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ACT 498

SECURITIES COMMISSION MALAYSIA ACT 1993
(Incorporating latest amendment – Act A1539/2017)

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SECURITIES COMMISSION MALAYSIA ACT 1993

(498 ACT)

LONG TITLE & PREAMBLE

An Act to establish the Securities Commission Malaysia and to provide for matters connected therewith and incidental thereto.

[1 March 1993 [P.U.(B) 57/1993][Gen.Am. Act A1539/2017]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by authority of the same, as follows:

PART I PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the **Securities Commission Malaysia Act 1993**.

[Gen. Am Act A1489/2015]

(2) This Act shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

[Am. Act A1074/2000]

"affiliate" has the meaning assigned to it in the Capital Markets and Services Act 2007 *[Act 671]*.

[Subs. Act A1305/2007]

"appointed day" means the day on which this Act comes into force;

"Audit Oversight Board" means the Audit Oversight Board established under section 31C;

[Ins. Act A1369/2010]

"Bank Negara Malaysia" means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 2009 *[Act 701]*;

[Ins. Act A1489/2015]

"books" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"Board" means the Board established under section 4;

[Ins. Act A1489/2015]

"Board committee" means any committee established by the Board under section 18;

[Ins. Act A1489/2015]

"capital market" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"capital market products" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"central depository" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"Chairman" means the Chairman of the Commission appointed under paragraph 4(2)(a);

[Am. Act A1489/2015]

"clearing house" means a clearing house approved under the Capital Markets and Services Act 2007;

[Subs. Act A1489/2015]

"Commission" means the Securities Commission established under section 3;

[Gen.Am.Act A1489/2015]

"committee"

[Del. Act A1489/2015]

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

[Subs. Act A1489/2015]

"corporation" has the meaning assigned to it in the Companies Act 1965;

[Subs. Act A1489/2015]

"Court" means -

(a) a High Court established under Article 121 of the Federal Constitution or a Judge of the High Court; or

(b) a Sessions Court or a Magistrate's Court established under section 3 of the Subordinate Courts Act 1948 *[Act 92]* or a Sessions Court Judge or a Magistrate;

[Subs. Act A1041/1998]

"dealing in derivatives" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"dealing in securities" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"Deputy Chief Executive" means the Deputy Chief Executive appointed under paragraph 4(2)(b);

[Am. Act A1489/2015]

"derivatives" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1403/2011]

"derivatives exchange" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1403/2011]

"derivatives market" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1403/2011]

"director" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1489/2015]

"document" has the meaning assigned to it in the Evidence Act 1950 *[Act 56]*;

[Subs. Act A1489/2015]

"exchange" means a stock exchange established under the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"exchange holding company" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"Fund" means the fund established under section 23;

"Futures contract;

[Del. Act A1403/2011]

"Futures exchange;

[Del. Act A1403/2011]

"Futures market;

[Del. Act A1403/2011]

"Islamic capital market business or transaction" means—

(a) the business of carrying any regulated activity;

(b) any proposal, scheme, transaction, arrangement, activity or matter relating to any capital market product, or under Part IIIA or Part VI of the Capital Markets and Services Act 2007;

(c) any transaction relating to a derivative; or

(d) the establishing, operating or maintaining of a securities market or a derivatives market,

which is consistent with the principles of Shariah as may be determined by the Shariah Advisory Council;

[Ins. Act A1489/2015]

"Islamic capital market product" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"licensed person" means a person licensed under the Capital Markets and Services Act 2007;

[Am. Act A1305/2007]

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

"officer", in relation to—

(a) the Commission, means any officer employed under section 20 and includes an Investigating Officer of the Commission appointed under section 125; and

(b) a corporation, has the meaning assigned to it in the Companies Act 1965;

[Subs. Act A1489/2015]

"participant" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"participating organization" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"prescribed", where no manner of prescribing is provided, means prescribed from time to time by regulations or order published in the *Gazette*;

"prescribed investment" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1489/2015]

"prescribed investment scheme" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1489/2015]

"private retirement scheme" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"public interest entity" means the entity specified in Part 1 of Schedule 1;

[Ins. Act A1489/2015]

"recognized market" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"record" includes information stored or recorded by means of a computer, electronic or digital medium or any other means of storage or recording;

[Subs. Act A1489/2015]

"schedule fund" means the funds specified in Part 2 of Schedule 1;

[Ins. Act A1489/2015]

"stock exchange" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"securities" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305/2007]

"securities laws" means—

- (a) this Act;
- (b) the Capital Markets and Services Act 2007;
- (c) the Securities Industry (Central Depositories) Act 1991 *[Act 453]*;
- (d) any other legislation which the Commission is empowered to administer or enforce; and
- (e) any other regulations, rules, orders, notifications or other subsidiary legislation made under paragraphs (a), (b), (c) and (d);

[Subs. Act A1489/2015]

"self-regulatory organization" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"*Shariah Advisory Council*" means the *Shariah Advisory Council* established under section 31Z1;

[Subs. Act A1489/2015]

"specify", where no manner of specifying is mentioned, means specify from time to time in writing; and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;

[Ins. Act A926/1995]

"trade repository" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1489/2015]

"unit trust scheme" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1489/2015]

(2) [Deleted]

[Am. Act A1403/2011]

2A. References to "this Act"

[Am. Act A1489/2015]

Any reference in this Act to "this Act" shall, unless otherwise "securities expressly stated, include a reference to any regulations, rules, orders, notifications or other subsidiary legislation made under this Act.

[Am. Act A1489/2015]

2B. [Deleted]

[Deleted Act A1305/2007]

2C. [Deleted]

[Deleted Act A1305/2007]

2D. Registers

- (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 authorized 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.

[Ins. Act A1074/2000]

2E. Electronic filing of books

[Am. Act A1217/2003]

- (1) The Commission may provide a service for the electronic filing, lodging or submission of books required by any of the provisions of the securities laws to be filed or lodged with or submitted to the Commission.

[Am. Act A1217/2003]

- (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, if any, and by complying with such terms and conditions as may be determined by the Commission.

[Am. Act A1217/2003]

- (3) Only a subscriber to the service provided under subsection (1), or such other person as the Commission may allow, may electronically file or lodge books with or submit books to the Commission.

[Am. Act A1217/2003]

- (4) A book electronically filed, lodged or submitted under this section shall be deemed to have satisfied the requirement for filing, lodgement or submission if the book is communicated or transmitted to the Commission in such manner as may be specified by the Commission.

[Am. Act A1217/2003]

- (5) The Commission may specify the books that may be electronically filed, lodged or submitted.

[Am. Act A1217/2003]

- (6) A book that is required to be stamped, signed or sealed shall, if it is to be electronically filed, lodged or submitted, be certified or authenticated in such manner as may be specified by the Commission.

[Am. Act A1217/2003]

- (7) A copy of or an extract from any book electronically filed or lodged with submitted to 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 authorized by the Commission, shall be admissible in evidence in any proceedings as of equal validity as the original book.

[Am. Act A1217/2003]

- (8) Where a book is electronically filed or lodged with or submitted to the Commission, the Commission or its authorized 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 book 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 authorized 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.

[Am. Act A1217/2003]

2F. Power of Commission to specify form and manner of keeping or maintaining books

- (1) Where under any of the provisions of the securities laws any person is required, or power is given to the Commission to require any person, to keep or maintain

any book, the Commission may specify the form and manner in which such book is to be kept or maintained.

- (2) The person referred to in subsection (1) shall take all reasonable precautions, including such precautions as may be specified by the Commission, to prevent damage to, or destruction or falsification of, such book.

[Ins. Act A1217/2003]

2G. Power of Commission to access books kept or maintained otherwise than in writing

- (1) Where under any of the provisions of the securities laws, power is given to the Commission—

- (a)* to inspect and make copies of or take extracts from any book required under any of the provisions of the securities laws to be kept or maintained; or
- (b)* to require any person, or where any person is required under the securities laws, to submit to the Commission any information, document or book,

the Commission shall have access to the same and may—

- (A) require that the same be submitted within such period, at such intervals, in such manner, in such form, and in writing or by means of any visual recording, whether of still or moving images, or sound recording, or any electronic, magnetic, mechanical or other recording whatsoever, on any substance, material, thing or article, as the Commission may set out in the specification;
- (B) obtain clear reproductions in writing; or
- (C) copy or move it to a storage or recording device.

[Subs. Act A1489/2015]

- (2) For the purpose of this section, the Commission may require any person involved in the compilation of the book, or in the storing or recording of the book in a storage or recording device, to make a statement providing an explanation of how to secure access to the book.

[Ins. Act A1217/2003]

2H. Power of Commission to require production, etc. of books kept or maintained otherwise than in writing

- (1) Where under any of the provisions of the securities laws, power is given to the Commission to allow the Commission to require the production of, search for, seize, take possession of, secure against interference or detain any book, the Commission may require the production of, search for, seize, take possession of, secure against interference or detain any storage or recording device in which the book is stored or recorded.
- (2) For the purposes of this section, the Commission may require any person who is involved in the compilation of the book, or in the storing or recording of the book in a storage or recording device, to make a statement providing an explanation of how to secure access to the book.

[Ins. Act A1217/2003]

PART II

SECURITIES COMMISSION MALAYSIA

[Part Title Am. Act A1489/2015]

3. Establishment of the Commission

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

[Gen. Am. Act A1489/2015]

4. Board of Commission

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

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

[Subs. Act A1489/2015]

4A. Appointment of members of Board

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

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

[Ins. Act A1489/2015]

4B. Chairman and Deputy Chief Executive

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

[Ins. Act A1489/2015]

5. Disqualification of Board members

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

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

[Subs. Act A1489/2015]

6. Tenure of office

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

[Subs. Act A1489/2015]

7. Resignation

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

[Subs. Act A1489/2015]

8. Revocation of appointment

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

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

[Subs. Act A1489/2015]

9. Remuneration or allowance

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

[Am. Act A1489/2015]

10. Meetings

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

[Am. Act A1489/2015]

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

[Ins. Act A1489/2015]

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

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

11. Board may invite others to meeting

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

[Subs. Act A1489/2015]

12. Common seal

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

[Gen. Am. Act A1489/2015]

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

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

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

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

13. Disclosure of interest

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

[Subs. Act A1489/2015]

- (2) [Deleted]

[Del. Act A926/1995]

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

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

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

relating to the matter.

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

- (6) [Deleted]

[Del. Act A926/1995]

14. Minutes

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

[Am. Act A1489/2015]

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

[Subs. Act A1489/2015]

15. Functions of the Commission

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

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

[Am. Act A1489/2015]

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

[Am. Act 1489/2015]

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

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

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Subs. Act A1217/2003]

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Subs. Act 1489/2015]

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

[Ins. Act 1489/2015]

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

[Am. Act 1489/2015]

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

[Ins. Act A1403/2011]

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

[Am. Act A1489/2015]

(2) [Deleted]

[Del. Act A987/2015]

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

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

[Subs. Act A926/1995]

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

[Ins. Act A1217/2003]

16. Powers of the Commission

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

[Subs. Act A926/1995]

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

[Subs. Act A1489/2015]

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

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

[Subs. Act A1489/2015]

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

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

[Ins. Act A1489/2015]

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

[Am. Act A1489/2015]

18. Board committee

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

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

(a) any Board member; and

(b) any other person,

as may be appointed by the Board.

[Subs. Act A1489/2015]

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

[Ins. Act A1489/2015]

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

[Ins. Act A1489/2015]

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

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

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

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

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

18A. Procedures of Board committee

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

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

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

[Ins. Act A1489/2015]

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

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

[Subs. Act A926/2015]

20. Appointment of officers of the Commission

[Am. Act A1489/2015]

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

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

[Am. Act A1489/2015]

21. Commission may issue policies on discipline and ethical behaviour

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

[Subs. Act 1489/2015]

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

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

22A. Commission may establish or participate in body corporate

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

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

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

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

[Subs. Act A1489/2015]

PART III

FINANCE

23. The Fund

(1) There is hereby established, for the purposes of this Act, a fund to be administered and controlled by the Commission.

(2) The Fund shall consist of -

(a) such sums as may be provided from time to time for the purposes of this Act by Parliament;

(b) sums borrowed by the Commission for the purposes of meeting any of its obligations or discharging any of its duties;

(c) levies payable under section 24;

(d) fees or other charges imposed by the Commission;

[Am. Act A1489/2015]

(e) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions and powers and;

[Am. Act A1489/2015]

(f) all other monies lawfully received by the Commission.

[Ins. Act A1489/2015]

24. Levies

- (1) In the case of every purchase and sale of securities recorded on the stock exchange or notified to it under its rules, the purchaser and the seller shall each of them be liable to pay to the Commission a levy at such rate as may be specified by order of the Minister to be published in the *Gazette* as a percentage of the consideration for such purchase and sale; and different rates may be specified in respect of different classes of securities .
- (2) In the case of every derivative effected on a derivatives market of a derivative exchange, both persons on each side of the order in relation to the derivative shall be liable to pay to the Commission a levy of such amount as may be specified by order of the Minister to be published in the *Gazette*; and different amounts may be specified in respect of different types or classes of derivatives or different classes or categories of persons in respect of derivatives.

[Subs. Act A1403/2011]

- (2A) In the case of every purchase and sale of securities or every derivative effected a recognized market under section 34 of the Capital Markets and Services Act 2007, the Commission may impose a levy at such rate as may be specified by the Minister, by order published in the *Gazette*;

[Am. Act A1489/2015]

- (3) The exchanges or the operator of a recognized market, as the case may be shall collect and account to the Commission for the levy referred to in subsections (1) and (2).

[Am. Act A1489/2015]

- (4) The amount of any levy payable under this section shall be recoverable as a civil debt due to the Commission.
- (5) The Minister may make rules providing for-

(a) the payment of the levies under this section; and

(b) the keeping, examination and audit of the accounts of the exchanges relating to the collection of such levies.

(6) [Deleted]

[Del. Act A1403/2011]

25. Conservation of the Fund

It shall be the duty of the Commission to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Commission are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital taking one year with another.

26. Expenditure to be charged on the Fund

The Fund shall be expended for the purpose of –

(a) paying any expenditure lawfully incurred by the Commission including legal fees and costs and other fees and costs, and the remuneration of officers and agents appointed and employed by the Commission, including the granting of loans, superannuation allowances or gratuities;

[Am. Act A1489/2015]

(b) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act;

(c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;

(d) repaying any moneys borrowed under this Act and the interest due thereon;
and

(e) generally, making any payment or grant for carrying into effect the provisions of the securities laws.

[Subs. Act A1489/2015]

27. Commission's financial year

The financial year of the Commission shall begin on the first day of January and end on the thirty-first day of December of each year.

28. Annual report

The Commission shall, as soon as practicable after the end of each financial year, prepare a report on its activities during that financial year and send a copy of the report to the Minister who shall cause a copy thereof to be laid before both Houses of Parliament.

29. Accounts

(1) The Commission shall cause proper accounts of the funds to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.

(2) The Commission shall cause the statement of accounts to be audited by auditors appointed by the Commission.

(3) The Commission shall as soon as practicable send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

[Am. Act A1489/2015]

(4) The Statutory Bodies (Accounts and Annual Reports) Act 1980 *[Act 240]* shall not apply to the Commission.

30. Power to borrow

The Minister may, on the recommendation of the Board, approve for the Commission to borrow at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Commission for meeting any of its obligations or performing any of its functions.

[Am. Act A1489/2015]

31. Investment

The moneys of the Commission shall, in so far as they are not required to be expended by the Commission under this Act, be invested in such manner as the Commission deems fit.

PART IIIA

AUDIT OVERSIGHT BOARD

DIVISION 1

Preliminary

31A. Interpretation for the purpose of Part IIIA Schedule 1 and Schedule 2

[Am. Act A1539/2017]

In this Part Schedule 1 and Schedule 2—

[Am. Act A1539/2017]

“auditor” means an individual auditor or audit firm registered or recognised under section 31O as a registered auditor or a recognised auditor of a public interest entity or schedule fund;

[Am. Act A1489/2015]

“executive officer” refers to the executive officer of the Audit Oversight Board appointed under section 31C;

[Ins. Act A1539/2017]

“executive chairman”

[Del. Act A1539/2017]

“Inspection Officer” means a person authorized by the Audit Oversight Board to carry out inspection under section 31V;

“Inquiry Officer” means a person authorized by the Audit Oversight Board to carry out inquiry under section 31W;

“Malaysian Institute of Accountants” means the Malaysian Institute of Accountants established under the Accountants Act 1967 *[Act 94]*;

“non-executive chairman” refers to the non-executive chairman of the Audit Oversight Board appointed under section 31C;

[Ins. Act A1539/2017]

“public interest entity”

[Del. Act A1489/2015]

“recognised auditor” means a foreign individual auditor or foreign audit firm recognised under section 31O as an auditor of a public interest entity or schedule fund;

[Am. Act A1489/2015]

“registered auditor” means an individual auditor or audit firm registered under section 310 as an auditor of a public interest entity or schedule fund;

[Am. Act A1489/2015]

“relevant authorities” includes Bank Negara Malaysia, Companies Commission of Malaysia, Malaysian Institute of Accountants and any other authority as may be determined by the Minister;

[Am. Act A1403/2011]

“relevant foreign authority” means a foreign authority which exercises the functions corresponding to the Audit Oversight Board as specified in section 31B.

[Ins. Act A1403/2011]

DIVISION 2

Establishment and Functions of Audit Oversight Board

31B. Functions of Commission relating to audit oversight

The functions of the Commission for the purposes of Part IIA shall be as follows:

[Am. Act A1489/2015]

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

[Am. Act A1489/2015]

- (c) to regulate auditors of public interest entities or schedule funds and;

[Am. Act A1489/2015]

- (d) to exercise oversight over any person who prepares a report in relation to financial information, required to be submitted under the securities laws, guidelines issued by the Commission or the rules of a stock exchange, of a—
- (i) public interest entity or schedule fund;
 - (ii) non-public interest entity seeking approval to become a public listed company or a corporation listed on the stock exchange; or
 - (iii) non-schedule fund seeking approval to become a schedule fund.

[Subs Act A1539/2017]

31C. Establishment of Audit Oversight Board

- (1) For the purposes of discharging its functions under section 31B relating to audit oversight, the Commission shall establish an Audit Oversight Board.

[Am. Act A1489/2015]

- (2) The Audit Oversight Board shall consist of the following members who shall be appointed by the Board:
- (a) a non-executive chairman;
 - (b) an executive officer; and
 - (c) five non-executive members;

[Subs. Act A1539/2017]

- (3) For the purposes of subsection (2), members who are appointed by the Board—

[Am. Act A1489/2015]

- (a) must possess knowledge and experience in finance, business, or in any other relevant discipline;
- (b) must be individuals of integrity and reputation who have demonstrated commitment to the interests of investors; and
- (c) must understand the responsibilities for and the nature of financial disclosures as required by public interest entities or schedule funds.

[Am. Act A1489/2015]

- (4) The non-executive chairman and executive officer shall not —

- (a) be a full-time officer or controlling shareholder of any public interest entity or schedule fund, its related corporation or associate company;
- (b) have any share in any of the profits of an accounting or auditing firm, or any of its affiliate; and
- (c) receive payment from any accounting or auditing firm, or from any other person as may be specified by the Commission, other than fixed continuing payments under standard arrangements for retirement from an accounting or auditing firm subject to such conditions as the Commission may impose;

[Subs. Act A1539/2017]

- (5) In this section, “controlling shareholder” means a person who—

- (a) is entitled to exercise, or control the exercise of, not less than fifteen per centum of the votes attached to the voting shares in a company;

- (b) has the power to appoint or cause to be appointed a majority of the directors of a company; or
 - (c) has the power to make or cause to be made, decisions in respect of the business or administration of a company, and to give effect to such decisions or cause them to be given effect to.
- (6) At all times, not more than three non-executive members of the Audit Oversight Board shall be members of the Malaysian Institute of Accountants who are registered under the Accountants Act 1967 as a chartered accountant or a licensed accountant.

[Am. Act A1539/2017]

- (6A) Notwithstanding subsection (6), no member of the audit Oversight Board shall—

- (a) be an approved company auditor under the Companies Act 2016; or
 - (b) be employed on a full-time or contractual basis, in any capacity, by a firm which—
 - (i) acts as an auditor for any public interest entity or schedule fund; or
 - (ii) prepares for or on behalf of any public interest entity or schedule fund, any report required by the Companies Act 2016 to be prepared by an approved auditor,

or any of the firm's affiliates

[Ins. Act A1539/2017]

- (7) The executive officer shall be entrusted with the day-to-day administration of the Audit Oversight Board.

[Am. Act A1539/2017]

31D. Application of Schedule 2

(1) Schedule 2 applies to members of the Audit Oversight Board.

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

31E. Responsibilities of Audit Oversight Board

(1) Without prejudice to the generality of section 31F, the responsibilities of the Audit Oversight Board in assisting the Commission in discharging its functions, shall be as follows:

[Am. Act A1489/2015]

(a) to implement policies and programmes in ensuring an effective audit oversight system in Malaysia;

(b) to register or recognise auditors of public interest entities or schedule funds for the purposes of this Act;

[Am. Act A1489/2015]

(c) to direct the Malaysian Institute of Accountants to establish or adopt, or by way of both, the auditing and ethical standards to be applied by auditors;

(d) to conduct inspections and monitoring programmes on auditors to assess the degree of compliance of auditing and ethical standards;

(e) to conduct inquiries and impose appropriate sanctions against auditors who fail to comply with auditing and ethical standards;

(f) to cooperate with relevant authorities in formulating and implementing strategies for enhancing standards of financial disclosures of public interest entities or schedule funds;

[Am. Act A1489/2015]

- (g) to liaise and cooperate with oversight bodies outside Malaysia to enhance the standing of the auditing profession in Malaysia and internationally;

[Am. Act A1489/2015]

- (ga) to carry out inspection on persons specified under paragraph 31B(d); and

[Ins. Act A1489/2015]

- (h) to perform such other duties or functions as the Audit Oversight Board determines necessary or appropriate to promote high professional standards of auditors and to improve the quality of audit services provided by auditors.

- (2) The Audit Oversight Board shall perform the responsibilities under subsection (1) on behalf and in the name of the Commission.

[Ins. Act A1369/2010]

31EA. Audit Oversight Board may establish committees

- (1) The Audit Oversight Board may establish such committees as it considers necessary or expedient to assist in the performance of its responsibilities as specified under subsection 31E(1).
- (2) The Audit Oversight Board may appoint any person to be a member of a committee subject to any terms or conditions as may be specified by the Audit Oversight Board.

[Am. Act A1489/2015]

- (3) A committee established under this section may elect any of its members to be chairman and may regulate its own procedure and, in the performance of its

responsibilities, shall be subject to and act in accordance with any direction given to the committee by the Audit Oversight Board.

- (4) Meetings of a committee shall be held at such times and places as the chairman of the committee may determine.
- (5) A committee may invite any person who is not a member to attend any meeting of the committee for the purpose of advising it on any matter under discussion but that person is not entitled to vote at the meeting.

[Am. Act A1489/2015]

- (6) Members of a committee or any person invited under subsection (5) to attend any meeting of a committee may be paid such allowances and other expenses as the Audit Oversight Board may determine.
- (7) A member of a committee shall hold office for such term as may be specified in his instrument of appointment and is eligible for reappointment.
- (8) The Audit Oversight Board may at any time revoke the appointment of any member of a committee.
- (9) A member of a committee may at any time resign his office by a written notice addressed to the non-executive chairman of the Audit Oversight Board.

[Am. Act A1539/2017]

- (10) A committee shall cause—
 - (a) minutes of all its meetings to be maintained and kept in proper form; and
 - (b) copies of the minutes of all its meetings to be submitted to the Audit Oversight Board as soon as practicable.

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

(12) Every meeting of a committee in respect of the proceedings of which minutes have been made in accordance with subsections (10) shall be deemed to have been duly convened and held and all members of the committee have been duly qualified to act.

[Am. Act A1489/2015]

(13) A member of the committee who has directly or indirectly, by himself or a member of his family, any interest in any matter under discussion by the committee shall disclose to the committee the fact and nature of his interest.

[Am. Act A1489/2015]

(14) A disclosure under subsection (13) shall be recorded in the minutes of the committee, and after the disclosure, the member having an interest in the matter—

(a) shall not take part nor be present in any deliberation or decision of the committee; and

(b) shall be disregarded for the purpose of constituting a quorum of the committee relating to the matter.

(15) Notwithstanding subsections (13) and (14), no act or proceedings of the committee shall be invalidated on the ground that any member of the committee has contravened the provisions of those subsections.

[Ins. Act A1403/2011]

31F. Commission may give general or specific directions to Audit Oversight Board

The Commission may, from time to time, give the Audit Oversight Board such general or specific directions consistent with the provisions of this Part.

31G. Disclosure of interest

- (1) A member of the Audit Oversight Board having directly or indirectly, by himself or a member of his family, any interest in any matter under discussion by the Audit Oversight Board shall disclose to such Board the fact and nature of his interest.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Audit Oversight Board and, after the disclosure, the member having an interest in the matter—
 - (a) shall not take part nor be present in any deliberation or decision of the Audit Oversight Board; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Audit Oversight Board.
- (3) Any member of the Audit Oversight Board who fails to disclose his interest as provided under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.
- (4) No act or proceedings of the Audit Oversight Board shall be invalidated on the ground that any member of the Audit Oversight Board has contravened the provisions of this section.

DIVISION 3

Finance

31H. The Audit Oversight Board Fund

- (1) For the purposes of this Part, the Commission shall establish and administer a fund to be known as the "Audit Oversight Board Fund".
- (2) The assets of the Audit Oversight Board Fund shall be the property of the Commission and shall be kept separate and apart from those of the Fund.
- (3) The Audit Oversight Board Fund shall consist of the following:
 - (a) such sums as may be determined by the Commission from time to time for the purposes of this Part;
 - (b) contributions as may be prescribed by the Minister under section 31I;
 - (c) fees prescribed under section 31O;
[Am. Act A1539/2017]
 - (d) penalty imposed under section 31Z;
 - (e) other fees or charges imposed under this Part;
[Am. Act A1539/2017]
 - (f) monies earned or arising from any investment of the Audit Oversight Board Fund; and

- (g) all other sums or property which may, in any manner, be payable to or be vested in the Audit Oversight Board Fund relating to any matter incidental to its functions and powers under this Part.

[Ins. Act A1369/2010]

31I. Contribution

- (1) The Minister may, by order published in the *Gazette*, prescribe the person who shall be required to make a contribution to the Audit Oversight Board Fund and the amount of such contribution.
- (2) The contribution made under subsection (1) shall be utilised only for the purposes of carrying out the functions of the Commission under section 31B.

[Ins. Act A1369/2010]

31J. Expenditure to be charged on Audit Oversight Board Fund

The Commission shall utilise the monies in the Audit Oversight Board Fund for the following purposes:

- (a) paying any expenditure lawfully incurred by the Audit Oversight Board including legal fees and costs and other fees and costs, and the remuneration of persons employed or engaged by the Commission for the purposes of carrying out the functions of the Commission and the responsibility of the Audit Oversight Board in this Part, including the granting of loans, superannuation allowances and gratuities to such persons;
- (b) paying any expenditure incurred in planning and implementing capacity building programmes relating to accounting and auditing profession; and
- (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Audit Oversight Board for carrying into effect the provisions of this Part.

[Ins. Act A1369/2010]

31K. Investment

The monies of the Audit Oversight Board Fund shall, in so far as they are not required to be expended under this Part, be invested by the Commission in such manner as the Commission deems fit.

[Ins. Act A1369/2010]

31L. Annual report and accounts

(1) The Audit Oversight Board shall, within three months after the end of each financial year, prepare a report on its activities during that financial year and send a copy of the report to the Commission.

(2) For the purposes of subsection (1), the report shall provide—

(a) the assessment of the Audit Oversight Board of its performance and effectiveness in discharging its responsibilities under section 31E;

(b) an assessment of significant risks relating to the quality and reliability of financial statements of public interest entities and schedule funds as identified by the Audit Oversight Board in the course of its inspection and inquiries, and key measures recommended by the Audit Oversight Board to address such risks;

[Am. Act A1489/2015]

(c) the systems, procedures and practices used by the Audit Oversight Board for evaluating the effectiveness of its operations; and

(d) any other matter affecting the carrying out of the functions of the Audit Oversight Board.

(3) The Commission shall cause a copy of the annual report to be submitted to the Minister.

- (4) The Commission shall keep proper accounts of the Audit Oversight Board Fund and shall prepare the statement of accounts in respect of such accounts.

[Am. Act A1403/2011]

- (5) The accounts of the Audit Oversight Board Fund shall be kept separate from the accounts of the Commission as provided under section 29.

- (6) The Commission shall cause the statement of accounts of the Audit Oversight Board Fund to be audited by auditors appointed by the Commission.

- (7) The Commission shall, as soon as possible, send a copy of the statement of accounts of the Audit Oversight Board Fund certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

[Ins. Act A1369/2010]

31M. Statutory Bodies (Accounts and Annual Reports) Act 1980

The Statutory Bodies (Accounts and Annual Reports) Act 1980 *[Act 240]* shall not apply to the Audit Oversight Board.

[Ins. Act A1369 /2010]

DIVISION 4

Registration or Recognition as Auditor of Public Interest Entity or Schedule Fund

[Am. Act A1489/2015]

31N. Requirement for registration or recognition as auditor of public interest entity or schedule fund

[Am. Act A1489/2015]

- (1) No person shall, unless he is registered as registered auditor or recognised as a recognised auditor under this Division—

[Am. Act A1489/2015]

(a) hold himself out or act as an auditor of a public interest entity or schedule fund;

[Am. Act A1489/2015]

(b) knowingly consents to be appointed and knowingly acts as an auditor of a public interest entity or schedule fund; or

[Am. Act A1489/2015]

(c) prepare for or on behalf of a public interest entity or schedule fund any report required by the Companies Act 1965 to be prepared by an auditor.

[Am. Act A1489/2015]

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

[Ins. Act A1369/2010]

310. Application for registration or recognition as an auditor of a public interest entity or schedule fund

[Am. Act A1489/2015]

(1) For the purposes of this Act, an application for—

(a) registration as a registered auditor; or

[Am. Act A1489/2015]

(b) recognition as a recognised auditor,

shall be made to the Audit Oversight Board.

[Subs. Act A1403/2015]

(2) The application under subsection (1)—

(a) shall be made in the form as may be determined by the Audit Oversight Board; and

(b) shall be accompanied with—

(i) the fees as may be prescribed by the Commission; and

(ii) such information or documents as may be required by the Audit Oversight Board.

(3) The Audit Oversight Board may upon the—

(a) registration of an applicant as a registered auditor; or

(b) grant of recognition of an applicant as a recognized auditor,

impose such conditions as the Board deems necessary or expedient and from time to time amend any such conditions or impose new or additional conditions.

[Subs. Act A1489/2015]

(4) The Audit Oversight Board shall serve a written notice to the auditor concerned of the amendment of any conditions imposed under subsection (3), and such conditions as amended or such new or additional conditions shall take effect at the time the notice is served or at such time as specified in the notice, whichever is the later.

[Subs. Act A1489/2015]

(4A) An auditor registered or recognized under this Part shall pay such prescribed fee on a yearly basis and on such date as the Commission may specify.

[Ins. Act A1539/2017]

- (4B) Where a registered or a recognized auditor fails to pay the prescribed fee by the date on which such fee is due, the Commission may impose a late payment fee of a prescribed amount for every day that the payment is late, and such fees shall be recoverable by the Commission as a debt due to the Commission.

[Ins. Act A1539/2017]

- (5) Subject to section 31P, the Audit Oversight Board may—
- (a) approve or refuse the registration of an applicant as a registered auditor;
or
 - (b) approve or refuse the grant of recognition of an applicant as a recognized auditor.

[Subs. Act A1489/2015]

31P. Refusal to register or grant recognition

[Am. Act A1489/2015]

- (1) The Audit Oversight Board may refuse the registration of an applicant if the Audit Oversight Board is satisfied that the applicant—

[Am. Act A1489/2015]

- (a) is not or has ceased to be an auditor approved under section 8 of the Companies Act 1965;
- (b) has been convicted—
 - (i) within or outside Malaysia, of an offence involving fraud or other dishonesty;
 - (ii) of an offence under any written law relating to the protection of members of the public against financial loss due to—

(A) dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies; or

(B) the conduct of discharged or undischarged bankrupts;

(c) has engaged in any practices which reflect discredit on his ability to meet professional auditing standards;

(d) is an undischarged bankrupt within or outside Malaysia;

(e) is subject to a sanction imposed under section 31Z; or

(f) has failed to comply with any other requirements of this Part or any written notices or guidelines made under this Act.

(1A) The Audit Oversight Board may refuse to recognise an applicant as a recognised auditor if the Audit Oversight Board is satisfied that the applicant—

(a) falls within paragraph (1)(b), (c), (d) or (f);

(b) has been subject to any sanction imposed by any relevant foreign authority;

(c) has not been approved by a relevant foreign authority to prepare audited financial statements; or

(d) is not supervised by a relevant foreign authority.

[Ins. Act A1403/2011]

(2) Where the Audit Oversight Board refuses—

(a) the registration of an applicant as a registered auditor; or

(b) to grant recognition of an applicant as a recognized auditor,

the Audit Oversight Board shall give the applicant an opportunity to be heard by serving a written notice on the applicant stating the grounds for such refusal.

[Subs. Act A1489/2015]

(3) [Deleted]

[Del. Act A1403/2011]

31Q. Power to revoke, withdraw or suspend registration or recognition

(1) The Audit Oversight Board may, at any time—

(a) revoke or suspend the registration; or

(b) withdraw or suspend the recognition,

of an auditor if—

(A) there exists a ground on which the Audit Oversight Board may refuse an application under subsection 31P(1) or (1A);

[Am. Act A1489/2015]

(B) the auditor contravenes any terms or conditions imposed by the Audit Oversight Board in respect of his registration or recognition under this Part; or;

[Am. Act A1489/2015]

(C) the auditor fails to pay any fees or charges imposed under this Part

[Subs. Act A1539/2017]

(2) The suspension under subsection (1) may be extended or revoked at any time by the Audit Oversight Board as it considers appropriate.

(3) Where the Audit Oversight Board intends to—

(a) revoke or suspend the registration; or

(b) withdraw or suspend the recognition,

under subsection (1) or (2), it shall give the auditor an opportunity to be heard by serving a written notice to the auditor concerned stating the grounds for such revocation, suspension or withdrawal.

[Subs. Act A1403/2011]

(4) [Deleted]

[Del. Act A1403/2011]

(5) For the purposes of this Part, an auditor whose registration has been revoked or suspended or whose recognition has been withdrawn or suspended, as the case may be, shall be deemed not to be registered or recognized as an auditor from the date the revocation, withdrawal or suspension takes effect or any other date as may be specified by the Audit Oversight Board.

[Subs. Act A1403/2011]

31R. Notification of refusal, revocation or suspension

Where an auditor falls within the scope of subsection 31P(1) or (1A), or subparagraph 31Q(1)(b)(B) he shall, immediately upon becoming aware of the happening of such event, notify the Audit Oversight Board in writing by setting out the relevant particulars.

[Am. Act A1489/2015]

31S. [Deleted]

[Del. Act A1489/2015]

31T. Register of auditors

- (1) The Audit Oversight Board shall keep and maintain a Register of Auditors in such form and manner as it thinks fit.
- (2) There shall be removed from the Register the name and other particulars of any auditor who ceases to be registered or recognised under this Part.

[Am. Act A1403/2011]

- (3) Any person may, upon payment of the prescribed fees, inspect and take extracts from the Register kept and maintained under subsection (1).

[Ins. Act A1369/2010]

DIVISION 5

Setting Auditing and Ethical Standards

31U. Auditing and ethical standards

- (1) Subject to subsections (2) and (3), the Audit Oversight Board shall adopt the auditing and ethical standards to be complied by an auditor to the extent and in such manner it considers appropriate.
- (2) For the purposes of setting auditing and ethical standards, the Audit Oversight Board may convene or authorize its staff to convene such advisory committees as may be appropriate, which may include accountants and other experts, as well as other stakeholders, to assist the Audit Oversight Board concerning the content of the auditing and ethical standards.
- (3) The Audit Oversight Board may direct the Malaysian Institute of Accountants to establish or amend the auditing and ethical standards to be complied by an auditor.

[Ins. Act A1369/2010]

DIVISION 6

Inspection and Inquiry

31V. Inspection

- (1) The Audit Oversight Board shall, from time to time, conduct inspections to assess—
 - (a) the degree of compliance with the auditing and ethical standards by an auditor; and
 - (b) the sufficiency and appropriateness of the audit evidence obtained in relation to the audit report prepared by an auditor relating to the audited financial statements of public interest entities or schedule funds.

[Subs. Act A1489/2015]

- (2) The inspections under subsection (1) shall be carried out by any officers of the Audit Oversight Board or any person authorized by the Audit Oversight Board who is referred to as an "Inspection Officer" in this Division.
- (3) The auditor, its partners and employees shall cooperate with an Inspection Officer, conducting an inspection under this section, in the following matters:
 - (a) providing access to all books, accounts, working paper or other related documents;
 - (b) furnishing copies of or extracts from such books, accounts, working papers or other related documents; and
 - (c) providing information by oral interview, in writing or in any other manner as may be determined or required by an Inspection Officer.

- (4) At the conclusion of the inspection made under this section, the Inspection Officer shall prepare a draft inspection report and a copy of that draft report shall be extended to the auditor concerned.
- (5) The Audit Oversight Board shall forthwith discuss the findings of the inspection report with the auditor concerned and after taking into account the representations made by the auditor, the Inspection Officer shall finalise the draft inspection report.
- (5A) Notwithstanding section 31Z, the Audit Oversight Board may direct the auditor to take any remedial measure to rectify matters raised in the inspection report.

[Ins. Act A1489/2015]

- (6) The auditor concerned shall, immediately, report to the Audit Oversight Board all remedial measures which have been or are being taken relating to any findings raised in the inspection report.
- (7) The Audit Oversight Board may publish the inspection report referred to in subsection (5) if the auditor fails to take the relevant remedial measures under subsection (6).

[Ins. Act A1369/2010]

31W. Inquiry

The Audit Oversight Board may appoint such number of Inquiry Officers as the Board considers necessary for the purposes of carrying out an inquiry where there has been a—

- (a) contravention of any provision of this Part; or
- (b) breach or failure to comply with—
 - (i) any condition imposed under subsection 31O(3); or

- (ii) any written notice or guidelines issued by the Commission.

[Subs. Act A1489/2015]

31X. Power to require information

- (1) For the purposes of an inquiry, an Inquiry Officer may, by notice in writing served on a person, require such person—
 - (a) to provide all reasonable assistance in connection with the inquiry; and
 - (b) to appear before him or other Inquiry Officers concerned to be examined orally.
- (2) Any statement made by any person under this section shall be reduced into writing by the Inquiry Officer, and signed by the person making it or affixed with his thumb print after such statement has been read to him and after he had been given an opportunity to make any correction he may wish.
- (3) If the person referred to in subsection (2) refuses to sign or affix his thumb print on the statement, the Inquiry Officer shall endorse on the statement under his hand of such refusal and the reason thereof, if any.
- (4) A person referred to in subsection (1) shall be legally bound—
 - (a) to give information relevant to the inquiry which is in his power to give;
 - (b) to answer all questions put to him by the Inquiry Officer; and
 - (c) to state the truth, whether or not the statement is made wholly or partly, in answer to questions.
- (5) For the purposes of subsection (1), the Inquiry Officer examining the person may give directions on who may be present during the examination or during any part of it.

- (6) Any statement made and recorded under this section shall be admissible as evidence in any proceeding in any court.
- (7) Any person to whom a notice is issued under subsection (1) shall not—
- (a) refuse to answer any question put to him by an Inquiry Officer as required under subsection (4) or neglects to give any information which may reasonably be required of him and which he has in his power to give; or
- (b) knowingly furnish to an Inquiry Officer information or statement which is false or misleading in any material particular.
- (8) For the purposes of this Division, any notice which is given shall, if practicable, be served personally on any person specified in such notice.
- (9) Where any person specified in a notice given under this section or any other provisions of this Division cannot by the exercise of due diligence be found, the notice may be served by leaving a copy of it for him with some adult member of his family or with his servant residing with him.
- (10) When any person specified in any notice given under this section or any other provision of this Division cannot by the exercise of due diligence be found, and service cannot be effected as directed by subsection (8) or (9), 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.

[Am. Act A1403/2011]

31Y. Inspection and inquiry of consolidated financial statements

For the purposes of this Division and, in the case of consolidated financial statements of public interest entities or schedule funds , the powers conferred on the Audit

Oversight Board and its officers, or persons authorized by the Audit Oversight Board to inspect or to inquire into such financial statements shall apply relating to the accounts, working papers and documents prepared by the auditors of the subsidiaries, associates or any other entities whose financial statements are consolidated into such public interest entities or schedule funds.

[Am. Act A1489/2015]

DIVISION 7

Sanctions

31Z. Sanctions

(1) Where any person contravenes or fails to comply with, observe, enforce or give effect to any of the following, that person has committed a breach:

(a) any provisions of this Part;

(b) any conditions imposed under this Part; or

[Am. Act A1489/2015]

(c) any written notice or guidelines imposed or issued by the Commission.

(2) Where a person has committed a breach under subsection (1), the Audit Oversight Board may take one or more of the following actions:

(a) direct the person concerned to comply with the provisions of this Part or any conditions imposed under this Part, or any written notice or guidelines issued by the Commission;

[Am. Act A1489/2015]

(b) reprimand the person concerned;

- (c) require the person concerned to take such steps, as the Audit Oversight Board may direct, to remedy the breach;
- (d) require relevant professional education to be undertaken by the person concerned;
- (e) assign a reviewer to oversee an audit that is undertaken by the person concerned;
- (f) prohibit the person concerned from accepting any public interest entity or schedule fund as its client or preparing reports in relation to financial information of any public interest entity or schedule fund, as may be required under the securities laws or guidelines issued by the Commission, for a period not exceeding twelve months;

[Subs. Act A1489/2015]

- (g) prohibit the person concerned from auditing financial statements or preparing reports in relation to financial information of a public interest entity or schedule fund, as may be required under the securities laws or guidelines issued by the Commission, for a period not exceeding twelve months or permanently; and;

[Subs. Act A1489/2015]

- (h) impose a penalty not exceeding five hundred thousand ringgit on the person concerned.

- (3) Notwithstanding subsection (2), the Audit Oversight Board may require any person who has committed a breach under subsection (1) to give a written undertaking that such person shall comply with, observe, enforce or give effect to—

- (a) the provision of this Part;

(b) any conditions imposed under this Part; or

[Am. Act A1489/2015]

(c) any written notice or guidelines imposed or issued by the Commission.

- (4) Subsection (3) shall not apply to any person who has committed a breach under subsection (1) and has been prohibited from auditing financial statements of a public interest entity or schedule fund permanently pursuant to paragraph 2(g).

[Am. Act A1489/2015]

- (5) The Audit Oversight Board shall not take any action under subsection (2) without giving the person concerned an opportunity to be heard.

- (6) Where the person concerned fails to pay the penalty imposed under paragraph (2)(h), such penalty may be sued for and recovered as a debt due to the Commission.

- (7) Any monies obtained from the penalty imposed under paragraph (2)(h), shall be utilised to plan and implement capacity building programmes relating to the accounting and auditing profession.

- (8) Where on an application by the Commission, it appears to the court that the person who has committed a breach under subsection (1) has failed to comply with any action taken by the Audit Oversight Board under subsection (2) or (3), the court may make an order directing such person to comply with such direction, requirement or terms of undertaking issued by the Audit Oversight Board.

- (9) Nothing in this section shall preclude the Commission or any other relevant authorities from taking any other action which they may take under their respective written laws or by-laws.

[Ins. Act A1369/2010]

DIVISION 8

General

31ZA. [Deleted]

[Del. Act A1403/2011]

31ZB. Appeal

- (1) Any person who is aggrieved by the decision of the Audit Oversight Board under subsection 31P(1) or (1A) , section 31Q or subsection 31Z(2) may appeal in writing to the Commission within thirty days from the date on which such person is notified of the decision of the Audit Oversight Board.

[Am. Act A1403/2011]

- (2) The Commission shall determine its own procedures in hearing an appeal under this Part.
- (3) For the purposes of an appeal under this Part, the Commission may—
 - (a) affirm the determination of the Audit Oversight Board;
 - (b) set aside the determination of the Audit Oversight Board; or
 - (c) substitute for the determination of the Audit Oversight Board its own determination.
- (4) The Commission shall decide on an appeal within a period of three months from the date the appeal is made.
- (5) Where there is an appeal against the decision of the Audit Oversight Board under this section, the decision of the Audit Oversight Board under subsection

31P(1) or (1A), section 31Q or subsection 31Z(2) shall not take effect until the appeal is disposed of.

[Am. Act A1403/2011]

31ZC. Duty to report to relevant authorities

Notwithstanding section 148, the Audit Oversight Board shall report to the relevant authorities if it becomes aware of any breach of any law or code of conduct which is administered by the relevant authorities.

[Ins. Act A1369/2010]

31ZD. Cooperation, coordination and sharing of information

[Subs. Act A1489/2015]

(1) For the purposes of promoting confidence in the quality and reliability of audited financial statements, the Commission may—

(a) enter into arrangements to cooperate with relevant authorities or relevant foreign authorities; and

(b) obtain any information or document from or share the same with any relevant authorities or relevant foreign authorities if the Commission considers it necessary to do so.

(1A) In determining whether it is necessary to exercise its power under paragraph (1)(b), the Commission shall have regard to—

(a) whether the relevant authorities or relevant foreign authorities will pay to the Commission any costs and expenses incurred for providing the assistance; and

- (b) whether the relevant authorities or relevant foreign authorities will be able and willing to provide reciprocal assistance in response to a comparable request for assistance from the Commission.

[Ins. Act A1489/2015]

- (2) Notwithstanding sections 31V and 31W, the Audit Oversight Board may, with regard to a recognised auditor, request for assistance from a relevant foreign authority to conduct inspection or inquire into the conduct of a recognised auditor to assess—

- (a) the degree of compliance with auditing and ethical standards adopted by the relevant foreign authority by the recognised auditor; and

- (b) the sufficiency and appropriateness of the audit evidence obtained in relation to the audit report prepared by an auditor relating to the audited financial statements.

[Subs. Act A1489/2015]

- (3) The Audit Oversight Board may disclose and share any findings under Division 6 of this Part with any public interest entity or schedule fund if the Audit Oversight Board considers that the sharing of such findings is pursuant to the functions of the Audit Oversight Board under section 31B.

[Ins. Act A1489/2015]

PART III B

MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET

31ZE. Interpretation

For the purposes of this Part—

“market participant” includes an investor, issuer, intermediary, capital market service provider, exchange holding company, stock exchange, derivatives exchange, central depository and clearing facility;

“systemic risk in the capital market” means a situation when one or more of the following events occur or is likely to occur:

- (a) financial distress in a significant market participant or in a number of market participants;
- (b) an impairment in the orderly functioning of the capital market; or
- (c) an erosion of public confidence in the integrity of the capital market.

[Ins. Act A1489/2015]

31ZF. Information for purpose of systemic risk

- (1) The Commission may, notwithstanding any provision under the securities laws, by notice in writing request any person to submit to the Commission any information or document—
 - (a) which the Commission considers necessary for the purposes of monitoring, mitigating and managing systemic risks in the capital market; or
 - (b) where the Commission receives a request from Bank Negara Malaysia under section 30 of the Central Bank of Malaysia Act 2009.
- (2) For the purposes of subsection (1), where the person concerned is solely under the supervision or oversight of Bank Negara Malaysia, the notice shall be issued through Bank Negara Malaysia.
- (3) Any person who is required to submit any information or document under this section shall provide such information or document notwithstanding any

obligation under any contract, agreement or arrangement whether express or implied to the contrary.

- (4) Any person who fails to comply with the notice issued under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

[Ins. Act A1489/2015]

Power of Commission to issue directive for systemic risk

- 31ZG.** (1) Where the Commission considers it necessary in the interest of monitoring, mitigating or managing systemic risk in the capital market, the Commission may issue a directive in writing requiring any person to take such measures as the Commission may consider necessary.
- (2) In exercising its power under subsection (1), the Commission shall take into consideration the interest of financial stability.
 - (3) For the purposes of subsection (1), where the person concerned is solely under the supervision or oversight of Bank Negara Malaysia, the Commission shall make a recommendation to Bank Negara Malaysia to issue such directive.
 - (4) Before issuing a directive under subsection (1), the Commission shall give the person an opportunity to be heard.
 - (5) Notwithstanding subsection (4), the Commission may issue a directive under subsection (1) without first giving the person an opportunity to be heard if any delay in issuing such directive would aggravate systemic risk in the capital market.
 - (6) Where a directive is issued pursuant to subsection (5) the person shall be given an opportunity to be heard after the directive has been issued.

- (7) When a person is given an opportunity to be heard under subsection (6), a directive issued under subsection (1) may be amended or modified.
- (8) Any person who fails to comply with the directive issued under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

[Ins. Act A1489/2015]

Arrangements with other supervisory authorities

31ZH. (1) Notwithstanding any provision in the securities laws, the Commission may for the purposes of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability—

- (a) provide assistance to any supervisory authority or Government agency responsible for promoting financial stability;
- (b) obtain any information or document from, or share any information or document with, any supervisory authority or Government agency responsible for promoting financial stability if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial stability; or
- (c) enter into arrangements to cooperate with other supervisory authorities and co-ordinate stability measures with such supervisory authorities.

(2) Where the Commission shares any information or document under paragraph (1)(b)—

- (a) with any supervisory authority or Government agency responsible for promoting financial stability in Malaysia, such information or document shall not be disclosed to any person except with the written consent of the Commission; or

- (b) with any supervisory authority outside Malaysia, such supervisory authority shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purposes for which the information or document may be used.
- (3) For the purposes of this section, “supervisory authority” means any authority, body, agency or entity—
- (a) responsible for monitoring, mitigating and managing systemic risk in the capital market or promoting financial stability; or
- (b) responsible for the supervision or oversight of capital market intermediaries or participants.

[Ins. Act A1489/2015]

PART III C

SHARIAH ADVISORY COUNCIL

31ZI. Establishment of Shariah Advisory Council for Islamic capital market

- (1) The Commission may establish a Shariah Advisory Council for Islamic capital market which shall be the authority for the ascertainment of the application of Shariah principles for the purposes of Islamic capital market business or transaction.
- (2) The Shariah Advisory Council may determine its own procedures.

[Ins. Act A1489/2015]

31ZJ. Functions of Shariah Advisory Council

The Shariah Advisory Council shall have the following functions:

- (a) to ascertain the application of Shariah principles on any matter relating to Islamic capital market business or transaction;
- (b) to issue ruling on any matter relating to Islamic capital market business or transaction;
- (c) to advise the Commission on any Shariah issue relating to Islamic capital market business or transaction;
- (d) to provide advice to any person on any Shariah issue relating to Islamic capital market business or transaction; and
- (e) such other functions as may be prescribed by the Minister.

[Ins. Act A1489/2015]

31ZK. Appointment of members of Shariah Advisory Council

- (1) The Yang di-Pertuan Agong may, on the advice of the Minister after consultation with the Commission, appoint persons as members of the Shariah Advisory Council who are qualified in—
- (a) *fiqh muamalah*;
 - (b) Islamic jurisprudence;
 - (c) Islamic finance; or
 - (d) any other related discipline.

- (2) If a judge of the High Court, the Court of Appeal or the Federal Court, or a judge of the Shariah Appeal Court of a State or Federal Territory, is to be appointed under subsection (1), such appointment shall not be made except—
- (a) in the case of a judge of the High Court, the Court of Appeal or the Federal Court, after consultation by the Commission with the Chief Justice; and
 - (b) in the case of a judge of the Shariah Appeal Court of a State or Federal Territory, after consultation by the Commission with the Chief Shariah Judge of that State or Federal Territory, as the case may be.
- (3) A member of the Shariah Advisory Council appointed under subsection (1) shall hold office on such terms and conditions as may be provided in their respective letters of appointment, and shall be eligible for reappointment.
- (4) The members of the Shariah Advisory Council shall be paid such remuneration and allowances as may be determined by the Commission.

[Ins. Act A1489/2015]

31ZL. Secretariat to Shariah Advisory Council

The Commission may—

- (a) establish a secretariat and such other committees as the Commission considers necessary to assist the Shariah Advisory Council in carrying out of its functions; and
- (b) appoint an officer of the Commission or any other person to be a member of the secretariat or such other committees.

[Ins. Act A1489/2015]

31ZM. Advice or ruling of Shariah Advisory Council

Any licensed person, stock exchange, derivatives exchange, clearing house, central depository, listed corporation or any other person may—

(a) seek the advice of; or

(b) refer a matter for a ruling by,

the Shariah Advisory Council relating to its Islamic capital market business or transaction in order to ascertain that it does not involve any element which is inconsistent with the Shariah.

[Ins. Act A1489/2015]

31ZN. Reference to Shariah Advisory Council for ruling from court or arbitrator

(1) Where in any proceedings before any court or arbitrator concerning a Shariah matter in relation to Islamic capital market business or transaction, the court or the arbitrator, as the case may be, shall—

(a) take into consideration any ruling of the Shariah Advisory Council; or

(b) refer such matter to the Shariah Advisory Council for its ruling.

(2) Any request for advice or a ruling of the Shariah Advisory Council under this Act or any other law shall be submitted to the secretariat.

[Ins. Act A1489/2015]

31ZO. Effect of Shariah ruling

Any ruling made by the Shariah Advisory Council under section 31ZM or 31ZN shall be binding on—

- (a) the licensed person, stock exchange, derivatives exchange, clearing house, central depository, listed corporation or any other person referred to in section 31ZM; and
- (b) the court or arbitrator referred to in section 31ZN.

[Ins. Act A1489/2015]

31ZP. Shariah Advisory Council ruling prevails

- (1) Where a ruling given by a registered Shariah adviser to a person engaging in any Islamic capital market business or transaction is different from the ruling given by the Shariah Advisory Council, the ruling of the Shariah Advisory Council shall prevail.
- (2) For the purpose of this section, "registered Shariah adviser" means a person who is registered under any guidelines issued by the Commission under section 377 of the Capital Markets and Services Act 2007.

[Ins. Act A1489/2015]

PART IV

ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

DIVISION 1

PROPOSALS IN RELATION TO SECURITIES

32. [Deleted] *[Del. Act A1305/2007]*

32A. [Deleted] *[Del. Act A1305/2007]*

32B. [Deleted] *[Del. Act A1305/2007]*

DIVISION 2

TAKE-OVERS, MERGERS AND COMPULSORY ACQUISITIONS

33. [Deleted] *[Del. Act A1305/2007]*
- 33A. [Deleted] *[Del. Act A1305/2007]*
- 33B. [Deleted] *[Del. Act A1305/2007]*
- 33C. [Deleted] *[Del. Act A1305/2007]*
- 33D. [Deleted] *[Del. Act A1305:s.7]*
- 33E. [Deleted] *[Del. Act A1305/2007]*
34. [Deleted] *[Del. Act A1305/2007]*
- 34A. [Deleted] *[Del. Act A1305/2007]*
- 34B. [Deleted] *[Del. Act A1305/2007]*
- 34C. [Deleted] *[Del. Act A1305/2007]*

DIVISION 3

PROSPECTUS

35. [Deleted] *[Del. Act A1305/2007]*
36. [Deleted] *[Del. Act A1305/2007]*

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- 64. [Deleted] *[Del. Act A1305/2007]*
- 65. [Deleted] *[Del. Act A1305/2007]*

DIVISION 4

DEBENTURES

Subdivision 1

Trust deeds, duties of trustees, borrowers, etc. [Deleted]

- 66. [Deleted] *[Del. Act A1305/2007]*

67. [Deleted] *[Del. Act A1305/2007]*
68. [Deleted] *[Del. Act A1305/2007]*
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- 89. [Deleted] *[Del. Act A1305/2007]*
- 90. [Deleted] *[Del. Act A1305/2007]*
- 91. [Deleted] *[Del. Act A1305/2007]*

Subdivision 2

General [Deleted]

- 92. [Deleted] *[Del. Act A1305/2007]*
- 93. [Deleted] *[Del. Act A1305/2007]*
- 94. [Deleted] *[Del. Act A1305/2007]*
- 95. [Deleted] *[Del. Act A1305/2007]*

DIVISION 5

UNIT TRUST SCHEMES AND PRESCRIBED INVESTMENT SCHEMES [Deleted]

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| 96. | [Deleted] | <i>[Del. Act A1305/2007]</i> |
| 97. | [Deleted] | <i>[Del. Act A1305/2007]</i> |
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| 104. | [Deleted] | <i>[Del. Act A1305/2007]</i> |
| 105. | [Deleted] | <i>[Del. Act A1305/2007]</i> |
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| 110. | [Deleted] | <i>[Del. Act A1305/2007]</i> |

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PART IVA

AGREEMENT OR ARRANGEMENT FOR TRANSFER OF BUSINESS [DELETED]

124. [Deleted] *[Del. Act A1305/2007]*
- 124A. [Deleted] *[Del. Act A1305/2007]*

124B. [Deleted]

[Del. Act A1305/2007]

PART V

ENFORCEMENT AND INVESTIGATION

125. Appointment of Investigating Officers of the Commission

[Am. Act A1074/2000]

- (1) The Commission may appoint such number of investigating officers to be known as Investigating Officers of the Commission as it considers necessary for the purposes of carrying out investigation of any offence under the securities laws.

[Am. Act A1305/2007]

- (2) An Investigating Officer of the Commission appointed under subsection (1) shall have all the powers given to any person for the purposes of carrying out investigation of any offence under the securities law.

[Am. Act A1305/2007]

126. Examination by Commission

[Subs. Act A1489/2015]

- (1) The Commission may, from time to time, examine, without giving any prior notice, the books or other documents, accounts and transactions of—
 - (a) any person licensed, registered, approved, recognized or authorized under any securities laws;

(b) any person performing any outsourced functions for persons referred to in paragraph (a); or

(c) a branch or subsidiary of a licensed person.

(2) Any person referred to in subsection (1) and any person acting on its behalf shall provide all assistance and produce any documents, records or matter, as may be required by the Commission, to enable the Commission to carry out its functions.

(3) For the purposes of paragraphs (1)(a) and (b), "person" does not include persons specified under the Third Column of Part 1 of Schedule 4 to the Capital Markets and Services Act 2007.

[Subs. Act A1489/2015]

127. Production of books, etc

[Am. Act A1305/2007]

(1) For the purposes of an examination under section 126, a person under examination, its directors and officers shall accord any person carrying out the examination access to all its books or other documents and accounts, including documents of title to its assets, all securities held by it in respect of securities transactions, all its cash, and all such documents, information and facilities as may be required by that person who carries out the examination, and shall produce to that person who carries out the examination all such books or other documents, accounts, titles, securities or cash, and give all such information, as he may require, but so far as is consistent with the conduct of the examination, such books or documents, accounts, titles, securities and cash shall not be required to be produced at such times or at such places as may interfere with the proper conduct of the normal daily business of that person;

[Subs. Act A1305/2007]

(2) Notwithstanding subsection (1), any person authorized by the Commission in writing for this purpose may take possession of any books or other documents,

accounts, titles, securities or cash to which he has access under subsection (1) if in his opinion -

- (a) the inspection of them, the copying of them, or the making of extracts from them cannot reasonably be undertaken without taking possession of them;
- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with any securities law or any other written law.

(3) No person and no director or officer of the person shall -

- (a) fail to allow access to, give possession of or produce, its books or other documents, accounts, titles, securities or cash; or
- (b) fail to give information or facilities in accordance with subsections (1) and (2).

[Am. Act A1305/2007]

128. Powers of the Investigating Officers of the Commission

[Am. Act A1074/2000]

(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;

[Am. Act A1305/2007]

(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; and

[Am. Act A1305/2007]

(d) detain all or any persons found on the premises searched under this subsection until such premises have been searched;

[Ins. Act A1305/2007]

(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 authorization 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 anything 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 the securities laws.

[Am. Act A1305/2007]

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

[Subs. Act A1074/2000]

129. Procedure by Investigating Officer on seizure property

[Am. Act A1074/2000]

- (1) A list of all things seized in the course of an inspection or investigation made under this Part and of the place or building in which they are respectively found shall be prepared by the Investigating Officer of the Commission conducting the inspection and signed by him.

[Am. Act A1074/2000]

- (2) The occupant of the place or building entered under subsection 128(1), or some person in his behalf, shall in every instance be permitted to attend during the inspection, and a copy of the list prepared and signed under subsection (1) shall be delivered to such occupant or person at his request.

[Am. Act A1074/2000]

- (3) An Investigating Officer of the Commission shall, unless otherwise ordered by any court, on the close of investigations or any proceedings arising there from, release any property seized, detained or removed by him or any other Investigating Officer of the Commission, to such person as he determines to be lawfully entitled to the property, if he is satisfied that it is not required for the purpose of any prosecution or proceedings under any securities law, or for the purpose of any prosecution under any other written law.

(4) A record in writing shall be made by the Investigating Officer of the Commission who releases any property under subsection (3) in respect of such release specifying therein the circumstances of, and the reason for, such release.

(5) Where the Investigating Officer of the Commission is unable to determine the person who is lawfully entitled to the property or where there is more than one claimant to such property, the Investigating Officer of the Commission shall report the matter to a Magistrate who shall then order that the property be dealt with as provided for in section 130.

[Am. Act A1074/2000]

(6) For the purpose of this section and of sections 130 and 131, "property" includes books and other documents.

[Am. Act A1074/2000]

130. Procedure by Magistrate in respect of property seized

[Am. Act A1074/2000]

(1) Where a report is forwarded to the Magistrate by an Investigating Officer of the Commission under subsection 129(5), the Magistrate shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession of the property or, if such person cannot be ascertained, respecting the custody and production of such property.

[Am. Act A1074/2000]

(2) If the person entitled to the property is known, the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall, if he makes such order, cause a notice to be served on such person informing the person of the terms of the order and requiring him to take delivery of the property within such period from the date of the service

of the notice (not being less than forty-eight hours) as the Magistrate may in such notice prescribe.

- (3) If the person to whom property has been ordered to be delivered under subsection (2) neglects or omits to take delivery of such property within the period prescribed, the Magistrate may, where such property is subject to speedy and natural decay or where in his opinion its value is less than fifty ringgit, direct that such property be sold and the net proceeds of such sale shall, on demand, be paid over to the person entitled thereto.
- (4) If the person entitled to the possession of such property is absent from Malaysia and the property is subject to speedy and natural decay or the Magistrate to whom its seizure is reported is of the opinion that its sale would be for the benefit of the owner or that the value of such property is less than fifty ringgit, the Magistrate may, at any time, direct it to be sold and subsection 131(4) shall apply to the net proceeds of such sale.

[Am. Act A1074/2000]

- (5) If the person entitled to the property is unknown, the Magistrate may direct that the property be detained in the custody of the Investigating Officer of the Commission.
- (6) Notwithstanding subsection (5), if the person entitled to the property is unknown and it is shown to the satisfaction of the Magistrate that such property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate, to render impracticable the sale, as provided in section 131, of such property or as to make its detention in the custody of the Investigating Officer of the Commission unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate may order such property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification referred to in subsection 131(1) as he may determine or forthwith as he thinks fit.

[Am. Act A1074/2000]

131. Procedure in respect of property detained in Investigating Officer's custody

[Am. Act A1074/2000]

- (1) Where a Magistrate has directed under subsection 130(5) that any property seized be detained in the custody of an Investigating Officer of the Commission, the Chairman acting on behalf of the Commission, shall issue a public notification specifying the articles of which the property consists and requiring any person who has any claim to make a claim within six months from the date of such public notification.

[Am. Act A1074/2000]

- (2) Every notification under subsection (1) shall, if the property has a value of fifty ringgit or more, be published in the *Gazette*.

- (3) If within three months from the publication of a notification under subsection (1) no person establishes a claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property may, after the expiration of such period of three months, be sold on the order of the Chairman acting on behalf of the Commission.

- (4) If within six months from the publication of a notification under subsection (1) no person has established a claim to such property, the ownership of such property, or, if sold, of the net proceeds of such sale, shall upon the expiration of such period of six months pass to and become vested in the Federal Government.

- (5) Where the property referred to in subsection (1) is subject to speedy and natural decay or the Chairman acting on behalf of the Commission is of the opinion that its value is less than fifty ringgit or where its custody involves unreasonable expense and inconvenience, such property may be sold at any time, and subsections (1), (2), (3) and (4) shall, as nearly as may be

practicable, apply to the net proceeds of such sale as they apply to the property.

[Ins. Act A1041/1998]

132. Surrender of travel documents

[Am. Act A1074/2000]

(1) Notwithstanding any written law to the contrary, if an Investigating Officer of the Commission has grounds to believe that any person, who is the subject of an investigation in respect of an offence under a securities law suspected to have been committed by such person, is likely to leave Malaysia, the Investigating Officer of the Commission, with the approval of the Commission, may by written notice require such person to surrender his certificate of identity, passport or exit permit, or any other travel document in his possession.

(2) A notice under subsection (1) shall be served in the manner specified in section 134.

[Subs. Act A1074/2000]

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith, failing which he may be arrested and taken before a Magistrate.

(4) Where a person is taken before a Magistrate under subsection (3), the Magistrate shall, unless such person complies with the notice under subsection (1) or satisfies the Magistrate that he does not possess a travel document, by warrant commit him to prison -

(a) until the expiry of a period of fourteen days from the date of his committal; or

(b) until he complies with the notice under subsection (1),

whichever occurs earlier.

- (5) For the purpose of subsection (4), a certificate signed by the Public Prosecutor to the effect that the person has complied with the notice under subsection (1) shall be sufficient warrant for the Superintendent of Prison to discharge such person.
- (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.

[Subs. Act A1074/2000]

- (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.

[Ins. Act A1074/2000]

- (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]*.

[Ins. Act A1074/2000]

- (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.

[Ins. Act A1074/2000]

133. Forcible entry

[Am. Act A1074 /2000]

- (1) For the purpose of exercising his powers under paragraph 128(1)(b) an Investigating Officer of the Commission may enter any place or building by force, if necessary.
- (2) Notwithstanding subsection (1), no Investigating Officer of the Commission shall enter any premises by the use of force without a search warrant by a Magistrate unless he has reasonable grounds for believing that, by reason of the delay in obtaining a search warrant, any object, article, material, thing, accounts, book, or other document referred to in paragraph 128(1)(b) may be interfered with or destroyed or the object of any entry is likely to be frustrated.

[Am. Act A1074 /2000]

134. Power to call for examination

[Am. Act A1074 /2000]

- (1) If an Investigating Officer of the Commission carrying out an investigation under any securities law suspects or believes on reasonable grounds that any person can give information relevant to a matter that he is investigating, the Investigating Officer of the Commission may by notice in writing to such person require such person -
 - (a) to give to the Investigating Officer of the Commission all reasonable assistance in connection with the investigation; and
 - (b) to appear before a specified Investigating Officer of the Commission or specified Investigating Officers of the Commission to be examined orally.

[Subs. Act A1041/1998]

- (1A) An Investigating Officer of the Commission exercising his authority under paragraph (1)(b) shall reduce into writing any statement made by the person examined under subsection (1).

[Ins. Act A1041/1998]

- (2) A person referred to in subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Investigating Officer of the Commission and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

[Am. Act A1074/2000]

- (3) A statement made by any person under this section shall be taken down in writing or recorded and subsequently taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish:

[Am. Act A1305/2007]

Provided that, where the person examined refuses to sign or affix his thumb print on the statement, the Investigating Officer of the Commission shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

- (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 do any one or both of the following:

- (a) give directions about who may be present during the examination, or during any part of it;

(b) record the examination or any part of it by audio or visual recording or a combination of both.

[Subs Act A1403/2011]

(4) Any statement made and recorded under this section shall be admissible as evidence in any proceeding in any Court.

(5) Any person who-

(a) fails to appear before an Investigating Officer of the Commission as required under subsection (1);

(b) refuses to answer any question put to him by an Investigating Officer of the Commission as required under subsection (2) or neglects to give any information which may reasonably be required of him and which he has in his power to give;

[Am. Act A1305/2007]

(c) knowingly furnishes to an Investigating Officer of the Commission information or statement that is false or misleading in any material particular;

[Am. Act A1305/2007]

(d) obstructs an Investigating Officer of the Commission in carrying out an investigation under this section,

[Ins. Act A1305/2007]

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.

[Am Act A1074/2000]

- (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.

[Ins. Act A1074/2000]

- (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.

[Ins. Act A1074/2000]

- (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.

[Ins. Act A1074/2000]

- (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 (6) or (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.

[Am. Act A1403/2011]

- (10) If upon an investigation made under the securities laws 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.

[Am. Act A1305/2007]

(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.

[Ins. Act A1074/2000]

135. Destruction, concealment, mutilation and alteration of records

[Am. Act A1074/2000]

Any person who—

- (a) destroys, conceals, mutilates or alters;
- (b) causes another person to destroy, conceal, mutilate or alter; or
- (c) sends or attempts to send or conspires with any other person to remove from his premises or send out of Malaysia,

any document, record or account with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, audit or investigation, or the exercise of any function or power under the securities laws shall be guilty of an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

[Subs. Act A1489/2015]

PART VI - GENERAL

136. Conduct of prosecution

[Am. Act A1074/2000]

(1) No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.

(2) [Deleted]

[Deleted by Act A1041/1998]

137. General penalty

[Am. Act A1074/2000]

(1) Any person who contravenes a requirement or any provision of this Act shall be guilty of an offence.

(2) Where no penalty is expressly provided for an offence under this Act, a person who is guilty of the offence shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years, or both; and in the case of a continuing offence, the offender, in addition to the penalty provided in this subsection, shall be punished with a daily fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.

[Am. Act A1074/2000]

138. Offences by bodies corporate

[Am. Act A1074/2000]

(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 the 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 authorized 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 authorized to act in the position; and
 - (iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act.

[Subs. Act A1074/2000]

139. Compounding of offences.

[Am. Act A1074/2000]

- (1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence under this Act or regulations made under this Act which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.
- (2) Upon receipt of the sum of money referred to in subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any property or document such property or document shall be released, subject to such conditions as may be imposed in accordance with the conditions of the compound.

[Am. Act A1305/2007]

- (3) All sums of money received under this section shall be paid into the Federal Consolidated Fund.

[Ins. Act A1041/1998]

140. Protection of informers and information.

[Am. Act A1074/2000]

- (1) Where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings before any court, tribunal or other authority.

- (2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings before any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court, tribunal or authority before which the proceedings are held shall cause all parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.
- (3) Any person who gives the information referred to in subsection (1) knowing that the information is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.
- (4) Subsections (1) and (2) shall not apply to any investigation into, or prosecution of, any offence under subsection (3).

[Ins. Act A1041/1998]

141. Offences under securities law are seizable offences.

[Am. Act A1074/2000]

Every offence punishable under a securities law shall be a seizable offence, and a police officer not below the rank of Inspector, or an Investigating Officer of the Commission appointed under subsection 125(1), may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

[Am Act A1074/2000]

142. Duty of Investigating Officer to make over arrested person to the police.

[Am. Act A1074/2000]

If an Investigating Officer of the Commission appointed under subsection 125(1) makes an arrest under section 141 he shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested shall be dealt with in accordance with the law relating to criminal procedure for detention under section 117 of the Criminal Procedure Code *[Act 593]* as if he had been arrested by a police officer.

[Am Act A1074/2000]

143. Detention of arrested person.

[Am. Act A1074/2000]

Notwithstanding any other provision in any other written law relating to criminal procedure, a Magistrate authorizing the detention of a person arrested under section 141 shall authorize the detention of the person arrested in the custody of the police.

[Am. Act A1074/2000]

144. Public servants and public officers.

[Am. Act A1074/2000]

- (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 *[Act 574]* 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.
- (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 *[Act 574]*, and a public officer for the purposes of the Criminal

Procedure Code *[Act 593]* and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

[Subs. Act A1074/2000]

145. Power to engage persons to render assistance.

[Am. Act A1074/2000]

The Commission may, either generally or in a particular matter, engage under such terms and conditions of engagement as the Commission may determine from time to time, any person who is not an officer of the Commission to render such assistance as the Commission may require or specify in connection with the performance of its functions, or the discharge of its duties under a securities law, or to perform or discharge the same on behalf of and in the name of the Commission.

[Subs. Act A926/1995]

146. Power to review.

[Am. Act A1074/2000]

(1) Except as otherwise provided in the securities laws, any person who is aggrieved by the decision of the Commission may appeal to the Commission to review its own decision.

[Subs. Act A1403/2011]

(2) An appeal to the Commission to review its own decision shall be made in writing within thirty days after the aggrieved person is notified of such decision.

[Am. Act A1403/2011]

147. Decision of Minister or Commission to be final

[Am. Act A1403/2011]

Except as otherwise provided in the securities laws—

- (a) any decision made by the Minister under the securities laws, whether an original decision by him or a decision on appeal to him from a decision of the Commission; or
- (b) any decision by the Commission under the securities laws made pursuant to an appeal to review its original decision,

shall be final.

[Subs. Act A1403/2011]

148. Obligation of secrecy

[Am. Act A1074/2000]

- (1) Subject to section 124 of the Evidence Act 1950, persons specified in subsection (2) shall not disclose any information which has been obtained by him in the course of his functions and which is not published in accordance with the securities laws, except—
 - (a) where the disclosure is authorized under a provision of the securities laws;
 - (b) for the purposes of assisting or enabling the Commission in the discharge of its functions under the securities laws or any other written law;
 - (c) in any criminal or civil proceedings by or against the Commission; or
 - (d) where the disclosure is authorized by the Commission.
- (2) Subsection (1) shall apply to the following persons:
 - (a) a member of —

- (i) the Commission;
 - (ii) the Shariah Advisory Council;
 - (iii) the Audit Oversight Board; or
 - (iv) the Capital Market Development Fund Board;
- (b) a member of any committee of the Commission, the Shariah Advisory Council, the Audit Oversight Board, or the Capital Market Development Fund Board;
- (c) an officer or agent of the Commission; or
- (d) a person attending any meeting of —
- (i) the Commission;
 - (ii) any committee of the Commission;
 - (iii) the Shariah Advisory Council;
 - (iv) the Audit Oversight Board;
 - (v) the Capital Market Development Fund Board.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

[Subs. Act A1489/2015]

148A. Permitted disclosure in civil enforcement proceedings

- (1) In any civil enforcement proceedings by the Commission, the Commission may be ordered to give discovery of or produce for inspection under Order 24 of the Rules of Court 2012 [*P.U.(A) 205/2012*] the following documents which are or have been in the Commission's possession, custody or power as a result of the performance or exercise by the Commission of any of its functions under the securities laws:
- (a) any document voluntarily produced or disclosed by the defendant to the Commission pursuant to the exercise of the Commission's powers under the securities laws;
 - (b) any document seized from the defendant or its officer or agent pursuant to section 128;
 - (c) any list prepared by the Commission and signed by the defendant or his officer or agent pursuant to section 129;
 - (d) any correspondence between the Commission and the defendant or his solicitors or agents;
 - (e) any statement of the defendant recorded by the Commission under sections 31X and 134;
 - (f) any notices served to the defendant under subsections 31X(1), 128(5) and 134(1);
 - (g) trading information relating to the defendant's trading activities which the Commission relies on or will rely on in the civil proceedings; and
 - (h) any document that the Commission intends to tender in the civil proceedings

- (2) The Commission may not be ordered to give discovery of or produce for inspection under Order 24 of the Rules of Court 2012 any document apart from those listed in subsection (1) unless the court is of the opinion that there are strong and exceptional grounds and it is not injurious to public interest, to order the Commission to give discovery of or produce for inspection of such document.
- (3) The court shall not make an order under subsection (2) in respect of the following documents:
- (a) any documents, other than documents referred to in subsection (1), which are or have been in the possession, custody or power of the Commission as a result of the performance or exercise by the Commission of any of its supervisory and enforcement functions or powers under the securities laws;
 - (b) complaints, reports or requests received by the Commission to investigate or provide assistance on any possible or alleged contravention of the securities laws;
 - (c) the Commission's internal documents;
 - (d) any correspondence or communication between the Commission and—
 - (i) any public officer;
 - (ii) any statutory body;
 - (iii) any foreign supervisory authority;
 - (iv) any stock exchange, derivatives exchange, recognized market, clearing house or central depository;
 - (v) any person engaged by the Commission to assist its investigation; or

- (vi) any person who has filed a complaint or made a report or request to the Commission pursuant to paragraph (b);
 - (e) any document or copy of such document, sent to or received by the Commission from, persons specified under paragraph (d); and
 - (f) all statements recorded by the Commission under sections 31X and 134 other than statements recorded from the defendant.
- (4) This section shall prevail and have full force and effect notwithstanding anything inconsistent therewith, or contrary thereto, contained in the Rules of Court 2012 or any provision of the securities laws or any written law or any rule of law or practice relating to discovery and inspection of documents in civil proceedings.

[Ins. Act A1489/2015]

148B. Confidentiality of supervisory information

- (1) Without affecting the generality of section 148, where the Commission produces any document or information in relation to—
- (a) any rating assigned by the Commission to; or
 - (b) any supervisory assessment made by the Commission on,
- any person specified under subsection 126(1), the person, or any of its directors, officers or auditors shall not disclose the document or information to any other person, unless authorized by the Commission.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable with imprisonment for a term not exceeding five years or be liable to a fine not exceeding one million ringgit or to both.

[Ins. Act A1489/2015]

149. Assistance to police or other public officer

[Am. Act A1074/2000]

Notwithstanding section 148, the Commission may, at its own initiative, or at the request of a public officer-

[Am. Act A1074/2000]

- (a) supply to a police officer or any other public officer a copy of any book or other document seized, detained or taken possession of under section 128 or of any record of examination made under section 134, or of any statement made under subsection 134(3), or of any book or other document produced under subsection 128(2), or otherwise in the course of any examination under section 134, and such police officer or other public officer may make use of such copy of such book statement, record or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or

[Am. Act A1074/2000]

- (b) allow a police officer or any other public officer to have access to and inspect any property, book, other document, article or thing which had been produced before, or seized, detained or taken possession of by an Investigating Officer under the securities laws, and such police officer or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

[Am. Act A1305/2007]

150. Assistance to and co-operation with foreign supervisory authorities

[Am. Act A1074/2000]

- (1) Notwithstanding any provision to the contrary under the securities laws, the Commission may, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breach of a legal or regulatory requirement which the foreign supervisory authority enforces or administers, provide assistance to the foreign supervisory authority by carrying out investigation of the alleged breach of the legal or regulatory requirement or provide such other assistance to the foreign supervisory authority as the Commission thinks fit.

[Am. Act A1489/2015]

- (2) For the purposes of this section and section 150A, "foreign supervisory authority" means a foreign authority which exercises functions corresponding to the functions of the Commission under a securities law or any person outside Malaysia exercising regulatory functions and in respect of which the Commission considers desirable and necessary to render assistance in the interest of the public.

[Am. Act A1489/2015]

- (3) For the purposes of subsection (1), the provisions of Part V shall, with such adaptations as are necessary, apply and have effect accordingly as if the breach of the legal or regulatory requirement were an offence under the securities laws.

[Am. Act A1489/2015]

- (4) In determining whether it is in the interest of the public to render assistance under subsection (1), the Commission shall have regard to -

- (a) whether the foreign supervisory authority will pay to the Commission any costs and expenses incurred for providing the foreign supervisory authority with the assistance; and
- (b) whether the foreign supervisory authority will be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from the Commission.

[Ins. Act A1041/1998]

150A. Admissibility of evidence obtained through assistance from a foreign supervisory authority

- (1) If an Investigating Officer of the Commission in the course of his investigation obtains evidence, oral or documentary, through assistance obtained from a foreign supervisory authority, such evidence shall be admissible as *prima facie* evidence.
- (2) In this section, a copy of a documentary evidence shall not be admissible in evidence unless the person who has custody or control of the document affirms that he has examined and verified the copy of that document with the original.
- (3) Notwithstanding subsection (2), where the original document is not found or is lost, it shall be sufficient for the person who has custody or control of the document to state orally or in an affidavit given under this section that he had made reasonable efforts to locate the original documents and thereafter the copy of such documents shall be admissible as *prima facie* evidence of such documents in any legal proceedings.
- (4) The oral evidence referred to in subsection (1) shall be admissible as *prima facie* evidence if a person authorized by the foreign supervisory authority—
 - (a) records the oral evidence whether in writing, by means of audio or visual recording or a combination of both, affirms in an affidavit that the oral evidence so recorded was recorded from a person acquainted with the

circumstances of the case and the recording of the oral evidence was made in accordance with the laws enforced or administered by the foreign supervisory authority; or

- (b) obtains an affidavit which is affirmed by a person acquainted with the circumstances of the case.

[Subs. Act A1403/2011]

- (5) An affidavit under this section shall not be admissible as *prima facie* evidence unless it is sworn or affirmed—

[Am. Act A1403/2011]

- (a) in the Republic of Singapore, before any Judge, District Judge, Assistant District Judge, Registrar, Deputy Registrar, police, Magistrate or before any person authorized to take affidavits by any written law in force in the Republic of Singapore;

- (b) in England, Scotland, Ireland or the Channel Islands or in any colony, island or place under the dominion or jurisdiction or protection of Her Britannic Majesty, before any Judge, Court, Notary Public or other person lawfully authorized to administer oaths; or

- (c) in any other place, before any officer exercising consular functions on behalf of Malaysia.

- (6) The court shall take judicial notice of the seal or signature, as the case may be, of any Judge, Court, Notary Public, Consul, Vice Consul, or other person whose seal or signature is appended or subscribed to any affidavit.

[Am. Act A1305 /2007]

150B. Admissibility of statements and documents of persons who are dead or cannot be traced, etc

Notwithstanding any written law to the contrary, in any proceedings against any person for an offence under the securities laws—

- (a) any statement made by any person to any Investigating Officer of the Commission in the course of an investigation under the securities laws; and
- (b) any document, or copy of any document, seized from any person by any Investigating Officer of the Commission in the exercise of his powers under or by virtue of the securities laws,

shall be admissible in evidence in any proceedings before any court, where the person who made the statement or document or the copy of the document, or the person from whom the document was seized, is dead, or cannot be traced or found, or has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

[Ins. Act A1403/2011]

151. [Deleted]

[Del. Act A1489/2015]

151A. Evidential provision

In any criminal or civil proceedings, any—

- (a) statement purporting to be signed by the Chairman or any other person to whom power has been delegated under section 17, which forms part of or is annexed to any letter, register, record or document, howsoever expressed, described or represented; or
- (b) minutes made of meetings of the Board, the Audit Oversight Board, or any committee of the Board or Audit Oversight Board, if duly signed,

shall be admissible as *prima facie* evidence of the facts stated therein.

[Subs. Act A1489 /2015]

152. Disclosure of information to Commission.

- (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 the securities laws.

[Am. Act A1217/2003]

- (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.

[Ins. Act A1074 /2000]

152A. Power of Commission to publish information.

The Commission may, where it thinks necessary or expedient in the interest of the public or for the protection of investors and in such form or manner as it thinks fit, publish any information in relation to—

- (a) the grant of, lapsing, revocation or suspension of an approval, licence or exemption granted under the securities laws to any person;

- (b) any rulings issued under the securities laws;

[Subs. Act A1489/2015]

- (c) any action taken under section 354, 355 or 356 of the Capital Markets and Services Act 2007;

- (d) an order by the court under section 360 of the Capital Markets and Services Act 2007;

- (e) the compounding of any offence—

- (i) under the securities laws; or

(ii) under any other law, whether the law of Malaysia or any territory or country outside Malaysia;

(f) any civil or criminal proceedings brought—

(i) under the securities laws against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or

(ii) under any other law, whether the law of Malaysia or any territory or country outside Malaysia, against any person and the outcome of such proceedings, including any settlement, whether in or out of court;

[Am. Act A1403/2011]

(fa) any action taken under section 125 of the Capital Markets and Services Act 2007;

[Ins. Act A1403/2011]

(fb) any action taken under section 220 of the Capital Markets and Services Act 2007; or;

[Ins. Act A1403/2011]

(g) any other action or measure as may be taken by the Minister, the Commission, a stock exchange, a derivatives exchange or an approved clearing house against any person.

[Am. Act A1489/2015]

153. [Deleted]

[Del. Act A1305/2007]

154. Officers of Commission may represent Commission in civil proceedings

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 authorized 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.

[Ins. Act A1074/2000]

155. [Deleted]

[Del. Act A1305/2007]

156. [Deleted]

[Del. Act A1305/2007]

157. Attempts, abetments and conspiracies

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.

[Ins. Act A1074/2000]

158. Written notices circulars, conditions or guidelines

- (1) The Commission may, generally in respect of any securities law or in respect of any particular provision of any securities law, issue such written notices, circulars or guidelines as the Commission considers desirable.

[Am. Act A1305/2007]

- (2) Subject to this Act or unless the contrary intention is expressly stated, the Commission may require a person to whom any written notices, circulars, conditions or guidelines 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.

[Am. Act A1305/2007]

- (3) [Deleted]

[Del. Act A1305/2007]

- (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) [Deleted]

[Del. Act A1305/2007]

- (6) [Deleted]

[Del. Act A1305/2007]

- (7) [Deleted]

[Del. Act A1305/2007]

- (8) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under any of the provisions of the securities laws against the person failing to give effect to any written notice, circular, condition or guideline.

[Am. Act A1305/2007]

159. Power to make regulations

[Am. Act A1074/2000]

- (1) The Commission may, with the approval of the Minister, make regulations as may be necessary or expedient for—
 - (a) giving full effect to the provisions of the securities laws;
 - (b) carrying out or achieving the objects and purposes of the securities laws;
or
 - (c) the further, better or convenient implementation of the provisions of the securities laws.
- (2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for—
 - (a) forms for the purposes of the securities laws;
 - (b) fees to be paid for the purposes of the securities laws; or
 - (c) the exemption of any specified person or any person who is a member of a specified class of persons from any of the provisions of the securities laws, subject to terms and conditions.

[Subs. Act A1539/2017]

159A. Power to amend schedules

- (1) The Minister may, on the recommendation of the Commission, by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend any of the schedules in this Act.
- (2) The Minister in varying, deleting, adding or substituting any of the schedules referred to in subsection (1) may impose such terms and conditions as he thinks necessary.

- (3) In making the order under subsection (1), the Minister shall have regard to the interests of the public.

[Ins. Act A1403/2011]

160. Immunity

[Am. Act A1074/2000]

No action, suit, prosecution or other proceeding shall lie or be brought, instituted, or maintained in any court or before any other authority against—

(a) the Commission;

(b) any person who is or has been—

(i) a member of the Board, Shariah Advisory Council, Audit Oversight Board, Capital Market Development Fund or Capital Market Compensation Fund Corporation, or any committee established by the Commission, Shariah Advisory Council, Audit Oversight Board, Capital Market Development Fund or Capital Market Compensation Fund Corporation; or

(ii) an officer of the Commission; or

(c) any person engaged by the Commission under section 145,

for or on account of, or in respect of, any act done or statement made, omitted to be done or made by the persons specified in paragraphs (a), (b) or (c), in the performance of their functions, in the administration of the securities laws or in the exercise of any power conferred, whether expressed or implied, by or under any securities laws:

Provided that such act, statement, performance of functions or exercise of power was done or made, in good faith.

[Subs. Act A1489/2015]

160A. Power to issue directions to discharge Government's international obligation under United Nations Security Council Resolutions

- (1) Where the Security Council of the United Nations decides, in pursuant to the Charter of the United Nations, on measures to be employed to give effect to any of its decisions and calls upon the Government of Malaysia to apply such measures, the Commission may, in relation to the measures that are within the functions of the Commission, issue directions in writing to any persons licensed, registered, approved, recognized or authorized under any securities laws, to enable those measures to be effectively applied.
- (2) A direction issued under subsection (1) may include, but not be limited to a direction to freeze securities accounts, monies and assets.
- (3) A person to whom a direction is issued under subsection (1) shall comply with the direction notwithstanding any other duty imposed on the said person by any contract or law or international agreement.
- (4) A person who carries out any act in compliance with the directions issued under subsection (1), shall not be treated as being in breach of any such contract or law or international agreement.
- (5) This section does not apply to a registered person as specified in the Third Column of Part 1 of Schedule 4 to the Capital Markets and Services Act 2007.
- (6) A person who fails to comply with any direction issued under this section shall be guilty of an offence.

[Ins. Act A1489/2015]

PART VII

REPEAL AND TRANSITIONAL PROVISIONS

161. Repeal.

[Am. Act A1074 /2000]

Sections 5 and 6 of the Securities Industry Act 1983 and section 179 of the Companies Act 1965 (in this Part referred to as the "repealed sections") are hereby repealed.

162. Saving

[Am. Act A1074/2000]

All regulations, instructions, orders and decisions made under or in accordance with the repealed sections shall remain valid and binding and shall be deemed to have been made under the provisions of this Act until they are amended or repealed or until they expire.

163. Continuance of other rights, liabilities, etc. under the repealed sections

[Am. Act A1074/2000]

- (1) Subject to the provisions of this Act, any right, privilege, obligation or liability acquired or accrued under the repealed sections or any legal proceedings or remedy in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings or remedy may be instituted, continued or enforced as if this Act had not been made.
- (2) All applications pending under the repealed sections shall be dealt with under this Act by the Commission as if they had been made under the provisions of this Act.

164. Continuance of criminal and civil proceedings

[Am. Act A1074/2000]

- (1) Subject to the provisions of this Act, neither the repealed sections nor anything contained in this Act shall affect any person liable to be prosecuted or punished for offences committed under the repealed sections before the appointed day, or any proceedings brought or sentence imposed before that day in respect of such offence.
- (2) Subject to the provisions of this Act, any proceedings, whether civil or criminal, or cause of action pending or existing immediately before the appointed day, by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers or any person acting on behalf of the Capital Issues Committee or the Panel On Take-Overs And Mergers may be continued or instituted by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers as it might have been continued or instituted by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers or such person if this Act had not been passed.
- (3) Any appeal brought or any leave to appeal applied for on or after the appointed day against a decision given in any legal proceedings before that day may be brought by or against the Commission as it might have been brought by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers if this Act had not been passed.

165. Transitional and savings.

- (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 Malaysia (Unit Trust Scheme) Regulations 1996 [P.U.(A) 439/96] 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 Malaysia (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.

[Gen. Am. Act A1489/2015]

- (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 Malaysia (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.

[Gen. Am. Act A1489/2015]

- (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 Malaysia (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.

[Gen. Am. Act A1489/2015]

- (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.

[Am. Act A1149/2002]

- (4A) Any condition imposed in relation to an approval given by the Central Bank of Malaysia or terms of a debenture approved by the Central Bank of Malaysia pursuant to paragraph (e) of Part I of the First Schedule to the Banking and Financial Institutions Act 1989 *[Act 372]* before 1 July 2000 may, after 1 July 2000, be varied or modified by the Commission under section 32 of the Act.

[Ins. P.U. (A) 354/2000]

- (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 (5) 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.

[Ins. Act A1074/2000]

166. Prevention of anomalies

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.

[Ins. Act A1074/2000]

SCHEDULE 1

PART 1

[Section 2]

- (a) a public listed company or a corporation listed on the stock exchange;
- (b) a bank licensed under the Financial Services Act 2013 [*Act 758*];
- (c) an insurer licensed under the Financial Services Act 2013;
- (d) a takaful operator licensed under the Islamic Financial Services Act 2013 [*Act 759*];
- (e) an Islamic bank licensed under the Islamic Financial Services Act 2013 [*Act 759*];
- (f) a person prescribed as a prescribed financial institution under section 212 of the Financial Services Act 2013 or a person prescribed as a prescribed Islamic financial institution under section 223 of the Islamic Financial Services Act 2013;

[Subs. P.U.(A) 112/2016]

- (g) a development financial institution prescribed under the Development Financial Institutions Act 2002 [*Act 618*];
- (h) a holder of the Capital Markets Services Licence for the carrying on of the regulated activities of dealing in securities, dealing in derivatives or fund management;
- (i) an exchange holding company approved under the securities laws;
- (j) an exchange approved under the securities laws;
- (k) a central depository approved under the securities laws;
- (l) a clearing house approved under the securities laws;

- (m) a self-regulatory organization recognized under the securities laws;
- (n) a private retirement scheme administrator approved under the securities laws;
- (o) a trade repository approved under the securities laws;
- (p) the Capital Market Compensation Fund Corporation;
- (q) any other person as the Minister may prescribe by order published in the *Gazette*.

Part 2

- (a) a private retirement scheme approved by the Commission under the Capital Markets and Services Act 2007;
- (b) a unit trust scheme approved, authorized or recognized by the Commission under the Capital Markets and Services Act 2007;
- (c) any other capital market funds as may be specified by the Commission.

[Subs. A1489/2015]

SCHEDULE 2

[Section 31D]

1. Resignation of office

A member of the Audit Oversight Board may at any time resign his office by giving a written notice addressed to the Commission

2. Tenure of office

(1) A non-executive chairman of the Audit Oversight Board shall hold office for a term not exceeding three years as may be specified in his instrument of appointment and is eligible for reappointment.

[Am. P.U.(A) 357/2017]

(2) A non-executive member of the Audit Oversight Board shall, unless he sooner resigns or his appointment is sooner revoked, hold office for a term not exceeding two years as may be specified in his instrument of appointment and shall be eligible for reappointment

[Am. P.U.(A) 357/2017]

3. Remuneration

The members of the Audit Oversight Board may be paid such remuneration or allowance as the Commission may determine.

[Am. P.U.(A) 357/2017]

4. Vacation of office

(1) The office of a member of the Audit Oversight Board shall be vacated if –

- (a) he dies;
- (b) there has been proved against him, or he has been convicted on, a charge in respect of –
 - (i) any offence involving fraud or dishonesty;
 - (ii) an offence under any law relating to corruption;
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years; or
 - (iv) an offence under section 31G;
- (c) he becomes bankrupt;
- (d) he absents himself from three consecutive meetings of the Audit Oversight Board without leave of the non-executive chairman, and in the case of the non-executive chairman, without leave of the Chairman; or

[Am. P.U.(A) 357/2017]

- (e) he is of unsound mind or is otherwise incapable of discharging his duties.
- (2) Where a person ceases to be a member of the Audit Oversight Board, the Commission may appoint another person to fill the vacancy for the remainder of the term for which his predecessor was appointed.
- (3) The Audit Oversight Board may act notwithstanding any vacancy in its membership.

5. Meetings

- (1) The Audit Oversight Board shall meet at such time and place as may be appointed by the non-executive chairman from time to time.

[Am. P.U.(A) 357/2017]

- (2) The quorum of the Audit Oversight Board shall be three one of whom shall be the executive officer or the officer of the Commission designated by the Chairman under subparagraph (2A).

[Am. P.U.(A) 357/2017]

- (2A) Where, for any reason, the executive officer is unable to attend any meeting of the audit Oversight Board, the Chairman shall designate an officer of the Commission to attend the meeting in place of the executive officer.

[Ins. P.U.(A) 357/2017]

- (2B) When attending a meeting in place of the executive officer, the officer designated under subparagraph (2A) shall have the same rights, powers, duties and obligations as the executive officer.

[Ins. P.U.(A) 357/2017]

- (3) The non-executive chairman of the Audit Oversight Board shall preside at all meetings of the Audit Oversight Board and in his absence, the members present shall elect a temporary chairman amongst them to preside at the meeting.

[Am. P.U.(A) 357/2017]

- (4) Every member present, including the officer of the Commission designated by the Chairman under subparagraph 2A shall be entitled to one vote and if on a question to be determined by the Audit Oversight Board there is an equality of votes, the non-executive chairman or temporary chairman shall have a casting vote.

[Am. P.U.(A) 357/2017]

- (5) Subject to the provisions of this Part, the Audit Oversight Board may regulate its own procedure.
- (6) The Audit Oversight Board shall cause minutes of all its meetings to be maintained and kept in a proper form.

[Ins. Act A1369/2010]

SCHEDULE 3. **[Deleted]** *[Deleted Act A1305/2007]*

SCHEDULE 4. **[Deleted]** *[Deleted Act A1305/2007]*

SCHEDULE 5. **[Deleted]** *[Deleted Act A1305/2007]*

NOTE: TRANSITIONAL AND SAVINGS. [ACT A1217]

- (1) All actions, rules, regulations, orders, directions, notifications, approvals, decisions, guidelines and other executive acts howsoever called, made, given or done under, or in accordance with, or by virtue of the principal Act before the commencement of this Act, to the extent that they are affected by this Act shall be deemed to have been made, given or done under, or in accordance with, or by virtue of, the corresponding provisions introduced or amended by this Act, and shall continue to remain in full force and effect in relation to whom they apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provisions introduced or amended by this Act.
- (2) Nothing in the principal Act or the provisions introduced or amended by this Act shall affect any person's liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.

(3) Nothing in this Act shall—

(a) affect the validity of any securities issued before the commencement of this Act; or

(b) apply in relation to an issuer 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.

(4) If any difficulty arises with respect to the provisions introduced or amended by this Act and its transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in these provisions as may appear to him necessary for preventing anomalies.

[Act A1217/2003]

NOTES : SAVINGS PROVISIONS [ACT A1369]

8. Immediately before the coming into operation of this Act, an auditor who is approved as a company auditor under section 8 of the Companies Act 1965 and is engaged to audit the accounts of any public interest entity shall be allowed to continue to audit the accounts of the public interest entity for a period of one year from the coming into operation of this Act subject of such terms and conditions as may be specified by the Audit Oversight Board.

[ACT A1369/2010]

SAVING AND TRANSITIONAL [ACT A1489]

64. (1) For the purposes of this section —

“effective date” means the relevant date of coming into operation of this Act or the respective provisions of this Act;

“repealed Part” means Part IXA of the Capital Markets and Services Act 2007 before the effective date;

“repealed sections” means sections 316A, 316B, 316C, 316D, 316E, 316F, 316G and 316H of the Capital Markets and Services Act 2007 before the effective date.

(2) In respect of the Commission—

- (a) the change of name from the “Securities Commission” to the “Securities Commission Malaysia” shall not affect any powers, rights, privileges, liabilities, duties or obligations of the Securities Commission, or render defective any legal proceedings by or against it;
- (b) any legal proceedings that could not have been continued or commenced by or against the Securities Commission before the effective date may be continued or commenced on or after the effective date in the name of the Securities Commission Malaysia;
- (c) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called, made, given or done by the Commission before the effective date shall be deemed to have been made, given or done by the Securities Commission Malaysia, and shall continue to remain in full force and effect;
- (d) all approvals, directions, notices, guidelines, circulars, guidance notes, practice notes, rulings, decisions, notifications, exemptions and other executive acts, howsoever called, given, made or done by the

Commission before the effective date shall be deemed to have been given, made or done by the Securities Commission Malaysia, and shall continue to remain in full force and effect;

- (e) any application for an approval or consent, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission before the effective date, and pending immediately before the effective date, shall, if there is a corresponding provision in the principal Act as amended by this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision, such application or appeal shall lapse on the effective date; and
 - (f) all monies contained in or due to be paid to the Fund established under section 23 of the principal Act under the administration and control of the Securities Commission shall, on the effective date, be deemed to be under the administration and control of the Securities Commission Malaysia.
- (3) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences or breaches committed under the securities laws before the effective date or any proceeding brought, sentence imposed or action taken before such date in respect of such offence or breach.
- (4) Any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.
- (5) In respect of the Shariah Advisory Council —
- (a) the Shariah Advisory Council established under the repealed sections and its members appointed under the same repealed sections shall be

deemed to be established and appointed, as the case may be, under or in accordance with the principal Act as amended by this Act; and

- (b) any decision or ruling made by the Shariah advisory Council established under the repealed sections shall be deemed to have been validly made under the principal Act as amended by this Act and shall continue to remain in full force and effect in relation to the person to whom it applies until amended.
- (6) Where in any written law, any reference is made to any specific provision of the repealed Part, it shall be construed as a reference to a provision of the principal Act as amended by this Act which corresponds as nearly as may be to such specific provision.
- (7) Nothing in the repealed Part or repealed sections shall affect any person's liability to be prosecuted or punished for offences or breaches committed under the repealed Part or repealed sections before the effective date or any proceeding brought, sentence imposed or action taken before such date in respect of such offence or breach.
- (8) Any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

[Ins. Act A1489/2015]

NOTE : CHANGE IN REFERENCE TO SHORT TITLE OF PRINCIPLE ACT

1. All references to the Securities Commission Act 1993 in any written law or document shall, when this act comes into operation, be construed as references to the Securities Commission Malaysia Act 1993.

NOTE: CHANGE OF NAME OF COMMISSION [ACT A1489]

1. The Securities Commission established under section 3 of the principal Act shall, when this Act comes into operation, be known as the "Securities Commission Malaysia".

TRANSITIONAL PROVISION [ACT A1539]

10. Notwithstanding the provision of this Act, the non-executive members of the Audit Oversight Board appointed under the principal Act immediately before the commencement of this Act shall, upon the commencement of this Act, continue to hold office and remain appointed until the expiry of their appointments.

[Ins. Act A1539]