

P.U.(A) 77/2012

Updated P.U.(A) 15/2022

Date come into force 31 January 2022

CAPITAL MARKETS AND SERVICES ACT 2007

CAPITAL MARKETS AND SERVICES (PRIVATE RETIREMENT SCHEME INDUSTRY)
REGULATIONS 2012

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CAPITAL MARKETS AND SERVICES ACT 2007

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IN exercise of the powers conferred by section 139ZI of the Capital Markets and Services Act 2007 [Act 671], the Commission, with the approval of the Minister makes the following regulations:

PART I
PRELIMINARY

Citation and commencement

1. (1) These regulations may be cited as the **Capital Markets and Services (Private Retirement Scheme Industry) Regulations 2012**.

(2) These Regulations come into operation on 19 March 2012.

Interpretation

2. In these Regulations—

“deed” means any deed which creates a trust governing the establishment and operation of a private retirement scheme and funds in the private retirement scheme and includes any supplementary deed;

“disclosure document” means any document which is issued by a private retirement scheme provider inviting contributions to the private retirement scheme;

“fund” means any fund in a private retirement scheme;

“special resolution” means a resolution passed by a majority of not less than three-fourths of members voting at a meeting of members;

PART II
PRIVATE RETIREMENT SCHEME

DIVISION 1
Application for approval

Application for approval of a private retirement scheme

3. For the purposes of section 139V of the Act, an application for the approval of a private retirement scheme shall be accompanied by—

- (a) a deed as provided under Division 2 of these Regulations; and
- (b) a disclosure document as provided under Division 3 of these Regulations.

DIVISION 2
Deed

Registration of deed

4. (1) A private retirement scheme provider shall ensure that a deed submitted to the Commission under regulation 3—

- (a) fulfills the requirements specified in the guidelines issued by the Commission; and
- (b) is registered with the Commission.

(2) The deed shall not have effect unless it is registered with the Commission.

(3) The Commission may, upon submission of the deed for registration, register the deed subject to such terms and conditions as the Commission thinks fit or refuse to register the deed.

Modification of deed through supplementary deed

5. (1) A deed registered with the Commission may only be amended by a supplementary deed.

(2) The supplementary deed shall not have effect unless it is registered with the Commission.

(3) A supplementary deed submitted for registration shall be accompanied by—

(a) a special resolution passed at a meeting of members of the private retirement scheme or the fund, as the case may be, where modification to the deed materially prejudice the interests of the members; or

(b) a statement from the scheme trustee and the private retirement scheme provider certifying that—

(i) such modification to the deed does not materially prejudice the interests of members and does not operate to release the scheme trustee or the private retirement scheme provider from any responsibility to the members; and

(ii) prior notice of the modification has been given to members of the private retirement scheme or the fund, as the case may be.

(4) Notwithstanding paragraph (3)(b), the Commission may require the private retirement scheme provider to obtain a special resolution under paragraph (3)(a) if in the Commission's opinion any modification to the deed may materially prejudice the interests of members.

(5) The requirements under subregulation (3) shall not apply where the supplementary deed submitted for registration—

(a) is to give effect to a direction issued by the Commission; or

(b) is consequential to any changes made to the Act, these Regulations or any guidelines issued by the Commission.

(6) A supplementary deed submitted for registration in the circumstances provided under subregulation (5) shall be accompanied by a statement from the scheme trustee and

the private retirement scheme provider, certifying that prior notice of the modification has been given to members of the private retirement scheme or the fund, as the case may be.

(7) The Commission may, upon submission of the supplementary deed for registration, register the supplementary deed subject to such terms and conditions as the Commission thinks fit or refuse to register the supplementary deed.

Deed to be lodged with Commission

6. A private retirement scheme provider shall lodge a copy of the deed with the Commission within seven days after the deed has been registered and the deed shall be available for inspection by any person at the Commission.

DIVISION 3

Disclosure document

Disclosure document

7. (1) A person shall not issue, circulate or distribute any form of application for contribution to a private retirement scheme unless the form of application is accompanied by a copy of a disclosure document which has been registered and lodged with the Commission.

(2) The disclosure document shall satisfy the requirements specified by the Commission.

(3) The Commission may, upon submission of the disclosure document for registration, register the disclosure document subject to such terms and conditions as the Commission thinks fit or refuse to register the disclosure document.

Supplementary or replacement disclosure document

8. (1) A private retirement scheme provider shall issue a supplementary or replacement disclosure document if—

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

(i) any requirement under the Act;

(ii) any requirement under these Regulations; or

(iii) any guidelines issued by the Commission,

to be disclosed in the disclosure document if the matter had arisen at the time the disclosure document was prepared;

(b) there has been a significant change affecting a matter disclosed in the disclosure document;

(c) the disclosure document contains a material statement or information that is false or misleading; or

(d) the disclosure document contains a statement or information from which there is a material omission.

(2) A private retirement scheme provider shall submit the supplementary or replacement disclosure document to the Commission for registration.

(3) The Commission may, upon submission of the supplementary or replacement disclosure document for registration, register the supplementary or replacement disclosure document subject to such terms and conditions as the Commission thinks fit or refuse to register the supplementary or replacement of disclosure document.

Disclosure document to be lodged with the Commission

9. (1) A private retirement scheme provider shall lodge a copy of the disclosure document which has been registered under regulation 7 with the Commission before issuing, circulating or distributing any form of application for contribution to the private retirement scheme.

(2) A private retirement scheme provider shall lodge a copy of the supplementary or replacement disclosure document with the Commission immediately upon registration by the Commission under regulation 8.

DIVISION 4

Private retirement scheme provider

Duties and responsibilities of private retirement scheme provider

10. A private retirement scheme provider approved under section 139Q of the Act shall, in the performance of its function and the management and operation of the private retirement scheme—

- (a) act in accordance with the provisions and covenants of the deed, the provisions of the Act, these Regulations and any guidelines issued by the Commission; and
- (b) carry out any other duties or responsibilities as may be specified by the Commission.

Duty of private retirement scheme provider in relation to annual reports, returns etc.

11. (1) A private retirement scheme provider shall prepare and lodge with the Commission—

- (a) an annual report of the private retirement scheme within two months after the end of each financial year of the private retirement scheme; and
- (b) an annual report of the private retirement scheme provider within six months after the end of each financial year of the private retirement scheme provider,

containing such information and in accordance with the manner, as may be specified in any guidelines issued by the Commission.

(2) The private retirement scheme provider shall send a copy of the document referred to in paragraph (1)(a) to every member of the private retirement scheme without charge within two months after the end of each financial year of the private retirement scheme.

(3) Where a member requests for—

- (a) any additional copies of the document referred to in subregulation (2); or
- (b) the document referred to in paragraph (1)(b),

the private retirement scheme provider shall send to the member the document requested in the form and manner as may be specified by the Commission.

(4) A private retirement scheme provider shall ensure that all financial statements relating to the private retirement scheme comply with approved accounting standards.

DIVISION 5

Scheme trustee

Duties and responsibilities of scheme trustee

12. (1) A scheme trustee approved under section 139ZC of the Act shall, in the performance of its function and the management of all securities, derivatives, property and asset of a private retirement scheme under its custody and control—

- (a) act in accordance with the provisions and covenants of the deed, the provisions of the Act, these Regulations and any guidelines issued by the Commission; and
- (b) carry out any other duties or responsibilities as may be specified by the Commission.

(2) The duties and responsibilities of a scheme trustee as provided under the Act, these Regulations, any guidelines issued by the Commission or the deed are in addition to and not in derogation of the duties which are otherwise imposed on the scheme trustee by any other law.

(3) A scheme trustee who contravenes subregulation (1) does not commit an offence.

Duty of scheme trustee to notify the Commission

13. Deleted

Exemptions and indemnification of scheme trustee from liability

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

- (a) exempting a scheme trustee under the deed from liability for contravention of any provision of the Act, these Regulations or any guidelines issued by the Commission or for breach of trust or for failure to show the degree of care and diligence required of a scheme trustee; or
- (b) indemnifying a scheme trustee against liability for contravention of any provision of the Act, these Regulations or any guidelines issued by the Commission or for breach of trust or for failure to show the degree of care and diligence required of a scheme trustee.

(2) Subregulation (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a scheme trustee before the giving of the release; or
- (b) any provision, covenant or term enabling such a release to be given—
 - (i) on the agreement by special resolution passed at a meeting of members summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the scheme trustee ceasing to act.

Indemnity of scheme trustee

15. (1) A scheme trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the members at any meeting called under regulations 20, 21 or 22.

(2) A scheme trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any monies coming into the scheme trustee's hands from a private retirement scheme provider, all reasonable costs incurred in explaining the effect of any proposal that is submitted to the members in the circumstances set out in paragraph 12(1)(i).

Replacement of scheme trustee

16. A private retirement scheme provider shall notify the Commission and replace the scheme trustee with another scheme trustee as soon as practicable after becoming aware that—

- (a) the scheme trustee has ceased to exist;
- (b) the approval granted to a scheme trustee has been withdrawn under section 139ZE of the Act;
- (c) the scheme trustee has failed or refused to act as scheme trustee in accordance with the provisions or covenants of the deed or the provisions of the Act, these Regulations or any guidelines issued by the Commission;
- (d) the scheme trustee intends to resign or retire where the deed has no provision for the appointment of a successor;
- (e) a receiver, a receiver and manager or an equivalent is appointed over the whole or a substantial part of the assets or undertaking of the existing scheme trustee and has not ceased to act under that appointment;
- (f) a petition is presented for the winding up of the existing scheme trustee other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction, the existing scheme trustee becomes or is declared to be insolvent; or
- (g) the scheme trustee has contravened the Trust Companies Act 1949 [Act 100], the Trustee Act 1949 [Act 208] or the Companies Act 1965.

DIVISION 6

Register

Register of members

17. (1) A private retirement scheme provider shall maintain a register of members and enter into the register—

- (a) the name, address and the identity card number issued under the National Registration Act 1959 [Act 78] of the members;
- (aa) the name, address and the particulars of passport or any evidence of travel document of the non-Malaysian citizen members;
- (b) the number of units held by each member in each fund;
- (c) the date on which the name of each person was entered in the register as a member;
- (d) the date on which any person ceased to be a member; and
- (e) any other information as may be specified by the Commission.

(2) Notwithstanding anything in subregulation (1), a private retirement scheme provider may keep the names and particulars relating to persons who have ceased to be members of the private retirement scheme in a separate register for seven years from the date a person ceased to be a member.

(3) The register of members shall be maintained by the private retirement scheme provider at its registered office or its principal place of business in Malaysia as notified to the Commission.

(4) The register of members shall be *prima facie* evidence of any matters inserted therein.

(5) A member may request a private retirement scheme provider, upon payment of such reasonable sum as may be imposed by the private retirement scheme provider, to furnish the member with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units.

Closure of register

18. A private retirement scheme provider may, on giving not less than fourteen days' notice to the Commission, close the register of members and a register shall not be closed for more than thirty days in the aggregate in any calendar year.

Power of court to rectify register

19. (1) Any person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the court for the rectification of the register.

(2) The court may, on an application made under subregulation (1), decide—

(a) on any question relating to the right of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, on the one part and the private retirement scheme provider on the other part; and

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

(3) The court may, on an application made under subregulation (1) order the rectification of the register and the payment by the private retirement scheme provider of any damages sustained by any party to the application or refuse the application.

DIVISION 7

Meetings of members

Meeting requisitioned by members

20. (1) A private retirement scheme provider shall call for a meeting of members of the private retirement scheme or the fund, as the case may be if—

- (a) not less than fifty members or one-tenth of all members of the private retirement scheme or the fund, as the case may be, direct the private retirement scheme provider to do so in writing;
- (b) the written direction is given to the private retirement scheme provider at its registered office; and
- (c) the purpose of the meeting is—
 - (i) to consider the most recent financial statements;
 - (ii) to give to the scheme trustee such directions as the meeting thinks proper; or
 - (iii) to consider any other matter in relation to the private retirement scheme or the fund, as the case may be, or the deed.

(2) The meeting referred to in subregulation (1) shall be held in accordance with the form and manner as may be specified by the Commission.

Power of scheme trustee to call a meeting

21. (1) Where a private retirement scheme provider fails to remedy any breach of the provisions or covenants of the deed or any contravention of the provisions of the Act, these Regulations or any guidelines issued by the Commission when required by the scheme trustee, the scheme trustee may—

- (a) call a meeting of members of the private retirement scheme or the fund, as the case may be;
- (b) inform the members of the private retirement scheme's provider's failure at the meeting;
- (c) submit proposals for the protection of interests of members; and
- (d) ask for directions from members in relation to the matter.

(2) A scheme trustee may appoint a person to chair a meeting of members called under subregulation (1) and where the scheme trustee does not exercise this power, the members present at the meeting may appoint a person to chair the meeting.

Court may order a meeting of members

22. (1) Without limiting the court's power to make orders under regulation 23, the court may make an order for a meeting of all or any of the members to be held to give directions to the scheme trustee.

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

- (a) place before the members any information concerning the interests of the members;
- (b) place before the members any proposal to protect the interests of the members that the court directs or the scheme trustee considers appropriate; and
- (c) obtain the members' directions concerning the protection of the interests of the members.

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

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

DIVISION 8

General

Power of court to make orders

23. (1) A court may make any order that it considers appropriate to protect the interests of existing or prospective members.

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

Rights of trustee, executor and administrator in relation to a deceased member

24. (1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a member of any private retirement scheme may be registered as the member in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as the deceased person would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.

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

(3) Except as provided in these Regulations, a notice of any trust expressed, implied or constructive shall not be entered on a register, and no liability shall be effected by anything done pursuant to subregulation (1) or (2) or any law outside Malaysia which corresponds to the provisions of these Regulations.

Winding up of a private retirement scheme

25. (1) Notwithstanding any provision or covenant of a deed, a private retirement scheme shall not be wound up unless a private retirement scheme provider or a scheme trustee has obtained prior approval of the Commission.

(2) For the purpose of subregulation (1), the Commission may require an applicant to furnish the Commission with such information or documents as the Commission considers necessary for the purpose of the application.

PART III
TRUSTEE FOR EMPLOYER-SPONSORED RETIREMENT SCHEMES

Duties and responsibilities of an employer trustee

26. (1) An employer trustee approved under section 139ZF of the Act shall, in the performance of its function and the management of all securities, derivatives, property and asset of an employer-sponsored retirement scheme under its custody and control—

- (a) act in accordance with the provisions and covenants of the deed, the provisions of the Act, these Regulations and any guidelines issued by the Commission; and
- (b) carry out any other duties or responsibilities as may be specified by the Commission.

(2) An employer trustee who contravenes subregulation (1) does not commit an offence.

Made 16 March 2012
[SC/RS(A&R)/PENSION FUND.3/11(085-1B); PN(PU2)662/VI]

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Approved

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