



# **LAWS OF MALAYSIA**

**Act A1042**

**FUTURES INDUSTRY (AMENDMENT) ACT 1998**

Date of Royal Assent ... .. 14 October 1998

Date of publication in the  
*Gazette* ... .. 22 October 1998

Publisher's Copyright ©

PERCETAKAN NASIONAL MALAYSIA BERHAD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording and/or otherwise without the prior permission of Percetakan Nasional Malaysia Berhad (Appointed Printer to the Government of Malaysia).

**LAWS OF MALAYSIA**

**Act A1042**

**FUTURES INDUSTRY (AMENDMENT) ACT 1998**

An Act to amend the Futures Industry Act 1993.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

1. (1) This Act may be cited as the Futures Industry (Amendment) Act 1998.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 2**

2. The Futures Industry Act 1993 [*Act 499*], which in this Act is referred to as the "principal Act", is amended in section 2—

(a) in the definition of "futures broking business", by inserting after the word "persons" the words "but does not include the business of trading in futures contracts by a holder of a futures fund manager's licence on another person's behalf for the purposes of his futures fund management business"; and

(b) by substituting for the definition of "futures fund management business" the following definition:

'"futures fund management business", in relation to a person, means a business of—

- (a) trading, under a discretionary authority or otherwise granted under an agreement with any other person or persons, in futures contracts for the benefit of such other person who is a party or persons who are parties to the agreement, on the basis that any money, property or interest acquired by such party or parties to such agreement may not be used or employed in common with any money, property or interest of any other person under like circumstances;
- (b) offering to any person for subscription, or inviting any person to subscribe for interests to which Division 5 of Part IV of the Companies Act 1965 applies where any of the money raised is intended to be applied in relation to trading in futures contracts; or
- (c) offering to any person for subscription, or inviting any person to subscribe for interests entitling such person to participate as a beneficiary under a trust in profits or income which comprise or include profits or income arising from trading in futures contracts,

Act 125.

but does not include an act that a person does—

- (aa) while employed by, or acting for, or by arrangement with, another person;
- (bb) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (cc) in connection with a futures fund management business carried on by the other person;'

*Futures Industry (Amendment)*

**New section 3b**

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

“Restriction on establishment of futures market on certain futures contracts. 3B. (1) No person shall establish, operate, maintain or assist in establishing, operating or maintaining or hold himself out as providing, operating or maintaining a futures market within or outside Malaysia, where futures contracts that are based on, or may be settled by reference to, or in respect of any of the following, are regularly traded:

Act 280.

(a) a security that has gained admission to be quoted on a stock market of a stock exchange approved under subsection 8(1) of the Securities Industry Act 1983;

(b) a numerical value level of any index comprising the value or price or constituted by reference to the value or price of any security referred to in paragraph (a);

(c) a futures contract traded on an exchange company;

(d) an underlying instrument of a futures contract referred to in paragraph (c) or a numerical value level of an index, an interest rate or other factor used in respect of such futures contract;

Act 17.

(e) the local currency within the meaning of subsection 2(1) of the Exchange Control Act 1953 or its equivalent value; or

(f) any other instrument, index or factor as may be prescribed by the Minister by order published in the *Gazette*.

(2) No person shall participate or assist in or facilitate—

(a) any transaction involving a futures contract; or

(b) any trading in a futures contract,

on a futures market referred to in subsection (1).

(3) Subsections (1) and (2) does not apply to an exempt futures market, a futures market of an exchange company or a clearing house.

(4) Subsection (2) does not apply to the participation in, assistance to or facilitation of any transaction involving, or any trading in, a futures contract on a futures market referred to in subsection (1) that are traded on an exempt futures market, a futures market of an exchange company or a clearing house.

(5) The Minister may, by order published in the *Gazette*, declare that subsection (1)—

(a) shall not be applicable to a futures market either within or outside Malaysia in relation to such futures contracts or categories of futures contracts specified in the order; or

(b) shall only be applicable to the futures market referred to in paragraph (a) in such manner and subject to such terms and conditions as the Minister thinks fit.

(6) Nothing in this section shall affect a futures market that is a Specified Exchange in so far as the trading in futures contracts is not in relation to a futures contract referred to in subsection (1).

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

**Amendment of section 7**

4. Subsection 7(2) of the principal Act is amended by deleting the word “exchange”.

*Futures Industry (Amendment)*

**Amendment of section 16**

5. Section 16 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Subsections (1) and (2) shall not apply to a person who is a holder of a futures fund manager’s licence whose trading in futures contracts on another person’s behalf is for the purposes of the first-mentioned person’s futures fund management business.”.

**Substitution of section 20**

6. The principal Act is amended by substituting for section 20 the following section:

“Persons exempt from being licensed under the Act. 20. (1) The following persons shall be exempted from the provisions of sections 16, 16A, 17, 18, 18A and 19:

- (a) person or persons or class of persons as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*: such exemption shall be subject to such conditions, limitations and restrictions as the Minister may, on the recommendation of the Commission, specify in the same order; and
- (b) without prejudice to the generality of the provisions in paragraph (a)—
- (i) an official receiver or a trustee under the Bankruptcy Act 1967;
  - (ii) a receiver, receiver and manager, or liquidator, appointed by a court;
  - (iii) a receiver, receiver and manager, or liquidator, appointed otherwise than by a court;
  - (iv) a person appointed by a court;

Act 360.

- (v) a trustee or other person administering a compromise or arrangement between a body corporate and any other person or persons; and
- (vi) any other prescribed person,

who, in the course of discharging his duties in such capacity pursuant to any written law or court order, does an act of a futures broker, futures fund manager, futures trading adviser or representative.

(2) Nothing in subsection (1) shall be deemed to exempt the person or persons or class of persons prescribed or specified therein from complying with other provisions of this Act unless the Minister, on the recommendation of the Commission, specifically exempts that person or those persons or class of persons from complying with those other provisions, by order published in the *Gazette*, subject to such conditions, limitations and restrictions as the Minister may, on the recommendation of the Commission, specify in the same order.”.

**Amendment of section 49**

7. Section 49 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) The Minister may make regulations providing for and with respect to the giving of contract notes by futures fund managers or any class of futures fund managers for transactions entered into by them, or at their direction, on behalf of other persons.”.

**Amendment of section 51**

8. Section 51 of the principal Act is amended—

- (a) in the marginal note and in subsection (2), by inserting after the word “broker” the words “and futures fund manager”; and



*Futures Industry (Amendment)*

(b) in subsection (1), by inserting after the word "brokers" the words "and futures fund managers".

**New sections 52C, 52D, 52E, 52F and 52G**

9. The principal Act is amended by inserting after section 52B the following sections:

"Inter-  
pre-  
ta-  
tion for  
the  
purposes  
of  
sections  
52D and  
52E. 52C. For the purposes of sections 52D and 52E—  
"client's money or property" means any money or property received or retained by a futures fund manager from, for or on behalf of a client, in connection with trading in futures contract effected or proposed to be effected, whether within or outside Malaysia, by the futures fund manager on behalf of that client;

"custodian", in relation to a trust account, means—

(a) a licensed institution appointed by a futures fund manager with the prior written consent of his client; or

(b) any other institution appointed or authorised by the client of a futures fund manager;

"trust account" means a current, deposit or property account which contains in its title the words "Trust Account/Clients" maintained in accordance with section 52D.

Operation  
of trust  
accounts. 52D. (1) Subject to section 52G, a futures fund manager shall open a trust account for his client's money or property and shall make arrangements for a custodian to maintain such trust account.

(2) The Commission may, where it thinks fit to do so, exempt a futures fund manager from the requirement under subsection (1) to arrange for a custodian to maintain a trust account, and permit any other person to maintain a trust account.

(3) A futures fund manager shall pay his client's money or deposit his client's property into a trust account not later than the next bank business day following the day on which the futures fund manager receives the client's money or property.

(4) Notwithstanding subsection (1), where a futures fund manager receives his client's money or property in a place outside Malaysia, the futures fund manager may pay the money or deposit the property into a trust account opened or maintained by him in that place.

(5) A futures fund manager shall not withdraw any money from, or deal with any property in, a trust account except for the purpose of making a payment to a person entitled to it or where otherwise authorised by law.

(6) Except as otherwise provided in this Part, money or property held in a trust account shall not be available for the payment of a debt or liability of a futures fund manager or liable to be paid or taken in execution of an order or process of the court for the payment of a debt or liability of a futures fund manager.

(7) A holder of a futures fund manager's representative's licence shall neither accept nor hold a client's money or property unless he does so on behalf of a futures fund manager in the course of his employment under a contract of employment with the futures fund manager.

(8) Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any money or property held in a trust account or against or upon any money or property received for the purchase or from the sale of securities or any other instrument or in respect of any trading in any futures contract before such money is paid or property deposited into the trust account.

*Futures Industry (Amendment)*

14

Application of client's money or property.

52E. A futures fund manager shall not apply his client's money or property which he has received to trade in futures contracts for or on behalf of that client unless—

- (a) he trades on the basis that the client's money or property is applied solely for specified purposes agreed upon by the client when or before he received such money or property;
- (b) pending the application in paragraph (a), the money is paid or the property is deposited into a trust account by the next bank business day; and
- (c) a separate book entry is recorded and maintained for each client by him in accordance with this Act or any regulations made under this Act, in relation to the client's money or property.

Right to copies of book entries, inspection of contract notes, etc.

52F. (1) A futures fund manager shall supply, on demand, to his client or any person authorised by the client, copies of all entries in his books relating to any transaction.

(2) A client of a futures fund manager shall be entitled free of charge, either personally or by his agent, to inspect any contract notes and other statements relating to any transaction.

Non-application to related corporations.

52G. Nothing in section 52D, 52E or 52F shall apply to a corporation which manages money or property solely for or on behalf of any of its related corporations, provided that the money or property of the second-mentioned corporation which is being managed by the first-mentioned corporation is not money or property held on trust or on behalf of or beneficially belonging to any other person, or arising from any investment contract as defined under subsection 84(1) of the Companies Act 1965 entered into by the second-mentioned corporation.”.

Act 125.

~~12~~

**Amendment of section 53**

10. Subsection 53(3) of the principal Act is amended by inserting after the word "person" the words "with whom an agreement is made or".

**Amendment of section 102**

11. Section 102 of the principal Act is amended—

- (a) in subsection (1), by inserting after the word "broker" the words "and futures fund manager"; and
- (b) in subsections (1B) and (2), by inserting after the word "broker" wherever appearing the words "or futures fund manager".

**Amendment of section 103**

12. Section 103 of the principal Act is amended—

- (a) in subsection (1), by inserting after the word "broker" the words "and futures fund manager"; and
- (b) in subsection 2—
  - (i) in paragraph (a), by inserting after the word "broker" the words "or futures fund manager"; and
  - (ii) in paragraph (b), by substituting for the word "broker" the words "futures broker or futures fund manager".

