicants shall be kept in trust in a separate bank account so long as the issuer may become liable to repay it under subsection (2); and if default is made in complying with this subsection, the issuer and every officer of the issuer who is in default commits an offence under this Act.

(8) Where the exchange referred to in subsection (1) has within the time specified in paragraph (1)(b) granted permission, subject to compliance with any requirements specified by the exchange, permission shall be deemed to have been granted by the exchange if the directors of the issuer have given the exchange an undertaking in writing to comply with the requirements of the exchange, but if any such undertaking is not complied with, each director of the issuer or the management company who is in default commits an offence.

(9) A person shall not issue a prospectus in relation to any securities if it includes—

- (a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in subsection (1); or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on any exchange

referred to in subsection (1), or to any requirements of the exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the exchange within three days of the issue of the prospectus or within such longer period as may be specified by the Commission or the statement has been approved by the Commission for inclusion in the prospectus.

(10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under section 96 complies with, or has been drawn so as to comply with, the requirements of any exchange referred to in subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the exchange.

(11) In this section, "officer", in relation to an issuer means a director, a secretary or an executive officer of the issuer.

(12) A person who contravenes this section shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Consent
from person
to issue of
prospectus
containing
statement
by him.

53. (1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Commission, purporting to be made by any person or to be based on a statement made by such person shall not be issued unless—

(a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and

- (b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

(2) Every person who knowingly is a party to the issue of any prospectus in contravention of subsection (1) shall be guilty of an offence.

Order to
stop issue
of
securities.

54. (1) Where in the opinion of the Commission—

- (a) a prospectus does not comply with or is not prepared in accordance with any requirement or provision of this Act;
- (b) a prospectus contains a statement or information that is false or misleading;
- (c) a prospectus contains a statement or information from which there is a material omission; or
- (d) an issuer has contravened any provision of the securities laws or the Companies Act 1965,

the Commission may, by order in writing served on the issuer or such other person as the Commission may determine, direct the issuer or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further securities to which the prospectus relates, as the case requires.

(2) Subject to subsections (3) and (5), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Commission may make an interim order without giving the opportunity to be heard.

(4) An interim order made under subsection (3) shall have effect until the Commission makes an order under subsection (1) or until the interim order is revoked, whichever first occurs.

(5) Subject to subsection (4), an interim order, unless sooner revoked, shall have effect until the end of twenty-one days after the day on which it is made.

(6) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Division shall apply as if the prospectus had not been registered.

(7) An order made under subsection (1) or an interim order made under subsection (3) may, by further order in writing made by the Commission, be revoked if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(8) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) shall be guilty of an offence.

Criminal
liability for
false
statements,
etc. in
prospectus.

55. (1) No person shall authorise or cause the issue of a prospectus which contains—

(a) any statement or information that is false or misleading; or

(b) any statement or information from which there is a material omission.

(2) For the purposes of this Division, a statement shall be deemed to be in a prospectus if it is—

(a) contained in a report or memorandum that appears on the face of the prospectus; or

(b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorised or caused the issue of the prospectus.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Persons not
to be taken
to have
authorised
or caused
issue of
prospectus.

56. (1) For the purposes of this Division, neither the Commission nor the Registrar shall be taken to have authorised or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Commission under the securities laws or the Registrar under the Companies Act 1965 respectively.

(2) For the purpose of section 55, a person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given a consent as required under subsection 53(1).

Right to
recover for
loss or
damage
resulting
from false
or
misleading
statement in
prospectus,
etc.

57. (1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for:

- (a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage;
- (b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;
- (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;

- (d) a principal adviser, for any loss or damage;
- (e) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;
- (f) a person named in the prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or
- (g) a person who authorised or caused the issue of a prospectus in contravention of section 55, for any loss or damage caused by such contravention.

(2) For the purposes of paragraphs (1)(a) and (1)(b), a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.

(3) For the purpose of paragraph (1)(f), an underwriter shall not include a sub-underwriter.

Civil
liability for
misleading
or
deceptive
acts.

58. (1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with—

- (a) any prospectus issued;
- (b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (c) any notice referred to in subsection 50(4) or 50(5) or a preliminary prospectus referred to in subsection 50(6), or any report referred to in subsection 50(7)

or any notice or report as may be specified by the Commission under paragraph 50(3)(d); or

- (d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in paragraph (a), (b) or (c).

(2) A person who contravenes this section does not commit an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in paragraph (1)(a), (1)(b), (1)(c) or (1)(d) may recover the amount of the loss or damage under section 153.

Due
diligence
defence.

59. A person does not commit an offence under section 55 and is not liable under section 57 if he proves that—

- (a) he had made all enquiries as were reasonable in the circumstances; and
- (b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—
 - (i) the statement or information was true and not misleading; or
 - (ii) there was no material omission.

Reliance on
statement
and
information
in respect
of false or
misleading
statement.

60. A person does not commit an offence under section 55 and is not liable under section 57 if the person (hereinafter referred to as the “first-mentioned person”) proves that the false or misleading statement or material omission from a statement in a prospectus—

- (a) is or is based on a statement made by a person referred to in subsection 53(1) (hereinafter referred to as the “second-mentioned person”); or
- (b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

(aa) the statement accurately represented the statement made by the second-mentioned person, or the copy or the purported copy or extract was a correct copy of, or extract from, the report or valuation, as the case may be; and

(bb) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person, in making the statement, report or valuation, as the case may be—

(i) was competent to make it;

(ii) had given the consent required by subsection 53(1); and

(iii) had not withdrawn that consent.

Reliance on statement and information in respect of misleading or deceptive act.

61. A person is not liable under section 58 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person (hereinafter referred to as the "first-mentioned person") proves that the act consists of a representation made in reliance on—

(a) a statement made by a person referred to in subsection 53(1) (hereinafter referred to as the "second-mentioned person"); or

(b) a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

(aa) the representation accurately reflects the statement made by the second-mentioned person or is contained in the report or valuation of the second-mentioned person, as the case may be; and

(bb) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe

until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person in making the statement, report or valuation, as the case may be,—

- (i) was competent to make it;
- (ii) had given the consent required by subsection 53(1); and
- (iii) had not withdrawn that consent.

Reliance on public official statement in respect of false and misleading statement.

62. (1) A person does not commit an offence under section 55 and is not liable under section 57 if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred to as the “defective statement”) is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document, and it is proved by the person that—

- (a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; or
- (b) the defective statement is contained in a copy of or what purports to be a copy of, or an extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the defective statement was true and not misleading and that there was no material omission from the defective statement, as the case may be.

(2) A person is not liable under section 58 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official

document or statement made by a public officer in the course of his duties and it is proved that—

- (a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; or
- (b) the representation is contained in a copy of, or an extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the representation was not misleading or deceptive or is likely to mislead or deceive.

Defence of
withdrawal
of consent.

63. (1) A person who is named in a prospectus as—

- (a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (b) making a statement that is included in the prospectus; or
- (c) making a statement on the basis of which a statement is included in a prospectus,

does not commit an offence under section 55 and is not liable under section 57 if—

- (aa) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus, and the prospectus was issued despite such withdrawal; or
- (bb) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.

- (2) A person who is named in a prospectus as—
- (a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (b) making a statement that is included in the prospectus; or
 - (c) making a statement on the basis of which a statement is included in a prospectus,

does not commit an offence under section 55 and is not liable under section 57 if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

Restriction
on offering
securities
for
subscription
or purchase.

64. (1) Except as otherwise expressly provided in this Act, a person shall not make—

- (a) an unsolicited invitation to subscribe for or purchase any securities;
- (b) an unsolicited offer of any securities for subscription or purchase; or
- (c) an unsolicited recommendation of any securities.

(2) Subsection (1) shall not—

- (a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations—
 - (i) in relation to any securities which are listed on a stock market of a stock exchange in Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission; and

- (ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:
 - (A) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Commission, in the twelve months before the making of the invitation or offer or recommendation; or
 - (B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;
- (b) prohibit a management company from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders;
- (c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the Commission;
- (d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act;

- (e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;
- (f) apply to an invitation or offer to which the provisions of the Companies Act 1965 apply; or
- (g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the *Gazette*.

(3) The Commission in exercising its discretion under subsection (2) may impose such terms and conditions as it deems fit.

(4) A person allowed in writing by the Commission under paragraph (2)(a) or (2)(c) shall comply with such terms and conditions as may be imposed by the Commission.

(5) The provisions of subsection (1) shall apply to an invitation, offer or recommendation in relation to any securities of a corporation or units of a unit trust scheme or prescribed investment scheme that is proposed to be formed.

(6) Where the making of any invitation, offer or recommendation is subject to subsection (1) or is in respect of any exception under subsection (2), the provisions of section 363 of the Companies Act 1965 shall not apply.

(7) A person who contravenes subsection (1) or (4) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Agreements
to exclude
or restrict
liability
void.

65. An agreement is void in so far as it purports to exclude or restrict the liability of a person for contravention of section 55, 57 or 58 or for loss or damage under section 153.

DIVISION 4

DEBENTURES

*Subdivision 1—**Trust deeds, duties of trustees, borrowers, etc.*

Application
of Division 4
of Part IV.

66. (1) The provisions of subdivision 1 of Division 4 of Part IV and section 92 of subdivision 2 of Division 4 of Part IV shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 4.

(2) The provisions of Division 4 of Part IV as specified in Schedule 5 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 5.

(3) The provisions of Division 4 of Part IV shall not apply to an issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(4) A prescription made under subsection (3) may specify the provisions of Division 4 of Part IV to which an issue, offer or invitation shall not apply.

(5) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend Schedule 4, Schedule 5 or any prescription made under subsection (3), as the case may be, and upon such publication, Schedule 4, Schedule 5 or the prescription, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

67. (1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall—

Requirement
for trust
deed and
trustee.

- (a) enter into a trust deed that meets the requirements of section 68;
- (b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 69; and
- (c) comply with the requirements and provisions of this Division.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 68 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 69.

(3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.

(4) A person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Form and
contents of
trust deeds.

68. (1) A trust deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

Persons
who can be
trustees.
Act 100.

69. (1) A trustee shall be—

- (a) a company registered as a trust company under the Trust Companies Act 1949; or
- (b) a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to act as trustee for the purposes of this Act.

(2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission if the person—

- (a) is a shareholder who beneficially holds shares in the borrower;
- (b) is beneficially entitled to moneys owed by the borrower to it;
- (c) has entered into a guarantee in respect of the amount secured or payable under the debenture; or
- (d) is a related corporation of—
 - (i) the persons referred to in paragraphs (a) to (c); or
 - (ii) the borrower.

(3) An application made by a corporation referred to in paragraph (1)(b) or an application for approval made by a person referred to in subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(4) Notwithstanding the provisions of subsection (2), a person is not prevented from being appointed or from acting as trustee by reason only that—

- (a) the borrower owes to the trustee or any related corporation of the trustee any moneys, so long as such moneys are—
 - (i) moneys that do not, at the time of the appointment or at any time within a period of three months after the debentures are first

offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to be issued within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount the borrower owes to the holders of the debentures; or

(ii) moneys to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; or

(b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.

(5) Where an application has been made to the Commission under subsection (3), the Commission may, subject to such terms and conditions as it thinks fit—

(a) allow a corporation to act as trustee for the purposes of this Act; or

(b) approve a person to be appointed or to act as trustee.

(6) In exercising its discretion whether to allow a corporation to act as a trustee under paragraph (5)(a) or approve a person to be appointed or to act as trustee under paragraph (5)(b), the Commission shall have regard to—

(a) the interests of holders of any debenture; and

(b) the ability of the trustee to safeguard the interests of such debenture holders as required by the provisions and covenants of the trust deed and the provisions of this Act.

(7) The Commission may revoke a decision to allow a corporation to act as trustee or an approval of a person to be appointed or to act as trustee under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.

(8) A trustee who—

(a) contravenes subsection (1) or (2); or

(b) fails to comply with a term or condition imposed by the Commission under subsection (5),

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Existing trustee to continue to act until new trustee takes office.
Act 208.

70. Notwithstanding the provisions of section 43 of the Trustee Act 1949 or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee.

71. (1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 69.

(2) A Court may, on the application of the borrower, a debenture holder or the Commission—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 69 if—

(i) the trustee has not been validly appointed;
or

(ii) the trustee has ceased to exist; or

- (b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 69 if—
- (i) the existing trustee is not eligible to be appointed or to act as trustee under section 69;
 - (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;
 - (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
 - (iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.
- (3) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duties of
the
borrower.

72. (1) A borrower shall—

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) provide a copy of the trust deed to—
 - (i) a debenture holder;
 - (ii) the trustee; or

- (iii) any other person as may be allowed by the Commission,

if they request a copy and upon payment of such reasonable sum as may be imposed by the borrower;

- (c) make all of its financial and other records available for inspection by—

- (i) the trustee;
- (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
- (iii) an approved company auditor appointed by the trustee to carry out the inspection,

and give any person carrying out the inspection any information, explanation or other assistance that the person may require; and

- (d) comply with any direction issued by the Commission under subsection 89(1).

- (2) A borrower who contravenes—

- (a) paragraph (1)(a) shall not be guilty of an offence;
- (b) paragraph (1)(b) or (1)(c) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;
- (c) paragraph (1)(d) shall be guilty of an offence.

(3) Where a borrower contravenes paragraph (1)(b) or (1)(c), the Commission may direct the borrower to comply with the provisions of those paragraphs.

(4) A borrower who fails to comply with a direction of the Commission issued pursuant to subsection (3) shall be guilty of an offence.

Duty of
borrower to
replace
trustee.

73. (1) A borrower shall take all reasonable steps to replace a trustee as soon as is practicable after becoming aware that—

- (a) the trustee has ceased to exist;
- (b) the trustee has not been validly appointed;
- (c) the trustee is not eligible to be appointed or to act as trustee under section 69;
- (d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act;
- (e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
- (f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duty of
borrower to
inform
trustee
about
charge, etc.

74. (1) Where a borrower creates a charge, it shall—

- (a) give the trustee written details of the charge within twenty-one days after it is created; and
- (b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with bankers, trade creditors or any other person, give the trustee written details of the amount of each advance within seven days after it is made.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duty of
borrower to
give trustee
and
Commission
quarterly
reports.

75. (1) A borrower shall, within one month after the end of each quarter—

- (a) deliver to the trustee a quarterly report that sets out the information required by subsections (3), (4), (5) and (7);
- (b) lodge a copy of the report with the Registrar; and
- (c) deliver a copy of the report to the Commission.

(2) For the purpose of this section—

- (a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and
- (b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.

(3) The report for a quarter shall include details of—

- (a) any breach of any limitations on the amount the borrower may borrow;
- (b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter;
- (c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:
 - (i) any amount secured or payable under the debenture to become immediately payable;
 - (ii) the debenture to become immediately enforceable;

- (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable;
- (d) any circumstance that has occurred during the quarter that would materially prejudice—
 - (i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; or
 - (ii) any security or charge included in or created by the debenture or the trust deed;
- (e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter;
- (f) any of the following events that has happened in the quarter:
 - (i) the appointment of a guarantor;
 - (ii) the cessation of liability of a guarantor for the payment of the whole or part of the moneys for which it was liable under the guarantee; or
 - (iii) a change of name of a guarantor;
- (g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where—
 - (i) the total amount to be advanced on the security of the charge is indeterminate; and
 - (ii) the advances are merged in a current account with bankers, trade creditors or any other person; and

(h) any other matter that may materially prejudice the interests of debenture holders.

(4) If money is owed to a borrower during the quarter by a related corporation of the borrower, not being such amounts that the borrower deposits with a licensed institution in the normal course of the borrower's business, the report must also include details of—

(a) the total amount owing by the related corporation during the quarter; and

(b) the total amount owing by the related corporation at the end of the quarter.

(5) If a borrower has assumed a liability of a related corporation during the quarter, the report shall include details of the extent of the liability assumed during the quarter and the extent of liability as at the end of the quarter.

(6) For purposes of subsections (4) and (5), the report —

(a) shall distinguish between amounts owing and assumptions of liability that are secured and those that are unsecured; and

(b) may exclude any deposit, loan or assumption of liability on behalf of the related corporation if it has—

(i) guaranteed the repayment of the debentures of the borrower; and

(ii) secured the guarantee by a charge over all of its property in favour of the trustee for the holders of the debentures of the borrower.

(7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which moneys received by a person in response to the

issue, offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.

(8) The report shall—

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the report is made.

(9) Where a borrower fails to deliver the report to the trustee, the trustee shall inform the Commission of that fact.

(10) A borrower who contravenes this section shall be guilty of an offence.

Duty of
borrower to
inform
trustee and
Commission
of
occurrence
of material
event.

76. (1) Notwithstanding section 75, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware—

(a) of the happening of any event that has caused or could cause, one or more of the following:

(i) any amount secured or payable under the debenture to become immediately payable;

(ii) the debenture to become immediately enforceable; or

(iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; or

(b) of any circumstance that has occurred that would materially prejudice—

(i) the borrower, its subsidiaries or its guarantors; or

(ii) any security or charge included in or created by the debenture or the trust deed.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duty of
borrower
where
prospectus
states
purpose or
project for
which
moneys are
to be
applied.

77. (1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed relates are to be applied and the borrower intends to change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall—

- (a) notify the Commission; and
- (b) give a notice in writing that is approved by the Commission under subsection (2) to each debenture holder.

(2) A notice referred to in subsection (1) may be approved by the Commission if the notice—

- (a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied;
- (b) offers to repay such amounts to each debenture holder; and
- (c) contains such information and particulars as may be approved by the Commission.

(3) The borrower shall not be liable to repay the amount secured or payable under the debenture issued by the borrower under subsection (1) where the debenture holder does not demand in writing for the repayment of such amounts within fourteen days after receipt of the notice or such longer period as may be specified in the notice.

(4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under subsection 32(5), the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.

(5) Where a borrower receives a notice referred to in paragraph 82(1)(m), subsection 89(4) or 89(5), the borrower shall be liable to repay the amount secured or payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.

(6) Subject to subsection (4), a notice given by the borrower under paragraph (1)(b) shall have effect as if the purpose or project specified in the notice is the purpose or project specified in the prospectus.

(7) Notwithstanding the provisions of subsection (1), the Commission may, on the written application of any borrower or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(8) A borrower who contravenes this section shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Obligations
of directors
of borrower
to deliver
financial
statements.

78. (1) The directors of every borrower shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the borrower as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the borrower shall deliver to the trustee and the Commission a copy of the borrower's annual audited accounts within two weeks from the date of the borrower's annual general meeting.

(3) Where the borrower is a listed corporation that is required to submit information to the Commission under section 99D of the Securities Industry Act 1983, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a borrower do not deliver to the trustee a copy of such financial statements of the

borrower as may be specified by the Commission under subsection (1) or a copy of the borrower's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a borrower contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director shall be guilty of an offence.

Borrower to
issue
document
evidencing
indebtedness,
etc.

79. (1) The borrower shall, within two weeks or such other period as may be specified by the Commission, after the acceptance of the moneys in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a specified number or value of debentures, give to that person a document that acknowledges, evidences or constitutes an acknowledgment of the indebtedness of the borrower in respect of the receipt of moneys in response to the issue, offer or invitation.

(2) A document issued by the borrower in respect of any moneys received by the borrower in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any debenture that certifies that a person named in the document—

- (a) is the registered holder of a specified number or value of debentures issued by the borrower; and
- (b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document,

shall be deemed to be a document evidencing the indebtedness of the borrower in respect of such moneys.

(3) A borrower shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrower has specified in the prospectus—

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and

- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than twenty-five per centum in excess of the amount of the issue as disclosed in the prospectus.

(4) A borrower who contravenes subsection (1) or (3) shall be guilty of an offence.

Duties of
guarantors.

80. (1) Where a borrower is required to enter into a trust deed under section 67 in relation to any debenture, a guarantor in respect of such debenture shall—

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) make all of its financial or other records available for inspection by—

- (i) the trustee;

- (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or

- (iii) an approved company auditor appointed by the trustee to carry out the inspection,

and give such persons carrying out the inspection any information, explanation or other assistance that they may require;

- (c) furnish the borrower with any information relating to itself which is required under subsection 75(3) to be contained in the quarterly report, within fourteen days from the date the borrower requests for such information by notice in writing or within such other period which shall not be less than fourteen days as may be specified in the notice; and

(d) where it creates a charge—

- (i) give the trustee written details of the charge within twenty-one days after it is created; and

(ii) give the trustee written details of—

- (A) the amount of each advance made within seven days after it is made; or
- (B) where the advances are merged in a current account with bankers, trade creditors or any other person, the net amount outstanding on the advances at the end of every three months.

(2) A guarantor who contravenes paragraph (1)(a) shall not be guilty of an offence.

(3) A guarantor who contravenes paragraph (1)(b) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

(4) Where a guarantor contravenes paragraph (1)(b), the Commission may direct the guarantor to comply with the provisions of that paragraph.

(5) A guarantor who fails to comply with a direction of the Commission issued pursuant to subsection (4) shall be guilty of an offence.

(6) A guarantor who contravenes paragraph (1)(c) or (1)(d) shall be guilty of an offence.

Obligations
of directors
of guarantor
to deliver
financial
statements.

81. (1) The directors of every guarantor shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the guarantor as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the guarantor shall deliver to the trustee and the Commission a copy of the guarantor's annual audited accounts within two weeks from the date of the guarantor's annual general meeting.

(3) Where the guarantor is a listed corporation that is required to submit information to the Commission under section 99D of the Securities Industry Act 1983, the

guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a guarantor do not deliver to the trustee a copy of such financial statements of the guarantor as may be specified by the Commission under subsection (1) or a copy of the guarantor's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a guarantor contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director shall be guilty of an offence.

Duties of
trustees.

82. (1) The trustee of a trust deed that is entered into under section 67—

- (a) shall exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;
- (b) shall satisfy itself that the provisions of a prospectus relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;
- (c) shall exercise reasonable diligence to ascertain whether the borrower or each guarantor has committed any breach of the terms, provisions or covenants of the debenture or the trust deed or has contravened any of the provisions of this Act;
- (d) shall do everything in its power to ensure that the borrower or each guarantor remedies any breach known to the trustee of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach or

contravention will not materially prejudice the debenture holder's interest or any security for the debenture;

- (e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interests of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;
- (f) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;
- (g) shall notify the Commission as soon as practicable if—
 - (i) the borrower has contravened section 74 or 75; or
 - (ii) a guarantor has contravened paragraph 80(1)(d);
- (h) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 69;
- (i) shall give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that—
 - (i) the Court calls in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or
 - (ii) the trustee calls under subsection 87(1);

- (j) shall comply with any directions given to it at a debenture holders' meeting referred to in sections 86, 87 and 88 unless—
 - (i) the trustee is of the opinion that the direction is inconsistent with the terms, provisions or covenants of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and
 - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under section 91 to set aside or vary that direction;
- (k) shall apply to the Commission for a direction under subsection 89(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;
- (l) shall apply to the Court for an order under section 91 where—
 - (i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due; or
 - (ii) the borrower has failed to comply with a direction made by the Commission under subsection 89(1); and
- (m) shall, where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amounts are to be applied and—
 - (i) it appears to the trustee that the purpose or project has not been achieved within the

time stated in the prospectus or where no time is stated, within a reasonable time; or

- (ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders,

give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:

- (A) that the purpose or project has been substantially achieved or completed; or
- (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(2) For the purposes of paragraphs (1)(k) and (1)(l), a trustee in making any application to the Commission or to the Court—

- (a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and
- (b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.

(3) A trustee who contravenes subsection (1) shall not be guilty of an offence.

83. (1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void in so far as the term, provision or covenant, as the case may be, would have the effect of—

Exemptions and indemnification of trustee from liability.

- (a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; or
- (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee,

unless the term, provision or covenant—

- (aa) releases the trustee from liability for anything done or omitted to be done before the release is given; or
- (bb) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.

(2) For the purpose of paragraph (1)(bb)—

- (a) a release is approved if the debenture holders who vote for the resolution hold seventy-five percent of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and
- (b) a debenture holder attends the meeting and votes on the resolution if—
 - (i) such debenture holder attends the meeting in person and votes on the resolution; or
 - (ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Indemnity
of trustee.

84. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 86, 87 or 88.

(2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any moneys coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 82(1)(i).

Duty of
auditor to
trustee for
debenture
holders.

85. (1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the Companies Act 1965 or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.

(2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee—

(a) by this Act; or

(b) under the trust deed,

the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.

(3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware—

(a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or

- (b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture,

the auditor shall immediately report the matter to the Commission.

(4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in subsection (1), (2) or (3).

(5) An auditor who—

- (a) contravenes subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;
- (b) contravenes subsection (3) shall be guilty of an offence.

Duty of
borrower to
call a
meeting.

86. (1) A borrower shall call a meeting of debenture holders if—

- (a) debenture holders who together hold ten per cent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so;
- (b) the direction is given to the borrower in writing at its registered office; and
- (c) the purpose of the meeting is to—
 - (i) consider the financial statements or annual audited accounts that were last delivered to the trustee under section 78 or 81;
 - (ii) give the trustee such directions as the meeting thinks proper; or
 - (iii) consider any other matter in relation to the trust deed.

(2) Where a borrower is required to call a meeting, it must give notice of the time and place of the meeting to—

- (a) the trustee;
- (b) the borrower's auditor; and
- (c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,

in accordance with the provisions of subsections (3) and (4).

(3) For the purpose of subsection (2), notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders or record of depositors, as the case may be.

(4) A borrower may give notice to a debenture holder—

- (a) personally;
- (b) by sending it by post to the address of the debenture holder in the register of debenture holders; or
- (c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.

(5) A notice of meeting posted to a debenture holder shall be taken as being given three days after it is posted, unless the terms, provisions or covenants of the debenture or the trust deed provide otherwise.

(6) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

(7) A borrower who contravenes subsection (1) or (2) shall be guilty of an offence.

Power of trustee to call a meeting.

87. (1) Where a borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of a debenture or a trust deed or any contravention of any provision of this Act when required by the trustee, the trustee may—

- (a) call a meeting of debenture holders;
- (b) inform the debenture holders of the failure at the meeting;
- (c) submit proposals for the protection of debenture holders' interests to the meeting; and
- (d) ask for directions from the debenture holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power the debenture holders present at the meeting may appoint a person to chair the meeting.

(3) A trustee is entitled to be reimbursed by the borrower for any costs incurred in calling for a meeting of debenture holders in pursuance of any of its duties or functions under this Act or any term, provision or covenant of the debenture or the trust deed.

Court may order a meeting of debenture holders.

88. (1) Without limiting the effect of section 90 or 91, the Court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.

(2) An order made under subsection (1) may direct the trustee to—

- (a) place before the debenture holders any information concerning the interests of the debenture holders;
- (b) place before the debenture holders any proposal to protect the interests of the debenture holders that the Court directs or the trustee considers appropriate; and

- (c) obtain the debenture holders' directions concerning the protection of the interests of the debenture holders.

(3) The meeting shall be held and be conducted in such manner as the Court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

Powers of
Commission
to protect
interests of
debenture
holders.

89. (1) The Commission may, on the application of a trustee under paragraph 82(1)(k) or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.

(2) The Commission shall serve the written direction issued under subsection (1) at the borrower's registered office in Malaysia.

(3) The Commission in issuing a direction under subsection (1) shall first give the borrower an opportunity to be heard in relation to the application.

(4) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture are to be applied and—

- (a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time;
- (b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and

- (c) the trustee in relation to the debenture has failed or refused to act under paragraph 82(1)(m),

the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:

- (aa) that the purpose or project has been substantially achieved or completed; or
- (bb) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under subsection 77(1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

General
power of
Court to
give
directions
and
determine
questions.

90. Where a trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter or make any ancillary or consequential orders that the Court considers appropriate.

Specific
Court
powers.

91. (1) Where a borrower, trustee or the Commission applies to the Court for an order under the provisions of this Act or pursuant to any term, provision or covenant of a debenture or a trust deed, the Court may make any or all of the following orders:

- (a) an order staying an action or other civil proceedings before a Court by or against a borrower or a guarantor;
- (b) an order restraining a borrower from paying any moneys to the debenture holders or holders of any other class of debentures;
- (c) an order that any security for the debentures be enforceable immediately or at the time the Court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency;
- (d) an order appointing a receiver of any property constituting security for the debentures;
- (e) an order restricting advertising by a borrower for deposits or loans;
- (f) an order restricting borrowing by a borrower;
- (g) an order varying or rescinding any order made by the Court under this Act; or
- (h) any other order that the Court considers appropriate to protect the interests of existing or prospective debenture holders.

(2) In deciding whether to make an order under subsection (1), the Court shall have regard to the rights of all creditors of the borrower.

*Subdivision 2—
General*

Register of
debenture
holders.

92. (1) Subject to subsection (2), every borrower which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Malaysia.

(2) Where the borrower is a company, the borrower shall comply with the provisions of section 70 of the Companies Act 1965 that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.

(3) The register shall contain particulars of—

(a) the names and addresses of debenture holders; and

(b) the amount of debentures held by them.

(4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under subsection (5).

(5) A register is deemed to be duly closed—

(a) if it is closed in accordance with the provisions contained in—

(i) the constituent documents of the borrower;

(ii) the debentures or debenture stock certificates;

(iii) the trust deed; or

(iv) any other document relating to or securing the debenture; and

(b) where it is closed for such periods as is specified in any of the documents mentioned in subparagraphs (5)(a)(i), (5)(a)(ii), (5)(a)(iii) and (5)(a)(iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.

(6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.

(7) The copy of the register of debenture holders referred to in subsection (6) need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.

(8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit.

(9) A borrower issuing debentures may keep at any place outside Malaysia a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders, and the provisions of Division 4 of Part V of the Companies Act 1965 shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.

(10) Notwithstanding the provisions of subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in subsection (1) or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of debenture holders, subject to such terms and conditions as it deems fit.

(11) A borrower and every officer of the borrower who is in contravention of subsection (1), (3) or (9) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit.

Specific
performance.

93. A contract with a borrower to take up and pay for any debenture of the borrower may be enforced by an order for specific performance.

Perpetual
debentures.

94. Notwithstanding any rule of law or equity which disallows perpetual debentures, a condition contained in any debenture or any trust deed relating to a debenture shall not be invalid by reason only that the debenture is—

- (a) irredeemable;
- (b) redeemable only on the happening of a contingency, however remote; or
- (c) redeemable on the expiration of a period, however long.

Reissue of
redeemed
debentures.

95. (1) Where a borrower has redeemed any debenture—

(a) unless any provision to the contrary, whether express or implied, is contained in the constituent documents of the borrower or any contract entered into by the borrower; or

(b) unless the borrower has shown an intention that the debenture shall be cancelled by passing a resolution to that effect or by some other act,

the borrower shall have and shall be deemed to have had the power to reissue the debenture, either by reissuing the same debenture or issuing any other debenture in its place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1) shall not be regarded as an issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the borrower.

(3) After the reissue, the person entitled to the debenture shall have and shall be deemed to have had the same priorities as if the debenture had never been redeemed.

(4) Where a borrower has deposited any of its debentures to secure advances on a current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the borrower having ceased to be in debit while the debentures remain so deposited.

DIVISION 5

UNIT TRUST SCHEMES AND PRESCRIBED INVESTMENT SCHEMES

Definition.

96. In this Division, unless the contrary intention appears—

“deed” means a document having the effect of a deed and, where applicable, includes a supplementary deed.

Requirement
for trustee
and deed.

97. (1) Subject to subsection (2), every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any unit shall—

- (a) ensure that a trustee who has been approved by the Commission under section 98 and who is eligible to be appointed or to act as trustee under section 99 has been appointed;
- (b) enter into a deed that has been registered under section 102 and that meets with the requirements of section 103 or ensure that there is in force a deed that has been registered under section 102 and that meets with the requirements of section 103; and
- (c) comply with the requirements and provisions of this Act.

(2) No person except a management company approved by the Commission under section 98 or a person authorised to act on behalf of a management company that has been approved by the Commission under section 98 shall—

- (a) issue;
- (b) offer for subscription or purchase; or
- (c) invite any person to subscribe for or purchase,

any unit.

(3) A person who contravenes subsection (1) or (2) shall be guilty of an offence.

Approval of
trustee and
management
company.

98. (1) No person shall act or be appointed to act as trustee or as a management company in relation to a unit trust scheme or prescribed investment scheme without obtaining the prior approval of the Commission to act as trustee or as a management company.

(2) The Commission may, subject to such terms and conditions as it thinks fit, approve—

- (a) a company to act as a management company of a unit trust scheme or a prescribed investment scheme; and

- (b) a person who is eligible to be appointed or to act as trustee under section 99, to act as trustee of a unit trust scheme or a prescribed investment scheme.

(3) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted under this Division or by reason of a contravention of this Act or any securities law, revoke such approval.

(4) Without prejudice to subsection (1), the Commission may impose such other terms and conditions as it thinks fit while the approval is in force, but if the terms and conditions proposed to be imposed are likely to prejudice the interests of the management company or trustee, as the case may be, the Commission shall give the management company or trustee an opportunity to be heard.

(5) An application for an approval under subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(6) A trustee or a management company who contravenes subsection (1) shall be guilty of an offence.

Persons
who can be
trustees.

99. (1) A person shall not be eligible to be appointed or to act as trustee for unit holders without the approval of the Commission if the person—

- (a) is a shareholder who beneficially holds shares in the management company;
- (b) is beneficially entitled to moneys owed by the management company to it; or
- (c) is a related corporation of—
 - (i) the persons referred to in paragraphs (a) and (b); or
 - (ii) the management company.

(2) An application for approval by a person referred to in subsection (1) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(3) Notwithstanding the provisions of subsection (1), a person is not prevented from being appointed or from acting as trustee by reason only that—

- (a) the moneys that the management company owes to the trustee or any related corporation of the trustee are moneys to which the trustee or any related corporation of the trustee is entitled to as trustee, in accordance with the provisions or covenants of the deed; or
- (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the management company, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the management company.

(4) The Commission may, subject to such terms and conditions as it thinks fit, approve a person to be appointed or to act as trustee where an application has been made to the Commission pursuant to subsection (1).

(5) In exercising its discretion under subsection (4) the Commission shall have regard to—

- (a) the interests of holders of any unit; and
- (b) the ability of the trustee to safeguard the interests of unit holders as required by the provisions and covenants of the deed and the provisions of this Act.

(6) The Commission may revoke an approval granted under subsection (4) where the trustee has failed to comply with any term or condition imposed under subsection (4) or has contravened any provision of this Act.

(7) A trustee who—

(a) contravenes subsection (1);

(b) fails to comply with a term or condition imposed by the Commission under subsection (4),

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Existing trustee to continue to act until new trustee takes office.

100. Notwithstanding section 43 of the Trustee Act 1949 or any provision or covenant in the deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee.

101. (1) Where no provision has been made in the deed for the appointment of a successor to a retiring trustee, the management company shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who has been approved by the Commission under section 98 and who is a person eligible to be appointed or to act as trustee under section 99.

(2) The Commission may, on the application of the management company, a unit holder or of its own accord—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 99 if—

(i) a trustee has not been validly appointed; or

(ii) the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 99 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 99;

- (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the deed or the provisions of this Act;
- (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
- (iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) Except for subparagraph (2)(a)(ii), a trustee shall be given the opportunity to be heard before the Commission takes any action under subsection (2).

(4) A management company who contravenes subsection (1) shall be guilty of an offence.

Registration
of deed.

102. (1) The management company shall submit the deed referred to in paragraph 97(1)(b) to the Commission for registration and such deed shall not have effect unless so registered.

(2) On an application for registration of a deed, the Commission may—

- (a) register the deed;
- (b) register the deed with such revisions or subject to such terms and conditions as it deems fit; or
- (c) refuse to register the deed.

(3) An application under subsection (2) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(4) The Commission shall refuse to register a deed under paragraph (2)(c) if—

- (a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission;
- (b) the making available of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a unit to which the deed relates has not been approved by the Commission under section 32; or
- (c) the trustee referred to in paragraph 97(1)(a) has not been appointed for the purposes of the deed.

(5) Subject to subsection (4), the Commission shall register a deed together with an application for its registration.

Contents of deed.

103. A deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

Modification of deed through supplementary deed.

104. (1) A modification may be made to a deed only by a deed expressed to be supplementary to the principal deed and submitted by the management company to the Commission for registration, and a supplementary deed shall not have effect unless it has been so registered.

(2) On an application for registration of a supplementary deed, the Commission may—

- (a) register the supplementary deed;
- (b) register the supplementary deed with such revisions or subject to such terms and conditions as it deems fit; or
- (c) refuse to register the supplementary deed.

(3) The Commission shall refuse to register a supplementary deed under paragraph (2)(c) if it appears

to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.

(4) The supplementary deed submitted for registration shall be accompanied by—

- (a) a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held according to the provisions and covenants of the deed sanctioning the proposed modification to the deed; or
- (b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unit holders and does not operate to release the trustee or the management company from any responsibility to the unit holders.

(5) The Commission may require the management company, in any application for registration of a supplementary deed, to obtain a resolution under paragraph (4)(a) if in the Commission's opinion any modification, alteration or addition to the deed may prejudice the interests of unit holders.

(6) A supplementary deed proposing any modification, alteration or addition to the deed which—

- (a) would increase the maximum service charge or annual management fee payable to the management company, whether payment is made out of the property or assets of the unit trust scheme or prescribed investment scheme or otherwise; or
- (b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or prescribed investment scheme to the trustee by way of remuneration for the trustee's services,

shall be submitted for registration accompanied by a resolution under paragraph (4)(a).

(7) A supplementary deed upon registration under this section shall be deemed to be part of the deed to which it relates for the purposes of this Act.

(8) A person who contravenes subsection (1) shall be guilty of an offence.

Deed to be
lodged with
Commission.

105. The management company shall lodge a deed with the Commission within seven days after the deed has been registered under section 102 or 104.

Duties of a
management
company.

106. (1) A management company who is required to enter into a deed under section 97—

(a) shall carry on and manage its business and its unit trust scheme or prescribed investment scheme, as the case may be, in a proper, diligent and efficient manner;

(b) shall carry on and manage its business in accordance with the provisions and covenants of the deed, the provisions of this Act, any securities law and any regulations made thereunder;

(c) shall provide a copy of the deed to—

(i) a unit holder; or

(ii) a trustee,

upon request for a copy of the deed and on payment of such reasonable sum as may be imposed by the management company;

(d) shall make all financial or other records of a unit trust scheme or a prescribed investment scheme available for inspection by—

(i) a trustee;

(ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or

- (iii) an approved company auditor appointed by the trustee to carry out the inspection,

and give such persons carrying out the inspection any information, explanation or other assistance that they may require in relation to those records; and

- (e) shall make a copy of the deed available for inspection without charge to any member of the public.

(2) Except as may be prescribed by way of regulations made under section 159, a management company shall not act as principal in the sale and purchase of securities, property and assets to and from the unit trust scheme or prescribed investment scheme.

(3) A management company shall not make improper use of its position in managing the unit trust scheme or prescribed investment scheme to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such unit trust scheme or prescribed investment scheme.

(4) A management company shall not, without the prior approval of the trustees, invest any moneys available under the deed in any securities, property and assets in which the management company or any officer of the management company has a financial interest or from which the management company or any officer of the management company derives a benefit.

(5) A management company who contravenes—

- (a) paragraph (1)(a) shall not be guilty of an offence;
- (b) paragraph (1)(c), (1)(d) or (1)(e) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;
- (c) paragraph (1)(b) or subsection (2), (3) or (4) shall be guilty of an offence.

(6) Where a management company contravenes paragraph (1)(c), (1)(d) or (1)(e), the Commission may direct the management company to comply with all or any of the provisions of those paragraphs.

(7) A management company who fails to comply with a direction of the Commission issued pursuant to subsection (6) shall be guilty of an offence.

Duty of
manage-
ment
company
to lodge
returns, etc.

107. (1) A management company—

(a) shall lodge with the Commission—

(i) the annual report of a unit trust scheme or a prescribed investment scheme within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(ii) the annual report of the management company within six months after the end of each financial year of the management company; and

(b) shall deliver to the Commission such other statements, documents, books and other particulars as may be required by the Commission.

(2) Any document required to be lodged with or delivered to the Commission by a management company under subsection (1) shall be signed by at least one of the directors of the management company.

(3) A management company shall—

(a) send to every unit holder without charge a copy of the document referred to in subparagraph (1)(a)(i) within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(b) where a unit holder requests for the document referred to in subparagraph (1)(a)(ii) and any additional copies of the document referred to in subparagraph (1)(a)(i), send to the unit holder the

document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the management company.

(4) A management company shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the unit trust scheme or prescribed investment scheme shall comply with approved accounting standards.

(5) A management company who contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence.

Duty of
management
company to
replace
trustee.

108. (1) A management company shall take all reasonable steps to replace a trustee as soon as practicable after becoming aware that—

- (a) the trustee has ceased to exist;
- (b) the trustee has not been validly appointed;
- (c) the trustee is not eligible to be appointed or to act as trustee under section 99;
- (d) the trustee has failed or refused to act as trustee in accordance with the provisions or covenants of the deed or the provisions of this Act;
- (e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
- (f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A management company who contravenes subsection (1) shall be guilty of an offence.

Duties of trustee.

109. (1) A trustee shall take custody and control of all securities, property and assets of a unit trust scheme or prescribed investment scheme and hold it in trust for the unit holders in accordance with the deed, such requirements as may be specified by the Commission, the provisions of this Act, all applicable securities laws and any regulations made thereunder.

(2) A trustee of a deed entered into under section 97 shall—

- (a) satisfy itself that the provisions of a prospectus relating to any unit trust scheme or prescribed investment scheme do not contain any matter which is inconsistent with the provisions and covenants of the deed;
- (b) exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions or covenants of the deed or has contravened any of the provisions of this Act;
- (c) do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach will not materially prejudice the unit holders' interests;
- (d) notify the Commission as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of the provisions of this Act or any inconsistency between the provisions of the prospectus and the provisions or covenants of the deed as referred to in paragraph (a) which, in the trustee's opinion, may indicate that the interests of the unit holders are not being served;

(e) give the unit holders a statement explaining the effect of any proposal that the management company submits to the unit holders before any meeting that—

(i) the Court orders in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or

(ii) the trustee may call under section 115; and

(f) comply with any direction given to the trustee at a unit holders' meeting referred to in section 114, 115 or 116 unless—

(i) the trustee is of the opinion that the direction is inconsistent with any provision or covenant of the deed or the provisions of this Act or is otherwise objectionable; and

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under section 123 to set aside or vary that direction.

(3) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duty of trustee to wind up scheme.

110. (1) Where a management company is in liquidation or where, in the opinion of the trustee, a management company has ceased to carry on business or has, to the prejudice of the unit holders, failed to comply with any provision or covenant of the deed or contravened any of the provisions of this Act, the trustee shall summon a meeting of the unit holders—

(a) by sending by post a notice of the proposed meeting at least twenty-one days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

(b) by publishing, at least twenty-one days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission.

(2) If at any meeting summoned under subsection (1) a resolution is passed by a majority in number representing at least three-fourths of the value of the units held by unit holders voting at the meeting that the unit trust scheme or prescribed investment scheme be wound up, the trustee shall apply to the Court for an order confirming the resolution.

(3) On an application by the trustee, if the Court is satisfied that it is in the interest of the unit holders, the Court may confirm the resolution and may make such orders as it thinks necessary or expedient for the winding-up of the unit trust scheme or prescribed investment scheme.

(4) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duties of
management
company
and trustee
under
general law.

111. The duties of a management company and a trustee imposed on them by this Act and the deed are in addition to and not in derogation of the duties which are otherwise imposed on them by any other law.

Exemptions
and
indemnifica-
tion of
trustee from
liability.

112. (1) Subject to subsection (2), a provision or covenant contained in a deed or a term of a contract with the unit holders shall be void in so far as the provision, covenant or term, as the case may be, would have the effect of—

(a) exempting a trustee under the deed from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee; or

(b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision, covenant or term enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths of the holders of units voting at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Indemnity
of trustee.

113. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the unit holders at any meeting called under section 114, 115 or 116.

(2) A trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any moneys coming into the trustee's hands from the management company, all reasonable costs incurred in explaining the effect of any proposal that the management company submits to the unit holders in the circumstances set out in paragraph 109(2)(e).

Duty of
management
company to
call meeting
of unit
holders.

114. (1) A management company shall call for a meeting of unit holders if—

- (a) not less than fifty unit holders or one-tenth of all unit holders direct the management company to do so;
- (b) the direction is given to the management company in writing at its registered office; and
- (c) the purpose of the meeting is—
 - (i) to consider the most recent financial statements of the unit trust scheme or prescribed investment scheme;

(ii) to give to the trustee such directions as the meeting thinks proper; or

(iii) to consider any other matter in relation to the deed.

(2) Where a management company is required to call a meeting under subsection (1), it shall do so within twenty-one days after the direction is given to the management company in writing at its registered office.

(3) Where a management company is required to call a meeting under subsection (1) or pursuant to any provision or covenant of the deed, it shall give notice of the time and place of the meeting—

(a) by sending by post a notice of the proposed meeting at least seven days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

(b) by publishing, at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission.

(4) A meeting summoned in accordance with a provision or covenant contained in a deed shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice and—

(a) be chaired by such person as is appointed in that behalf by the unit holders that are present at the meeting; or

(b) where no such appointment is made, be chaired by a nominee of the trustee,

and shall be conducted in accordance with the deed or, if the deed makes no provision, as directed by the chairman of the meeting.

(5) A notice of meeting posted to a unit holder shall be taken as given three days after it is posted, unless the deed provides otherwise.

(6) A management company who contravenes subsection (1), (2) or (3) shall be guilty of an offence.

Power of
trustee to
call a
meeting.

115. (1) Where a management company fails to remedy any breach of the provisions or covenants of the deed or any contravention of the provisions of this Act, any securities law or regulations made thereunder when required by the trustee, the trustee may—

- (a) call a meeting of unit holders;
- (b) inform the unit holders of the failure at the meeting;
- (c) submit proposals for the protection of interests of unit holders; and
- (d) ask for directions from unit holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of unit holders called under subsection (1) and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

Court may
order a
meeting of
unit
holders.

116. (1) Without limiting the effect of section 123, the Court may make an order for a meeting of all or any of the unit holders to be held to give directions to the trustee.

(2) An order made under subsection (1) may direct the trustee to—

- (a) place before the unit holders any information concerning the interests of the unit holders;

- (b) place before the unit holders any proposal to protect the interests of the unit holders that the Court directs or the trustee considers appropriate; and
- (c) obtain the unit holders' directions concerning the protection of the interests of the unit holders.

(3) The meeting shall be held and be conducted in such manner as the Court may direct.

(4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

Register of
unit holders. 117. (1) Every management company shall keep a register of unit holders and enter into the register—

Act 78.

(a) in the case of a unit holder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959, if any, of that individual; or

(b) in the case of a unit holder that is a corporation, the name, registered address and registration number of that corporation, if applicable.

(2) The management company shall enter into the register—

(a) the number of units held by each unit holder;

(b) the date on which the name of each person was entered in the register as a unit holder;

(c) the date on which any person ceased to be a unit holder; and

(d) any other relevant information or particulars of the unit holder,

within the previous seven years.

(3) Notwithstanding anything in subsections (1) and (2), a management company may keep the names and

particulars relating to persons who have ceased to be unit holders of the unit trust scheme or prescribed investment scheme in a separate register.

(4) The register of unit holders shall be *prima facie* evidence of any matters inserted therein in accordance with the provisions of this Act.

(5) Where a unit trust scheme or prescribed investment scheme has more than fifty unit holders, the management company shall, unless the register of unit holders is in such a form as to constitute in itself an index, keep an index of the names of the unit holders in a convenient form and shall, within fourteen days after the date on which any alteration is made in the register of unit holders, make any necessary alteration in the index.

(6) The index shall, in respect of each unit holder, contain sufficient indication to enable the account of that unit holder in the register to be readily found.

(7) Any person who contravenes subsection (1), (2), (5) or (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Where
register is
to be kept.

118. (1) A register of unit holders and the index shall be kept at the registered office of a management company in Malaysia.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Closure and
inspection
of register.

119. (1) A management company may, on giving not less than fourteen days' notice to the Commission, close the register of unit holders at any time, but no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(2) Any unit holder may request the management company to furnish him with an extract from the register in so far as it relates to his name, address, number of

units held by him and amounts paid on those units, and the management company shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the management company.

(3) A management company who contravenes subsection (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Power of
Court to
rectify
register.

120. (1) Any unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the Court for the rectification of the register, and the Court may refuse the application or may order the rectification of the register and the payment by the management company of any damages sustained by any party to the application.

(2) On an application under subsection (1), the Court may decide—

(a) on any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between unit holders or alleged unit holders, or between registered unit holders or alleged registered unit holders, on the one part and the management company on the other part; and

(b) generally, any question necessary or expedient to be decided for the rectification of the register.

Branch
register.

121. (1) Notwithstanding the provisions of section 117, a management company may cause to be kept in any place outside Malaysia a branch register of unit holders

of a unit trust scheme or prescribed investment scheme which shall be deemed to be part of the register of unit holders.

(2) A management company shall deliver to the Commission a notice of the location of the office where any branch register is kept and of any change in its location and, if the branch office is permanently closed, of its closure, and any such notice shall be delivered within one month after the opening of the office or of the change or closure, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(4) A management company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practicable after the entry is made, and shall cause to be kept at that office, duly entered up from time to time, a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) A management company may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.

(6) A person who contravenes subsection (2), (3) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Rights of
trustee,
executor,
administrator
in relation
to a
deceased
unit holder.

122. (1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a unit holder of any unit trust scheme or prescribed investment scheme may become registered as the unit holder in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as he would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.

(2) A unit held by a trustee, executor or administrator of a deceased person in respect of a particular trust may, with the consent of the management company, be marked in the register or branch register in such a way as to identify it as being held in respect of the trust.

(3) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register, and no liability shall be affected by anything done in pursuance of subsection (1) or (2) or pursuant to any law outside Malaysia which corresponds to the provisions of this section.

Power of
Court to
make orders.

123. (1) A Court may make any order that it considers appropriate to protect the interests of existing or prospective unit holders.

(2) If a trustee applies to a Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of unit holders, the Court may give any direction or make any declaration or determination in relation to the matter that the Court considers appropriate, including such ancillary or consequential orders as may be necessary.

Disapplica-
tion of
Division 5
of Part IV.

124. (1) The provisions of Division 5 of Part IV shall not apply to an issue, offer or invitation made to a person or a class of persons, or made in respect of a unit trust scheme or prescribed investment scheme or a class of unit trust schemes or prescribed investment schemes as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(2) A prescription made under subsection (1) may specify the provisions of Division 5 of Part IV to which an issue, offer or invitation shall not apply.

(3) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend the prescription made under subsection (1) and upon such publication, the prescription as varied,

deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or such later date as may be specified in the order.”.

Amendment of section 35

10. The principal Act is amended by renumbering section 35 as section 125.

Amendment of section 35A

11. The principal Act is amended—

- (a) by renumbering section 35A as section 126; and
- (b) in the renumbered subsection 126(2)—
 - (i) by substituting for the words “section 35B” the words “section 127”;
 - (ii) by deleting the word “and” at the end of paragraph (2)(a);
 - (iii) by substituting for the full stop at the end of paragraph (2)(b) the words “; and”; and
 - (iv) by inserting after paragraph (2)(b) the following paragraph:—

“(c) an exchange company, an exempt futures fund manager and clearing house, as defined in section 2 of the Futures Industry Act 1993.”.

Amendment of section 35B

12. The principal Act is amended—

- (a) by renumbering section 35B as section 127; and
- (b) in the renumbered subsection 127(1), by substituting for the words “section 35A” the words “section 126”.

Amendment of section 36

13. The principal Act is amended—

- (a) by renumbering section 36 as section 128; and
- (b) by substituting for the renumbered section 128 the following section:

“Powers of
Investiga-
ting
Officers
of the
Com-
mission.”

128. (1) An Investigating Officer of the Commission carrying out an investigation may enter any place or building and may—

- (a) inspect and make copies of or take extracts from any book, minute book, account, register or document;
- (b) where he has reason to believe that an offence has been committed against a securities law, search for, seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document, which may be used as evidence; and
- (c) search any person who is in, or on, the premises and, for the purpose of such search, detain the person and remove him to such place as may be necessary to facilitate the search, and seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document, including any travel or other personal document found on the person.

(2) An Investigating Officer of the Commission may search any person whom he has reason to believe has on his person any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document necessary, in his opinion, for the purpose of investigation into any offence under any securities law, and for the purpose of such search may

detain the person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorisation of the Magistrate, and may remove him into custody at such place as may be necessary to facilitate the search.

(3) An Investigating Officer of the Commission making a search of a person under subsection (1) or (2) may seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document found upon such person for the purpose of the investigation being carried out by him.

(4) No female person shall be searched under this section except by another female person.

(5) An Investigating Officer of the Commission may by notice in writing require any person to produce to him such object, article, material, thing, property, book, minute book, account, register or other document as are in the custody or under the control of that person.

(6) An Investigating Officer of the Commission may seize, take possession of and detain for such duration as he deems necessary any object, article, material, thing, property, book, minute book, account, register or other document produced before him as required under subsection (5).

(7) A person who—

- (a) refuses an Investigating Officer of the Commission, while exercising his powers under this Part, access to any premises or part thereof, or fails to submit to the search of his person;
- (b) assaults, obstructs, hinders or delays an Investigating Officer of the Commission in effecting any entrance which he is entitled to effect;

(c) fails to comply with any lawful demands of an Investigating Officer of the Commission in the execution of his duties under this Part; or

(d) rescues or endeavours to rescue any thing which has been duly seized,

shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or both.

(8) An Investigating Officer of the Commission may grant permission to any person to inspect any book, minute book, account, register or other document seized and taken possession of by the Investigating Officer of the Commission under this section if such person is entitled to inspect such book, minute book, account, register or other document under this Act.

(9) Subsection (1) shall not be construed as limiting or affecting any similar powers conferred on any person under any other law.”.

Amendment of section 36A

14. The principal Act is amended—

- (a) by renumbering section 36A as section 129;
- (b) in the renumbered subsection 129(1), by substituting for the words “an inspection made under section 36”, the words “an inspection or investigation made under this Part”;
- (c) in the renumbered subsection 129(2), by substituting for the words “subsection 36(1)” the words “subsection 128(1)”;
- (d) in the renumbered subsection 129(5), by substituting for the words “section 36B” the words “section 130”; and
- (e) in the renumbered subsection 129(6), by substituting for the words “sections 36B and 36c” the words “sections 130 and 131”.

Amendment of section 36b

15. The principal Act is amended—

- (a) by renumbering section 36B as section 130;
- (b) in the renumbered subsection 130(1), by substituting for the words “subsection 36A(5)” the words “subsection 129(5)”;
- (c) in the renumbered subsection 130(), by substituting for the words “subsection 36c(4)” the words “subsection 131(4)”;
- (d) in the renumbered subsection 130(6)—
 - (i) by substituting for the words “section 36c” the words “section 131”; and
 - (ii) by substituting for the words “subsection 36c(1)” the words “subsection 131(1)”.

Amendment of section 36c

16. The principal Act is amended—

- (a) by renumbering section 36c as section 131; and
- (b) in the renumbered subsection 131(1), by substituting for the words “subsection 36B(5)” the words “subsection 130(5)”.

Amendment of section 36d

17. The principal Act is amended—

- (a) by renumbering section 36D as section 132;
- (b) by substituting for the renumbered subsection 132(2) the following subsection:
 - “(2) A notice under subsection (1) shall be served in the manner specified in section 134.”;
- (c) by substituting for the renumbered subsection 132(6) the following subsection:
 - “(6) An Investigating Officer of the Commission may, with the approval of the Commission, by notice issued to any Immigration Officer, request that any

person who is the subject of an investigation in respect of an offence under a securities law be prevented from leaving Malaysia.”; and

- (d) by inserting after the renumbered subsection 132(6) the following subsections:

“(7) The Immigration Officer, upon being notified of a request made under subsection (6), may require the person who is the subject of an investigation in respect of an offence under a securities law to surrender his certificate of identity, passport or exit permit, or any other travel document in his possession to the Immigration Officer.

(8) Subject to any order issued or made under any written law relating to banishment or immigration, “immigration officer” means any person appointed under section 3 of the Immigration Act 1959/63.

Act 155.

(9) No legal proceedings shall be instituted or maintained against the Government, an immigration officer, an officer of the Commission, a public officer or any other person, in respect of anything done under this section.”.

Amendment of section 37

18. The principal Act is amended—

- (a) by renumbering section 37 as section 133; and
- (b) by substituting for the words “paragraph 36(1)(b)” wherever they appear in the renumbered section 133 the words “paragraph 128(1)(b)”.

Amendment of section 38

19. The principal Act is amended—

- (a) by renumbering section 38 as section 134;

- (b) in the renumbered subsection 134(2), by substituting for the words "Such person" the words "A person referred to in subsection (1)";
- (c) by substituting for the renumbered subsection 134(3A) the following subsection:

"(3A) In an examination of a person under subsection (1), an Investigating Officer of the Commission or Investigating Officers of the Commission examining the person may give directions about who may be present during the examination, or during any part of it.";

- (d) in the renumbered subsection 134(5)—

- (i) in paragraph (b), by inserting after the words "subsection (2)" the words "or neglects to give any information which may reasonably be required of him and which he has in his power to give";
- (ii) by substituting for the words "be liable on conviction to" the words "on conviction be punished with";
- (iii) by deleting the word "to" appearing before the word "imprisonment"; and
- (iv) by deleting the word "to" appearing before the word "both"; and

- (e) by inserting after the renumbered subsection 134(5) the following subsections:

"(6) For the purposes of this section and any other provision of Part V, any notice that is given shall, if practicable, be served personally on the person specified in such notice.

(7) In the case of a corporation, the notice may be served on the secretary or other like officer of the corporation or on any person who is responsible for the management of the affairs of the corporation.

(8) Where the person specified in a notice given under this section or any other provision of Part V cannot by the exercise of due diligence be found, the notice may be served by leaving a copy thereof for him with some adult member of his family or with his servant residing with him.

(9) When the person specified in any notice given under this section or any other provision of Part V cannot by the exercise of due diligence be found, and service cannot be effected as directed by subsection (8), a copy of the notice shall be affixed to some conspicuous part of the house or such other place in which the person specified in the notice ordinarily resides, and in such case the notice shall be deemed to have been duly served.

(10) If upon an investigation made under this Act it appears to the Investigating Officer of the Commission that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or continuance of any proceedings against any person, the Investigating Officer of the Commission shall require the complainant, if any, and so many of the persons who appear to such Investigating Officer of the Commission to be acquainted with the circumstances of the case as he thinks necessary, to execute a bond to appear before any Court therein named and to give evidence in such proceedings.

(11) If any complainant or person referred to in subsection (10) refuses to execute a bond under that subsection, the Investigating Officer of the Commission shall report such refusal to the Court which may thereupon in its discretion issue a warrant or summons to secure the attendance of such complainant or person before itself to give evidence in the proceedings concerned.”.

Amendment of section 38A

20. The principal Act is amended—

(a) by renumbering section 38A as section 135; and

(b) in the renumbered section 135—

- (i) by substituting for the words “be liable on conviction to” the words “on conviction be punished with”;
- (ii) by deleting the word “to” appearing before the word “imprisonment”; and
- (iii) by deleting the word “to” appearing before the word “both”.

Amendment of section 39

21. The principal Act is amended by renumbering section 39 as section 136.

Amendment of section 39A

22. The principal Act is amended—

(a) by renumbering section 39A as section 137; and

(b) in the renumbered subsection 137(2)—

- (i) by substituting for the words “liable to” wherever they appear the words “punished with”;
- (ii) by deleting the word “to” appearing before the word “imprisonment”;
- (iii) by deleting the word “to” appearing before the word “both”;
- (iv) by inserting after the words “continuing offence,” the words “the offender, in addition to the penalty provided in this subsection,”; and
- (v) by inserting after the words “offence continues” the words “after conviction”.

Amendment of section 39B

23. The principal Act is amended—

(a) by renumbering section 39B as section 138; and

(b) by substituting for the renumbered section 138 the following section:

“Offences by bodies corporate. 138. (1) Where a person convicted in respect of any offence under this Act is a body corporate, it shall only be punished with the fine provided for such offence.

(2) Where an offence against this Act or any regulations made thereunder has been committed by a body corporate, any person who at the time of the commission of the offence was a director, a chief executive officer, an officer, an employee, a representative or the secretary of the body

corporate or was purporting to act in such capacity, shall be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all circumstances.

(3) Where a person who is an employee of a body corporate contravenes any provision of this Act, that body corporate shall be deemed to have contravened such provision.

(4) For the purposes of this section, "officer", in relation to a director of a corporation, includes—

(a) a person occupying or acting in the position of a director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position;

(b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and

(c) if the corporation is incorporated outside Malaysia—

(i) a member of the corporation's board;

(ii) a person occupying or acting in the position of director of the corporation's board, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position; or

(iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act."

Amendment of section 39c

24. The principal Act is amended—

- (a) by renumbering section 39c as section 139; and
- (b) in the renumbered subsection 139(2), by substituting for the word “goods” wherever it appears the words “property or document”.

Amendment of section 39d

25. The principal Act is amended by renumbering section 39D as section 140.

Amendment of section 39E

26. The principal Act is amended—

- (a) by renumbering section 39E as section 141; and
- (b) in the renumbered section 141, by substituting for the words “subsection 35(1)” the words “subsection 125(1)”.

Amendment of section 39F

27. The principal Act is amended—

- (a) by renumbering section 39F as section 142;
- (b) in the renumbered section 142—
 - (i) by substituting for the words “subsection 35(1)” the words “subsection 125(1)”;
 - (ii) by substituting for the words “section 39E” the words “section 141”; and
 - (iii) by substituting for the words “for the time being in force” the words “for detention under section 117 of the Criminal Procedure Code”.

Amendment of section 39G

28. The principal Act is amended—

- (a) by renumbering section 39G as section 143; and
- (b) in the renumbered section 143, by substituting for the words “section 39E” the words “section 141”.

Amendment of section 40

29. The principal Act is amended—

- (a) by renumbering section 40 as section 144; and
- (b) by substituting for the renumbered section 144 the following section:

“Public servants and public officers. 144. (1) All members of the Commission or any of its committees or any officer, servant or agent of the Commission while discharging their duties as such members, officers, servants or agents shall be deemed to be public servants within the meaning of the Penal Code and public officers for the purposes of the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

Act 574.

(2) Without affecting the generality of subsection (1), an Investigating Officer of the Commission shall be deemed to be a public servant for the purposes of the Penal Code, and a public officer for the purposes of the Criminal Procedure Code and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.”.

Act 593.

Amendment of section 41

30. The principal Act is amended by renumbering section 41 as section 145.

Amendment of section 42

31. The principal Act is amended by renumbering section 42 as section 146.

Amendment of section 42A

32. The principal Act is amended—

- (a) by renumbering section 42A as section 147; and
- (b) in the renumbered section 147, by substituting for the words “subsection 42(1)” the words “subsection 146(1)”.

Amendment of section 43

33. The principal Act is amended—

- (a) by renumbering section 43 as section 148; and
- (b) in the renumbered subsection 148(1), by inserting after the words “otherwise authorised by the Commission” the words “or subject to section 124 of the Evidence Act 1950”.

Amendment of section 43A

34. The principal Act is amended—

- (a) by renumbering section 43A as section 149;
- (b) in the renumbered section 149, by substituting for the words “section 43” the words “section 148”;
- (c) in the renumbered paragraph 149(a)—
 - (i) by substituting for the words “section 36” the words “section 128”;
 - (ii) by substituting for the words “section 38” wherever they appear the words “section 134”;
 - (iii) by substituting for the words “subsection 38(3)” the words “subsection 134(3)”; and
 - (iv) by substituting for the words “subsection 36(2)” the words “subsection 128(2)”.

Amendment of section 43B

35. The principal Act is amended by renumbering section 43B as section 150.

Amendment of section 43c

36. The principal Act is amended by renumbering section 43c as section 151.

New sections 152 to 158

37. The principal Act is amended by inserting after section 151 the following sections:

“Disclosure of information to Commission. 152. (1) The Commission may, by notice in writing, require any person to disclose to the Commission such information as the Commission may specify in the notice as it deems expedient for the due administration of Part IV.

(2) Where any information is required to be disclosed to the Commission under subsection (1), the person to whom the notice is directed shall not—

- (a) disclose or cause to be disclosed any information that is false or misleading;
- (b) disclose or cause to be disclosed any information from which there is a material omission; or
- (c) engage in, or aid, or abet, conduct that is misleading or deceptive or is likely to mislead or deceive the Commission.

(3) Without prejudice to subsection (2), where a person referred to in subsection (1) becomes aware that—

- (a) any information disclosed to the Commission under subsection (1) is false or misleading;
- (b) any information disclosed to the Commission under subsection (1) is information from which there is a material omission; or
- (c) the person's conduct is misleading or deceptive or is likely to mislead or deceive the Commission,

the person shall advise the Commission of the facts and shall take such action as the Commission may require.

(4) A person who contravenes subsection (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both.

Civil
liability of
person in
contravention
of this Act.

153. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in subsection (1) became aware of the contravention, whichever is the later.

Officers of
Commission
may
represent
Commission
in civil
proceedings.

154. Notwithstanding the provisions of any written law—

- (a) in any civil proceedings by or against the Commission; or
- (b) in any other civil proceedings in which the Commission is required or permitted by the court to be represented or to be heard, or is otherwise entitled to be represented or to be heard,

any officer of the Commission authorised by the Chairman for the purpose may, on behalf of the Commission, institute such proceedings or appear as an advocate therein, and may make all appearances and applications and to do all acts in respect of such proceedings on behalf of the Commission.

Commission
may
recover loss
or damage.

155. (1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV or any regulations made under this Act the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.

Reference
to conduct.

156. (1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.

(2) Where, in a proceeding under Part IV in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of an issuer—

- (a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the issuer, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed to have been engaged in by the issuer.

(4) Where, in a proceeding under Part IV in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(5) Conduct engaged in on behalf of a person other than an issuer—

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed to have been engaged in also by the first-mentioned person.

Attempts,
abettments
and
conspiracies.

157. A person who—

- (a) attempts to commit any offence under this Act;
- (b) does any act in furtherance of the commission of any offence under this Act; or
- (c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code) any offence under this Act, whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and shall be punished with or be liable to the penalty provided for such offence.

Written
notices,
circulars,
conditions
or
guidelines.

158. (1) The Commission may, generally in respect of this Act or any securities law or in respect of any particular provision of this Act or any securities law, issue such written notices, circulars or guidelines as the Commission considers desirable.

(2) Subject to this Act or unless the contrary intention is expressly stated, the Commission may require a person to whom the provisions of Part IV apply to give effect to all written notices, circulars, conditions or guidelines issued by the Commission within such period as may be specified by the Commission.

(3) A person to whom the provisions of Part IV apply shall give effect to all written notices, circulars, conditions or guidelines issued by the Commission under subsection (1) within such period as may be prescribed by the Commission.

(4) Where a person referred to in subsection (2) fails to give effect to any written notice, circular, condition or guideline issued by the Commission, the Commission may, after giving such person a reasonable opportunity to be heard, take such action as the Commission deems fit.

(5) For the purposes of subsection (4), the Commission may take any one or more of the following actions against a person for failing to give effect to any written notice, circular, condition or guideline issued by the Commission under Divisions 1, 3, 4 and 5 of Part IV:

- (a) direct the person failing to give effect to any written notice, circular, condition or guideline to comply with, observe, enforce or give effect to such written notice, circular, condition or guideline;
- (b) impose a penalty not exceeding five hundred thousand ringgit on the person failing to give effect to any written notice, circular, condition or guideline;
- (c) issue a public reprimand against the person failing to give effect to any written notice, circular, condition or guideline;
- (d) issue a caution letter or a reprimand letter against the person failing to give effect to any written notice, circular, condition or guideline;
- (e) refuse to accept or consider any submission under section 32;

(f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a) to (e), the following actions may be taken by the Commission:

- (i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission deems fit by the promoter or director or any persons connected with the promoter or director; or
- (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest."

Amendment of section 44

38. The principal Act is amended—

- (a) by renumbering section 44 as section 159; and
- (b) by inserting after the renumbered subsection 159(3) the following subsections:

"(4) Regulations may provide that all or any of the provisions of this Act—

- (a) shall not have effect in relation to any specified person or persons or any particular class of persons, either generally or as otherwise provided in the exemption, from all or any of the provisions of any regulations made under this section; and
- (b) shall have effect in relation to any specified person or persons or any particular class of persons to such extent as is prescribed."

Amendment of section 44A

39. The principal Act is amended by renumbering section 44A as section 160.

Amendment of section 45

40. The principal Act is amended by renumbering section 45 as section 161.

Amendment of section 46

41. The principal Act is amended by renumbering section 46 as section 162.

Amendment of section 47

42. The principal Act is amended by renumbering section 47 as section 163.

Amendment of section 48

43. The principal Act is amended by renumbering section 48 as section 164.

New sections 165 and 166

44. The principal Act is amended by inserting after section 164 the following sections:

“Transi-
tional and
savings.

P.U. (A)
439/96.

165. (1) All actions, regulations, orders, directions, notifications, approvals, decisions and other executive acts, howsoever called, made, given or done under, or in accordance with, or by virtue of, the provisions of the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 as amended by this Act, and shall continue to remain in force and have effect in relation to the persons to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act.

(2) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act or any proceedings brought or sentence imposed before the date of commencement of this Act in respect of such offence.

(3) Nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act and any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings, remedy or investigation may be instituted, continued or enforced as if this Act had not been enacted.

(4) Nothing in this Act shall—

- (a) affect the validity of any securities or the operation of any trust deed or deed issued or executed before the commencement of this Act;
- (b) apply in relation to an issuer, borrower, guarantor or trustee or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the commencement of this Act; or
- (c) require the appointment of any trustee or the execution of any trust deed in respect of any debenture issued before the commencement of this Act,

where there was no such requirement before the commencement of this Act.

(5) Where, upon the commencement of this Act, securities may be issued, offered for subscription or purchase or where an invitation to subscribe for or purchase

securities has been made on the basis of any prospectus issued before the commencement of this Act, the issuer shall, unless the written approval of the Commission granting an exemption is obtained, issue such supplementary prospectus and take such other action to ensure that the issue, offer or invitation complies with the requirements of this Act.

(6) The Commission may, by a direction in writing given to any issuer referred to in subsection (1) determine what action is to be taken by that issuer and how any difficulty arising in respect of the provisions introduced or amended by this Act may be overcome.

(7) Nothing in this Act shall—

(a) affect the validity or operation of any interest or deed, to which Division 5 of Part IV of the Companies Act 1965 applies, issued or executed before the commencement of this Act; or

(b) apply in relation to the management company by or on whose behalf any interest to which Division 5 of Part IV of the Companies Act 1965 applies and which have been issued before the commencement of this Act or in relation to the trustee for the holders of any such interest.

Prevention
of
anomalies.

166. If any difficulty arises with respect to the foregoing saving and transitional provisions, the Minister may by order make such modifications in those provisions as may appear to him necessary for preventing anomalies:

Provided that the Minister shall not exercise the power so conferred by this section after the expiration of two years from the date of commencement of this Act.”.

Amendment of Schedule

45. The Schedule to the principal Act is amended—

- (a) by inserting after the title “Schedule” the numeral “1”;
- (b) in paragraph 1, by inserting after the words “guaranteed by the” the words “Federal or any State”;

- (c) in paragraph 2, by inserting after the word "company", the words "other than debentures";
- (d) in paragraph 3, by substituting for the words "public company" the word "corporation";
- (e) by substituting for paragraph 4 the following paragraph:

"4. All trades in securities effected in the money market.";
- (f) in paragraph 9, by substituting for the words "section 39A of the Companies Act 1965" the words "section 46";
- (g) in paragraph 10 of the English language text, by inserting after the words "subscription or purchase" the word "of";
- (h) in paragraph 11, by deleting the word "listed"; and
- (i) by inserting after paragraph 11 the following paragraphs:
 - "12. An offer for purchase or an invitation to purchase existing securities of an unlisted corporation by an existing holder of those securities.
 - 13. The making available of, offering for subscription or purchase of, or making an invitation to subscribe for or purchase, securities of a corporation incorporated outside Malaysia pursuant to an employee share or employee share option scheme.
 - 14. The listing of securities that are issued by way of bonus issue arising from a capitalisation of unappropriated profits.
 - 15. The issuance of notes pursuant to a notes issuance facility or revolving underwriting facility as may be specified by the Commission."

New Schedules 2, 3, 4 and 5

46. The principal Act is amended by inserting after Schedule 1 the following Schedules:

"SCHEDULE 2

(Section 38)

Excluded offers or excluded invitations to which sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52 and 53 of Division 3 of Part IV shall not apply

1. An offer or invitation to enter into an underwriting agreement or an offer or invitation made to an underwriter under such an agreement.
2. With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 46 applies.
3. An offer or invitation made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
4. An offer or invitation made to a unit trust scheme or prescribed investment scheme.
5. An offer or invitation made to a person licensed as a dealer under the Securities Industry Act 1983.
6. An offer or invitation made exclusively to persons outside Malaysia.
7. An offer or invitation made to a closed end fund approved by the Commission.
8. An offer or invitation made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.
9. An offer or invitation made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.
10. An offer or invitation made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
11. An offer or invitation made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
12. An offer or invitation made to a licensed offshore bank as defined under the Offshore Banking Act 1990.
13. An offer or invitation made to an offshore insurer as defined under the Offshore Insurance Act 1990.

Act 443.

Act 444.

14. An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.
15. An offer or invitation made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
16. An offer or invitation of securities made or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.
17. An offer or invitation in respect of securities of a private company.
18. An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. An offer or invitation in respect of a trade in securities effected in the money market.
20. An offer or invitation made to employees of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An offer or invitation made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.
- Act 587.
22. An offer or invitation made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
- Act 372.
Act 276.
23. An offer or invitation made to an insurance company registered under the Insurance Act 1996.
- Act 89.
24. An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.
25. An offer or invitation made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.
- Act 53.
26. An offer or invitation made by or to Danamodal Nasional Berhad.
27. An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

SCHEDULE 3

(Section 39)

Excluded issues to which sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52 and 53 of Division 3 of Part IV shall not apply

1. An issue made to an underwriter under an underwriting agreement.
2. An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which section 46 applies.
3. An issue made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
4. An issue made to a unit trust scheme or prescribed investment scheme.
5. An issue made to a person licensed as a dealer under the Securities Industry Act 1983.
6. An issue made exclusively to persons outside Malaysia.
7. An issue made to a closed end fund approved by the Commission.
8. An issue made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.
9. An issue made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.
10. An issue made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
11. An issue made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
12. An issue made to a licensed offshore bank as defined under the Offshore Banking Act 1990.
13. An issue made to an offshore insurer as defined under the Offshore Insurance Act 1990.

14. An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.
15. An issue made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
16. An issue of securities made or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.
17. An issue in respect of securities of a private company.
18. An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. An issue in respect of a trade in securities effected in the money market.
20. An issue in respect of securities which are acquired by employees of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An issue made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.
22. An issue made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
23. An issue made to an insurance company registered under the Insurance Act 1996.
24. An issue made to a statutory body established by an Act of Parliament or an enactment of any State.
25. An issue made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.
26. An issue made by or to Danamodal Nasional Berhad.
27. An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act.
28. An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act.

29. An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.
30. An issue of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.
31. A bonus issue of securities made by a corporation.

SCHEDULE 4

(Section 66)

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sub-division 1 of Division 4 of Part IV and section 92 of sub-division 2 of Division 4 of Part IV shall not apply

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal or any State Government or any statutory body.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or the Central Bank of Malaysia.
3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.
4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.
5. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
6. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures in respect of trades in debentures effected in the money market.
7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.

8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.
10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.

SCHEDULE 5

(Subsection 66(2))

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sections 72, 74, 75, 76, 77, 78, 80, 81, 82, 84, 86, 87, subsections 89(4) and 89(5) of Division 4 of Part IV shall not apply

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a unit trust scheme or prescribed investment scheme.
3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person licensed as a dealer under the Securities Industry Act 1983.
4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a closed end fund approved by the Commission.
5. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.
6. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed offshore bank as defined under the Offshore Banking Act 1990.
10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an offshore insurer as defined under the Offshore Insurance Act 1990.
11. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures of a private company.
12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
13. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an insurance company registered under the Insurance Act 1996.
14. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.”.