



# **LAWS OF MALAYSIA**

**Act A926**

**SECURITIES COMMISSION (AMENDMENT)  
ACT 1995**

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**Act A926**

**SECURITIES COMMISSION (AMENDMENT)  
ACT 1995**

An Act to amend the Securities Commission Act 1993.

[ ]

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 the authority of the same, as follows:

1. This Act may be cited as the Securities Commission (Amendment) Act 1995 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint; and the Minister may appoint different dates for the coming into force of different provisions of this Act. Short title and commencement.

2. The Securities Commission Act 1993, which in this Act is referred to as the "principal Act", is amended in section 2— Amendment of section 2. Act 498.

(a) by inserting after the definition of "appointed day" the following definition:

Act 280. "associate" has the same meaning as in the Securities Industry Act 1983;';

(b) in the definition of "clearing house"—

(i) by substituting for the words "settlement of trading in futures contracts" the words "a clearing house approved under subsection 6B (1) of the Futures Industry Act 1993"; and

(ii) by inserting the marginal reference "*Act 499*," as against the reference to the Futures Industry Act 1993;

(c) by substituting for the definition of "exchange" the following definition:

*Act 280.* ' "exchange" means a stock exchange established under subsection 8(2) of the Securities Industry Act 1983 or an exchange company;';

(d) by inserting after the definition of "exchange" the following definition:

*Act 499.* ' "exchange company" means a company established under subsection 4(1) of the Futures Industry Act 1993;';

(e) by substituting for the definition of "futures contract" the following definition:

*Act 499.* ' "futures contract" has the same meaning as in the Futures Industry Act 1993;';

(f) by deleting the definition of "futures exchange";

(g) by substituting for the definition of "futures market" the following definition:

*Act 499.* ' "futures market" has the same meaning as in the Futures Industry Act 1993;';

(h) by deleting the definition of "futures option transaction";

(i) by inserting before the definition of "licensed institution" the following definition:

*Act 280.* ' "licence" means any licence issued under Part IV of the Securities Industry Act 1983  
*Act 499.* or Part III of the Futures Industry Act 1993;';

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- (j) by inserting after the definition of "licensed institution" the following definitions:

' "licensed person" means a person licensed under Part IV of the Securities Industry Act *Act 280.* 1983 or Part III of the Futures Industry Act *Act 499.* 1993;

"listed", in relation to a security or corporation, as the case may be, means such security or corporation whose securities or any class of its securities having gained admission to be quoted on a stock market of a stock exchange;

- (k) by inserting after the definition of "officer" the following definitions:

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

"record" includes record stored or recorded by means of a computer;';

- (l) by deleting the definition of "registered person";

- (m) by inserting after the definition of "securities" the following definitions:

' "securities laws" means the Securities *Act 280.* Industry Act 1983, the Securities Industry *Act 453.* (Central Depositories) Act 1991, the Securities *Act 498.* Commission Act 1993 and the Futures Industry *Act 499.* Act 1993;

"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;'; and

(n) by substituting for the definition of "trading in futures contracts" the following definition:

Act 499.

' "trade", in relation to futures contracts, has the same meaning as in the Futures Industry Act 1993; '.

New section 2A.

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

"References to "this Act" and "securities law".

2A. Any reference in this Act to "this Act" or a "securities law" shall, unless otherwise expressly stated, include a reference to any regulations, rules, orders, notifications or other subsidiary legislation made under this Act or a securities law, as the case may be."

Amendment of section 13.

4. Section 13 of the principal Act is amended—

(a) in subsection (1) by substituting for the words "having any interest in any matter" and "the fact" the words "who has or acquires a direct or indirect interest in relation to any matter" and "the existence" respectively;

(b) by deleting subsection (2);

(c) in subsection (3) by substituting for the full stop at the end of paragraph (b) a comma and by inserting the words "relating to the matter." so as to qualify paragraphs (a) and (b); and

(d) by deleting subsection (6).

Substitution of section 15.

5. The principal Act is amended by substituting for section 15 the following section:

"Functions of the Commission.

15. (1) The Commission shall have the following functions:

(a) to advise the Minister on all matters relating to securities and futures industries;

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- (b) to regulate all matters relating to securities and futures contracts;
- (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 regulate all matters relating to unit trust schemes;
- (f) to be responsible for supervising and monitoring the activities of any exchange, clearing house and central depository;
- (g) to take all reasonable measures to maintain the confidence of investors in the securities and futures markets by ensuring adequate protection for such investors;
- (h) to promote and encourage proper conduct amongst members of the exchanges, clearing houses, central depository and all licensed persons;
- (i) to suppress illegal, dishonourable and improper practices in dealings in securities and trading in futures contracts, and the provision of investment advice or other services relating to securities or futures contracts;
- (j) to consider and make recommendations for the reform of the law relating to securities and futures contracts;
- (k) to encourage and promote the development of securities and futures markets in Malaysia including research and training in connection thereto;
- (l) to encourage and promote self-regulation by professional associations or market bodies in the securities and futures industries;

(m) to license and supervise all licensed persons as may be provided for under any securities law;

(n) to promote and maintain the integrity of all licensed persons in the securities and futures industries.

(2) The functions of the Commission relating to futures contracts under this Act do not apply to any commodity futures contracts traded under the Commodities Trading Act 1985.

(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.”.

Substitution  
of section  
16.

6. The principal Act is amended by substituting for section 16 the following section:

“Powers  
of the  
Com-  
mission.

16. 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.”.

Substitution  
of section  
19.

7. The principal Act is amended by substituting for section 19 the following section:

“Power of  
the  
Minister  
to give  
directions  
and require  
informa-  
tion.

19. (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.”.



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8. The principal Act is amended by substituting for section 22 the following section: Substitution of section 22.

*"Power to grant loans and make advances to its officers and servants."* 22. (1) The Commission may grant loans and make advances, including study loans and scholarships, to its officers and servants or to other persons on such terms and conditions as the Commission may determine.

(2) In this section, the term "officers and servants" includes the Chairman."

9. The principal Act is amended by inserting after section 22 the following section: New section 22A.

*"Commission may establish and participate in body corporate."* 22A. The Commission may, with the approval of the Minister, establish and participate in any body corporate for the purpose of promoting research and training in relation to the securities and futures industries."

10. Section 24 of the principal Act is amended— Amendment of section 24.

(a) by substituting for subsection (2) the following subsection:

"(2) In the case of every futures contract effected on a futures market of an exchange company, the person in the short position and the person in the long position in relation to futures contracts 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 futures contracts or different classes or categories of persons in respect of futures contracts."; and

(b) by substituting for subsection (6) the following subsection:

"(6) For the purposes of this section, the terms "short position" and "long position" have the same meanings as in the Futures Industry Act 1993."

11. The principal Act is amended by substituting for Part IV the following Part: Substitution of Part IV.

PART IV

ISSUES OF SECURITIES AND TAKE-OVERS  
AND MERGERS

DIVISION 1

PROPOSALS IN RELATION TO SECURITIES

Proposals  
to be  
submitted  
to the  
Com-  
mission.

32. (1) In this Division and the Schedule—

“an applicant” means any person referred to  
in subsection 32(2);

Act 519. “Central Bank of Malaysia” means the Central  
Bank established under the Central Bank of  
Malaysia Act 1958;

“expert” includes engineer, valuer, accountant  
and any other person whose profession gives  
authority to a statement made by him;

“officer”, in relation to a corporation,  
includes—

- (a) a director, a secretary, an executive  
officer or an employee of the corporation;
- (b) a receiver and manager, appointed under  
a power contained in any instrument, of  
any part of the undertaking or property  
of the corporation;
- (c) a liquidator of the corporation appointed  
in a voluntary winding up of the  
corporation,

but does not include a receiver who is not also  
a manager, a receiver and manager appointed  
by a Court and a liquidator appointed by a Court;

Act 125. “private company” and “public company” have  
the same meanings as in subsection 4(1) of the  
Companies Act 1965;

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"proposal" means a proposal referred to in subsection 32(2).

(2) This section applies to a person who proposes to do any of the following:

- (a) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia;
- (b) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company, or to list such securities on a securities exchange outside Malaysia;
- (c) make a bonus issue of securities of a public company other than by way of the capitalisation of unappropriated profits;
- (d) by way of issue of securities, effect—
  - (i) a compromise or arrangement whether or not for the purposes of or in connection with a scheme, compromise or arrangement for the amalgamation of any two or more corporations or for reconstruction of any corporation;
  - (ii) an employee share or employee share option scheme; or
  - (iii) an acquisition of securities or assets;
- (e) apply for the listing of a corporation, or for the quotation of securities, on a stock market of a stock exchange;
- (f) distribute the assets of a public company to its members other than distribution

in cash or distribution of assets to members of the public company on its winding up; or

- (g) effect a restructuring exercise involving an acquisition or disposal of assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed public company.

(3) An applicant shall submit to the Commission such documents and such other information in relation to the proposal in such form and manner and at such times as the Commission may require.

(4) Subject to section 32A, no person referred to in subsection (2) shall implement or carry out a proposal unless the Commission has approved the proposal under this section.

(5) The Commission may—

- (a) approve a proposal;
- (b) approve a proposal with such revisions and subject to such terms and conditions as it deems fit; or
- (c) reject a proposal.

(6) A person who contravenes or fails to comply with any term or condition in relation to an approval given under paragraph (5)(b) shall be guilty of an offence.

(7) Where the Commission is satisfied that—

- (a) there is a contravention of subsection 32B(1); or
- (b) there is a breach of any term or condition imposed under paragraph (5)(b); or

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- (c) there is any change or development in the circumstances relating to a proposal occurring subsequent to the Commission giving its approval under subsection (5), and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the proposal,

the Commission may—

- (aa) revoke an approval given under subsection (5);  
(bb) revise an approval; or  
(cc) impose such further terms or conditions in relation to a proposal approved by it under subsection (5):

Provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by or arising from the carrying out or implementation of a proposal in accordance with an approval given under subsection (5).

(8) The Commission shall give a written notice to an applicant of its intention to take action under subsection (7) and shall give the applicant an opportunity to be heard prior to it taking any action under subsection (7).

(9) Where the Commission has granted its approval to a proposal under subsection (5)—

- (a) if registration of a prospectus is required under Part IV of the Companies Act 1965 in connection with the proposal, the prospectus shall include a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the

proposal shall not be taken to indicate that the Commission recommends the proposal; or

- (b) if registration of a prospectus is not required under Part IV of the Companies Act 1965 in connection with the proposal, the applicant shall include in any document issued with respect to the proposal, in such form as the Commission may require, a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal.

(10) Where—

- (a) a person enters into an agreement in respect of a proposal; and
- (b) the terms of the agreement are not binding until the fulfillment of any condition as may be set out in the agreement, including that of the approval to be given under subsection (5),

the person shall not be taken, for the purposes of subsection (4), to have taken any step to implement or carry out the proposal.

(11) In respect of any proposal referred to in subsection 32(2)—

- (a) the Commission may direct an applicant to make an announcement of a proposal in accordance with the rules of the stock exchange, if applicable; and
- (b) any person may make an announcement of a proposal before submitting such proposal to the Commission for its approval under this section.

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(12) For the purpose of subsection (11), an "announcement" includes any publication by press notice or in any other form of a firm intention to make an offer for any securities.

(13) Any person who contravenes subsection (3), (4), (9) or (11) 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 ten years or to both.

Classes or  
categories  
of transac-  
tions or  
securities not  
subject to  
subsection  
32(4).

32A. (1) Subsection 32(4) shall not apply to the following:

- (a) such classes or categories of securities or classes or categories of transactions as specified in the Schedule;
- (b) the making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase securities as may be prescribed by the Minister on the basis of the manner or total value thereof or the characteristics, types or numbers of investors in relation thereto;
- (c) such categories or classes of securities as may be prescribed by the Minister.

(2) In making any prescription under subsection (1), the Minister shall have regard to the interests of the public.

(3) Any prescription made under this section shall be subject to any condition, restriction or limitation as the Minister may impose.

False or  
misleading  
statements,  
etc.

32B. (1) Where any statement or information is required to be submitted to the Commission under this Division in relation to or in connection with any proposal submitted pursuant to section 32—

- (a) an applicant, any of its officers or associates;

- (b) a financial adviser or an expert; or
- (c) any other person,

shall not—

- (aa) submit or cause to be submitted any statement or information that is false or misleading;
- (bb) submit or cause to be submitted any statement or information from which there is a material omission; or
- (cc) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct, was of the belief that—

- (a) the statement or information was true and not misleading;
- (b) the omission was not material;
- (c) there was no material omission; or
- (d) the conduct in question was not misleading or deceptive.

(3) Where—

- (a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and



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(b) a person referred to in that subsection becomes aware before the proposal has been fully implemented or carried out—

(i) that the statement or information may be false or misleading or materially incomplete; or

(ii) that the conduct may tend to mislead or deceive,

the person shall forthwith advise the Commission of the facts referred to in subparagraph (b)(i) or (b)(ii), where applicable, and shall take such action as the Commission may require pursuant to subsection 32(7).

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

DIVISION 2

TAKE-OVERS, MERGERS AND COMPULSORY  
ACQUISITIONS

Definition. 33. (1) In this Division—

“acquirer” means—

(i) a person who acquires or proposes to acquire control in a company whether the acquisition is effected by the person or by an agent; or

(ii) two or more persons who, acting in concert with one another, acquire or propose to acquire control in a company, whether the acquisition is effected by the persons or by an agent;

"Code" means the Malaysian Code on Take-Overs and Mergers made in accordance with section 33A;

"company", in relation to a company being taken over, means a public company, whether or not it is listed on any stock exchange, and includes such private company as the Commission may determine;

"control", in relation to an acquisition of shares, means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares of more than thirty-three per centum in a company;

"dissenting shareholder" includes any shareholder who has not accepted a take-over offer and any shareholder who has failed or refused to transfer shares to an acquirer in accordance with a take-over offer;

"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"offeree" means a company whose voting shares are subject to a take-over offer;

"offeror" means a person who makes a take-over offer;

"officer", in relation to a corporation, includes—

- (i) a director, secretary, executive officer or employee of the corporation;
- (ii) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation;

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- (iii) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a Court and a liquidator appointed by a Court;

Act 125. "private company" and "public company" have the same meanings as in subsection 4(1) of the Companies Act 1965;

"related", in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965;

"take-over offer", in relation to a company, means an offer made to acquire all or part of the voting shares, or any class or classes of voting shares, in the company;

"voting shares", in relation to a company, has the same meaning as in subsection 4(1) of the Companies Act 1965.

(2) For the purposes of this Division, a reference to "persons acting in concert" shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to—

- (a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or
- (b) act jointly or severally for the purpose of exercising control over a company.

(3) Without prejudice to the generality of subsection (2), the following persons shall be presumed to be persons acting in concert unless the contrary is established:

- (a) a corporation and its related and associate corporations;

- (b) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;
- (c) a corporation and any pension fund established by it;
- (d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis;
- (e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation's funds and has ten per centum or more of the voting shares in that corporation; and
- (f) a person who owns or controls twenty per centum or more of the voting shares of a corporation falling within paragraph (a) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within paragraph (a).

(4) For the purposes of subsection (2), an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.

(5) For the purposes of paragraph (3)(a), an associated corporation means a corporation in respect of which not less than twenty per centum of the voting shares of that corporation are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation.

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Malaysian  
Code on  
Take-Overs  
and  
Mergers.

33A. (1) The Minister may, on the recommendation of the Commission, prescribe a Code which shall be published in the *Gazette*.

(2) The Minister may, from time to time on the recommendation of the Commission, amend any of the provisions of the Code and any amendment thereto shall be published in the *Gazette*.

(3) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.

(4) The Commission shall administer the Code according to the objectives specified in subsection (5) and may do all such things as may be necessary or expedient to give full effect to the provisions of this Division and the Code; and without limiting the generality of the foregoing, may—

- (a) issue rulings from time to time, interpreting the Code;
- (b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and
- (c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission deems fit with respect thereto.

(5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this

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Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure—

- (a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer—
  - (i) are aware of the identity of the acquirer and offeror;
  - (ii) have reasonable time in which to consider a take-over offer; and
  - (iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;
- (b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control;
- (c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and
- (d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified

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in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

Compliance  
with Code  
and rulings.

33B. (1) A person who makes a take-over offer shall do so in accordance with the provisions of the Code and any ruling made under subsection 33A(4).

(2) Subject to section 33c, an acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise, in accordance with the provisions of the Code and any ruling made under subsection 33A(4).

(3) Subject to section 33c, an acquirer who has obtained more than thirty-three per centum of the voting shares in a company but less than fifty per centum of voting shares in that company, shall not acquire any additional voting shares in that company, except in accordance with the provisions of the Code and any ruling made under subsection 33A(4).

(4) Any person who contravenes subsection (1), (2) or (3) 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 ten years or to both.

Exemptions.

33C. (1) Subject to subsection 33A(5), the Commission may grant exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of this Division, the Code and any ruling made under subsection 33A(4).

(2) Any exemption granted under subsection (1) may be subject to any conditions, restrictions or limitations as may be imposed by the Commission.

Action by  
Commission  
in cases of  
non-  
compliance  
with Code  
and rulings.

33D. (1) Where any person who is under an obligation to comply with, observe or give effect to the provisions of the Code or any ruling made under subsection 33A(4), fails to comply with, observe or give effect to any such provision of the Code or ruling (hereinafter referred to as the "defaulting person"), the Commission may take one or more of the following actions:

- (a) direct the defaulting person to comply with, observe or give effect to any such provision of the Code or ruling;
- (b) impose a penalty not exceeding two hundred and fifty thousand ringgit on the defaulting person;
- (c) reprimand the defaulting person;
- (d) direct a stock exchange to deprive the defaulting person access to the facilities of the stock exchange;
- (e) where the defaulting person is a listed corporation, direct the stock exchange—
  - (i) to suspend trading in the securities of the corporation;
  - (ii) to suspend the listing of the corporation; or
  - (iii) to remove from the official list the corporation or the class of securities of the corporation;
- (f) where the defaulting person is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities; or



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(g) direct a stock exchange to prohibit the defaulting person from engaging in transactions to be executed through the use of the facilities of the stock exchange.

(2) The Commission shall give a written notice to a defaulting person of its intention to take action under subsection (1) and shall give the defaulting person an opportunity to be heard prior to it taking any action under subsection (1).

(3) The Court may, in a case where the Commission gives a direction under paragraph (1)(a), on an application by the Commission, make an order directing the defaulting person to comply with, observe or give effect to those provisions of the Code or rulings.

False or misleading documents, information, etc.

33E. (1) Where any document or information is required to be submitted to the Commission under this Division or the Code in relation to or in connection with a take-over offer, merger or compulsory acquisition—

- (a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger, its officers or associates;
- (b) an offeree, its officers or associates;
- (c) a financial adviser or an expert; or
- (d) any other person,

shall not—

- (aa) submit or cause to be submitted any document or information that is false or misleading;
- (bb) provide or cause to be provided any document or information from which there is material omission; or
- (cc) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that—

- (a) the document or information was true and not misleading;
- (b) the omission was not material;
- (c) there was no material omission; or
- (d) the conduct in question was not misleading or deceptive.

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

Compulsory  
acquisition.

34. (1) Subject to section 34A, where a take-over offer by an offeror to acquire all the shares or all the shares in any particular class or classes in an offeree has, within four months after the making of the take-over offer, been accepted by the holders of not less than nine-tenths in the nominal value of those shares or of the shares of that class or classes (other than shares already held at the date of the take-over offer by the offeror or by a nominee for or a related corporation of the offeror), the offeror may, at any time within two months after the take-over offer has been so accepted, give notice in the manner prescribed under the Code to any dissenting shareholder that it desires to acquire his shares together with a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied.

(2) Where an offeror has given notice to any dissenting shareholder that it desires to acquire his shares pursuant to subsection (1), the dissenting shareholder shall be entitled to require the offeror, by a demand in writing served on the offeror within one month from the date on which the notice is given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the offeror shall not be entitled or bound to acquire the shares of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.

(3) Upon the giving of the notice and statutory declaration under subsection (1), or where subsection (2) applies, upon the provisions in subsection (2) being complied with, the offeror shall in accordance with subsection (7) acquire those shares on the terms of the take-over offer or, if the take-over offer contained two or more alternative sets of terms, on the terms which were specified in the take-over offer as being applicable to the dissenting shareholders.

(4) Any person who—

- (a) sends a copy of a notice or statutory declaration under subsection (1) which is not in the prescribed manner; or
- (b) makes a statutory declaration pursuant to subsection (1) or sends a statement pursuant to subsection (2), knowing that the declaration or the statement, as the case may be, to be false, or without having reasonable grounds for believing it to be true,

shall be guilty of an offence.

(5) Where a person is charged for an offence under subsection (4), it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.

(6) Where, during the period within which a take-over offer can be accepted, the offeror acquires or contracts to acquire any of the shares to which the take-over offer relates, otherwise than by virtue of acceptances of the take-over offer, then if—

- (a) the value of the consideration for which they are acquired or contracted to be acquired (the acquisition consideration) does not at that time exceed the value of the consideration specified in the terms of the take-over offer; or
- (b) the terms of the take-over offer are subsequently revised so that when the revision is announced the value of the acquisition consideration at the time mentioned in paragraph (a) no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of acceptances of the take-over offer but in relation to any other case those shares shall be treated as excluded from those to which the take-over offer relates.

(7) Subject to section 34B, where a notice has been given by the offeror under subsection (1), the offeror shall, after the expiration of one month after the date on which the notice has been given, or where subsection (2) applies after fourteen days from the date the statement has been posted to the dissenting shareholder—

- (a) send a copy of the notice to the offeree together with an instrument of transfer

executed on behalf of a dissenting shareholder by a person appointed by the offeror; and

- (b) pay, allot or transfer to the offeree the amount or other consideration for the shares to which the notice relates,

and the offeree shall thereupon register the offeror as the holder of those shares.

(8) Any sums received by the offeree under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that offeree in trust for the persons entitled to the shares in respect of which the sum or other consideration was received.

(9) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of ten years from the date on which the consideration is paid, allotted or transferred to it, transfer the same to the Minister.

(10) The Minister shall sell or dispose of any consideration received under subsection (9) in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal as if it were moneys paid to him pursuant to the law relating to unclaimed moneys.

Right of  
minority  
share-  
holder.

34A. (1) Subject to section 34B, if a take-over offer relates to all the shares or to all shares in any class or classes in an offeree and, at any time before the end of the period within which the take-over offer can be accepted—

- (a) the offeror has, by virtue of the acceptances of the take-over offer, acquired some (but not all) of the shares to which the take-over offer relates or shares of any class or classes to which the take-over offer relates; and

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- (b) those shares, with or without any other shares or any other shares of that class or classes to which the take-over offer relates, as the case may be, which the offeror or any nominee or related corporation of the offeror has acquired amounts to not less than nine-tenths in value of all the shares in the offeree or of that class in the offeree,

the holder of any shares or any class or classes of shares to which the take-over offer relates may, by notice to the offeror, require him to acquire those shares, and the offeror shall be bound to acquire those shares on the terms of the take-over offer or such other terms as may be agreed.

(2) Within one month of the time specified in subsection (1), the offeror shall give any shareholder who has not accepted the take-over offer, notice in the manner prescribed under the Code of the rights that are exercisable by him under subsection (1) and, if the notice is given before the period mentioned in subsection (1), it shall state that the take-over offer is still open for acceptance.

(3) A notice under subsection (2) may specify the period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the take-over offer can be accepted.

(4) Subsection (2) shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under subsection 34(1).

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence.

*Securities Commission (Amendment)*

Application  
to Court.

34B. (1) Where a notice is given under subsection 34(1), the Court may, on an application made by any dissenting shareholder within one month from the date on which the notice was given—

- (a) order that the offeror shall not be entitled and shall not be bound to acquire those shares; or
- (b) specify terms of acquisition that are different from the terms of the take-over offer.

(2) If an application to Court is pending at the end of the period mentioned in subsection 34(2), that subsection shall not have effect until the application has been disposed of.

(3) When the holder of any shares exercises his rights under subsection 34A(1), the Court may, on an application made by such holder of shares or the offeror, order that the terms on which the offeror shall acquire the shares shall be as the Court thinks fit.

(4) No order for costs shall be made against a shareholder making an application under subsection (1) or (3) unless the Court considers—

- (a) that the application was unnecessary, improper or vexatious; or
- (b) that there has been unreasonable delay in making the application or unreasonable conduct on the part of the shareholder in conducting the proceeding on the application.

(5) Subject to subsection (6), the Court may, on an application made by an offeror who has not obtained acceptances to the extent necessary

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for entitling him to give notices under subsection 34(1), make an order authorising the offeror to give notices under subsection 34(1).

(6) The Court may only grant an order under subsection (5) upon being satisfied that—

- (a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares to which the take-over offer relates after having made reasonable enquiries;
- (b) the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the take-over offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in subsection 34 (1); and
- (c) the consideration offered is fair and reasonable:

Provided that the Court shall not make such an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the take-over offer.

Section 180  
of the  
Companies  
Act 1965  
shall not  
apply to  
take-over  
offers to  
which  
subsection  
34(1)  
applies.  
Act 125.

34c. The provisions of section 180 of the Companies Act 1965 shall not apply in respect of take-over offers to which subsection 34(1) applies.”.



*Securities Commission (Amendment)*

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12. Section 36 of the principal Act is amended in paragraph (1)(b) by substituting for the words "this Act" the words "a securities law".

Amendment  
of section  
36.

13. The principal Act is amended by inserting after section 39 the following sections:

New sections  
39A and 39B.

"General penalty. 39A. (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 liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years, or to both; and in the case of a continuing offence, shall be liable to a daily fine not exceeding five thousand ringgit for every day during which the offence continues.

Offences by body corporate. 39B. (1) Where a person convicted in respect of any offence under this Act is a body corporate, it shall only be liable to the imposition of any fine provided therein.

(2) Where a person convicted of an offence under this Act is a body corporate, every person who at the time of the commission of the offence was a director, an executive officer, an employee or the secretary of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of 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 exercise having regard to the nature of his functions in that capacity and to all the circumstances."

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Substitution  
of section  
41.

14. The principal Act is amended by substituting for section 41 the following section:

"Power to  
engage  
persons to  
render  
assistance. 41. 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."

New section  
42A.

15. The principal Act is amended by inserting after section 42 the following section:

"Decision  
of Com-  
mission  
shall be  
final. 42A. Except as otherwise provided in this Act, any decision made by the Commission under this Act, whether an original decision by it or a decision upon being reviewed under subsection 42(1), shall be final."

New sections  
43A, 43B  
and 43C.

16. The principal Act is amended by inserting after section 43 the following sections:

"Assistance  
to police  
or other  
public  
officer. 43A. Notwithstanding section 43, the Commission may, at its own initiative, or at the request of a public officer—

(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 36 or of any record of examination made under section 38, or of any statement made under subsection 38(3), or of any book or other document produced under subsection 36(2), or otherwise in the course of any examination under section 38, and such police officer or other public officer may

*Securities Commission (Amendment)*

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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

- (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 this Act, 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.

Assistance  
to and co-  
operation  
with foreign  
supervisory  
authorities.

43B. (1) Notwithstanding section 43, the Commission may, upon request by a foreign supervisory authority, provide such assistance to the foreign supervisory authority as the Commission thinks fit.

(2) In this section, "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.

Power of  
Com-  
mission to  
require  
informa-  
tion.

43C. Where under this Act, power is given to the Commission to require any person, or where any person is required under this Act, to submit to the Commission any information, document or book, the Commission may require that the

same shall 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.”.

Amendment  
of section  
44.

**17. Section 44 of the principal Act is amended—**

(a) by substituting for paragraphs (2)(c) and (d) the following paragraphs:

“(c) prescribing the principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition;

(d) all matters relating to proposals referred to in subsection 32(2);” and

(b) by substituting for subsection (3) the following subsection:

“(3) Regulations made under this section may provide for the imposition of penalties which shall not exceed twenty-five thousand ringgit for any offence thereunder.”.

New section  
44A.

**18. The principal Act is amended by inserting after section 44 the following section:**

“Indemnity. 44A. The Commission, any member of the Commission or of any committee established by the Commission, the Chairman and any officer of the Commission shall not be liable to an action or other proceedings for damages for or on account of, or in respect of, any act done or statement made, omitted to be done or made, in pursuance of or in execution of a securities law or in the performance of any function, or in exercise of any power, conferred or expressed to be conferred by or under a securities law:

*Securities Commission (Amendment)*

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

19. The principal Act is amended by inserting the following Schedule: Insertion  
of Schedule.

" SCHEDULE  
(Subsection 32A(1))

Classes Or Categories Of Securities Or Classes Or Categories Of  
Transactions Not Subject To Subsection 32(4)

1. The issuance of securities by or guaranteed by the Government or the Central Bank of Malaysia.
2. Securities of a private company.
3. Bonus issues of securities of a public company which is not listed.
4. Securities which are permitted by the Central Bank of Malaysia to be traded in the money market.
5. Making available or creation of, or issuance or execution of—
  - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
  - (b) cheques or other bills of exchange, a banker's draft or a letter of credit; or
  - (c) a banknote, a statement showing a balance in a current, deposit or savings account, or (by reason of any financial obligation contained in it) a charge or other disposition of property, or an insurance policy.
6. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
7. An offer or invitation to enter into an underwriting agreement or is made or issued to an underwriter under such an underwriting agreement.
8. An issue or allotment of securities to an underwriter under an underwriting agreement.

9. An offer or invitation with respect to securities of a corporation which is not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 39A of the Companies Act 1965 applies.
10. The making available, offering for subscription or purchase or issuing an invitation to subscribe for or purchase, securities of a corporation to existing members of a company within the meaning of section 270 of the Companies Act 1965.
11. Issuance or allotment of securities by a listed corporation pursuant to the exercise of a warrant, convertible note, option or transferable subscription right, in respect of which the Commission has given its prior approval under subsection 32(4)."

Savings  
and  
transitional.

20. (1) All actions, 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 shall be deemed to have been made, given or done under, or in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act, and shall continue to remain in full force and effect in relation to the persons to whom they apply until amended, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act.

(2) Nothing in the principal Act or 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) If any difficulty arises with respect to the provisions introduced or amended by this Act and 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.

This Act to  
apply to  
pending  
proposals,  
etc.

21. For the avoidance of doubt, the provisions introduced or amended by this Act shall apply to—

- (a) all proposals submitted;

*Securities Commission (Amendment)*

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(b) take-overs mergers or compulsory acquisition made,

before or pending at the date of coming into force of this Act.



DICETAK OLEH  
PERCETAKAN NASIONAL MALAYSIA BERHAD, IBU PEJABAT, KUALA LUMPUR  
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA  
Harga: RM5.60

