[Incorporating latest amendment [A1499/2015 & P.U.(A) 473/2025]
c.i.f 1 January 2026]

CAPITAL MARKETS AND SERVICES ACT 2007

(Act 671)

An Act to consolidate the Securities Industry Act 1983 [*Act 280*] and Futures Industry Act 1993 [*Act 499*], to regulate and to provide for matters relating to the activities, markets and intermediaries in the capital markets, and for matters consequential and incidental thereto.

[28 September 2007 [All provisions of the act except Division 2 of Part VI – P.U.(B) 342/2007]

1 April 2010 [Division 2 of Part VI of the Act comes into operation. [P.U.(B) 143/2010]

[ ]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, commencement and application

1. (1) This Act may be cited as the Capital Markets and Services Act 2007.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of—

(a) different provisions of this Act; or

(b) all or different provisions of this Act in respect of different classes or categories of persons, securities or derivatives.

[Am. Act A1406/2011]
[Am. Act A1499/2015]

Interpretation

2. (1) In this Act, unless the context otherwise requires—

"accounting records", in relation to a corporation, includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up and howsoever compiled, recorded or stored;

"advising on corporate finance" has the same meaning as in Part 2 of Schedule 2;

"affiliate", in relation to a derivatives exchange or a clearing house of a derivatives exchange, means any person, however described, who is a party to a subsisting contract with the derivatives exchange or clearing house of a derivatives exchange, as the case may be, under which the person agrees to be bound by its rules;

"approved clearing house" means a clearing house that has been approved under section 38;

"assets", in relation to a holder of a Capital Markets Services Licence, means all the assets of the holder, whether or not used in connection with the carrying on of the regulated activity by the holder;

"associated person" shall be construed as provided in section 3;

"auditor" means an approved company auditor within the meaning of the Companies Act 1965 [*Act 125*];

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

[Am. Act A1499/2015]

"board", in relation to a corporation, means the board of directors or other governing authority of the corporation;

"books" include—

(a) a register;

(b) any other record of information;

(c) accounts or accounting records, however compiled, recorded or stored; and

(d) a document;

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

"business trust" means a unit trust scheme where the operation or management of the scheme and the scheme's property or asset is managed by a trustee manager";

[*Ins. Act A1437/2012*]

"capital market" means the securities and derivatives markets;

[Ins. Act A1406/2011]

"capital market products" means —;

(a) securities;

(b) derivatives;

(c) a private retirement scheme;

(d) a unit trust scheme;

(e) any product or arrangement which is based on securities or derivatives, or any combination thereof; and

(f) any other product which the Minister may prescribe as a capital market product;

[Subs. Act A1437/2012]

"capital market services" means any service as specified by the Commission under section 76A, but does not include a regulated activity;

[*Ins. Act A1437/2012*]

"Capital Markets Services Licence" means a licence that is granted under section 61;

[Am. Act A1406/2011]

"Capital Markets Services Representative's Licence" means a licence that is granted under section 61;

[Am. Act A1406/2011]

"central depository" means a central depository which has been approved by the Minister under subsection 5(1) of the Securities Industry (Central Depositories) Act 1991 [*Act 453*]—

(a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange—

(i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of these securities are effected by means of entries in securities accounts without the physical delivery of scrips; or

(ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and

(b) to provide other facilities and services incidental thereto;

"Chairman" means the Chairman of the Commission appointed under paragraph 4(2)*(a)* of the Securities Commission Malaysia Act 1993 [*Act 498*];

[Am. Act A1499/2015]

"chief executive", in relation to a corporation, means the principal executive officer of the corporation for the time being, by whatever name called, and whether or not he is a director;

"clearing facilities" means—

(a) a facility for the clearing or settlement of—

(i) transactions in securities traded on a stock exchange; or

(ii) derivatives traded on a derivatives market;

(b) a facility for the guarantee of settlement of transactions referred to in paragraph *(a);* or

(c) such other clearing or settlement facility or class of clearing or settlement facilities as the Commission with the approval of the Minister may allow;

"clearing house" means a person whose activities or objects include the provision of clearing facilities;

"client", in relation to a holder of a Capital Markets Services Licence, means—

(a) a person on whose behalf the holder carries on or will carry on any regulated activity; or

(b) any other person with whom the holder, as principal, enters or will enter into transactions—

(i) for purposes of dealing in securities; or

(ii) for purposes of dealing in derivatives, but does not include such person or class of persons as may be prescribed;

"close out", in relation to a derivative, means to discharge the obligations of a person in the long position or short position under a derivative and shall include the discharge of these obligations as a result of the matching up of the derivative with a derivative of the same kind under which the person has assumed an offsetting short position or offsetting long position, as the case may be;

"Commission" means the Securities Commission Malaysia established under the Securities Commission Malaysia Act 1993;

[Subs. Act A1499/2015]

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

"constitution", in relation to a company, means the memorandum of association and articles of association of the company;

"contract note" means the document issued by a holder of a Capital Markets Services Licence as prescribed by the Minister under section 90;

"corporation" means any body corporate formed or incorporated or existing within or outside Malaysia and includes any foreign company but does not include—

(a) any body corporate that is incorporated within Malaysia and is, by notice of the Minister charged with the responsibility for companies published in the *Gazette*, declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any society registered under any written law relating to co-operative societies; or

(d) any trade union registered under any written law as a trade union;

"dealing in derivatives" has the same meaning as in Part 2 of Schedule 2;

[Ins. Act A1406/2011]

"dealing in securities" has the same meaning as in Part 2 of Schedule 2;

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

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;

(b) a cheque, banker's draft or any other bill of exchange or a letter of credit;

(c) a banknote, guarantee or an insurance policy;

(d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

(e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or

(f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribed by order published in the *Gazette*;

"depository participant" means a person to whom the provisions of section 9 of the Securities Industry (Central Depositories) Act 1991 applies;

"Deputy Chief Executive" means the Deputy Chief Executive appointed under paragraph 4(2)*(b)* of the Securities Commission Malaysia Act 1993;

[Am. Act A1499/2015]

"derivatives" means any contract, either for the purposes of creating an obligation or a right or any combination of both, of which its market value, delivery or payment obligations are derived from, referenced to or based on, but not limited to, underlying securities or commodities, assets, rates, indices or any of its combination, whether or not a standardized derivative or an over-the-counter derivative, but does not include—

(a) securities;

(b) any derivative to which Bank Negara or the Government of Malaysia is a party;

(c) any over-the-counter derivatives whose market price, value, delivery or payment obligations are solely derived from, referenced to or based on, exchange rates; or

(d) any agreement, when entered into, is in a class of agreements prescribed not to be derivatives;

[Ins. Act A1406/2011]

"derivatives exchange" means anybody corporate in relation to which an approval under subsection 8(2) is in force;

[Ins. Act A1406/2011]

"derivatives market" means a market or other place at which, or a facility by means of which, derivatives are regularly traded;

[Ins. Act A1406/2011]

"derivatives report" means an analysis or report that contains recommendations about dealing in derivatives;

[Ins. Act A1406/2011]

"director" has the meaning assigned to it in the Companies Act 1965, includes a reference to—

(a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;

(b) a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

(c) an alternate or substitute director; or

(d) in the case of a corporation formed or incorporated or existing outside Malaysia—

(i) a member of the corporation's board of directors or governing body;

(ii) a person occupying or acting in the position of a member of the corporation's board, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in the position; or

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

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

"exchange holding company" means a body corporate that is the holding company of any body corporate approved as a stock exchange, derivatives exchange, central

depository or approved as a clearing house and that has been approved as an exchange holding company under section 15;

"exempt derivatives market" means a derivatives market which is declared to be an exempt derivatives market under paragraph 7(3)*(a)*;

[Ins. Act A1406/2011]

"exempt stock market" means a stock market which is declared to be an exempt stock market under paragraph 7(3)*(a)*;

"financial planning" has the same meaning as in Part 2 of Schedule 2;

"foreign supervisory authority" means a foreign authority or any other person which exercises functions corresponding to the functions of the Commission under the securities law;

[Ins. Act A1499/2015]

"fund management" has the same meaning as in Part 2 of Schedule 2;

"futures contract" means a derivative that is traded on a derivatives exchange which creates an obligation for physical delivery or acceptance of physical delivery of the underlying instrument of such derivative, the quantity and quality of which is determined by that derivatives exchange, at a fixed date in the future at a fixed price, and which may be cash settled in lieu of physical delivery;

[Subs. Act A1406/2011]

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

"holding company" has the meaning assigned to it in sections 5 and 5A of the Companies Act 1965;

"information service" means—

(a) a broadcasting service;

(b) an interactive or broadcast videotext or teletext service or other similar service;

(c) an online database service or other similar service; or

(d) any other service as may be prescribed by the Commission,

but does not include bond pricing facilities;

"instrument", in relation to derivatives, means—

(a) anything that is capable of delivery under an agreement for its delivery, including a commodity, or a document creating or evidencing a thing in action; or

(b) any other thing that is prescribed to be an instrument for the purposes of this Act;

"investment advice" has the same meaning as in Part 2 of Schedule 2;

"Islamic bank" means a bank licensed under the Islamic Banking Act 1983 [*Act 276*];

"issue" means—

(a) in relation to securities, to bring or cause to be brought into existence those securities; and

(b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

"issuer" means—

(a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;

(b) in the case of units of a unit trust scheme or prescribed investment scheme, the management company; and

(c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

"licence" means a Capital Markets Services Licence or a Capital Markets Services Representative's Licence granted under section 61;

[Am. Act A1406/2011]

"licensed bank" means a bank licensed under the Financial Services Act 2013 [*Act 758*];

[Am. Act A1499/2015]

"licensed institution" has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

"licensed merchant bank" has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

"licensed person" means a person holding a Capital Markets Services Licence and includes a person holding a Capital Markets Services Representative's Licence;

"listed", in relation to a security or a 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;

"listed corporation" means a corporation whose securities or any class of its securities have gained admission to be quoted on a stock market of a stock exchange;

"listing requirements", in relation to a body corporate which establishes or operates, or proposes to establish or operate, a stock market of a stock exchange, means the rules governing or relating to—

(a) the admission to the official list of any body corporate, government, unincorporated body or any other person for the purpose of the quotation on the stock market, securities issued or made available by a body corporate, government, unincorporated body or any other person or the removal from that official list and for other purposes; or

(b) the activities or conduct of any body corporate, government, unincorporated body and any other person who are admitted to that list,

whether those rules—

(A) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or

(B) are made by another person and adopted by the body corporate;

"management company" means a company by which or on whose behalf a unit of a unit trust scheme or prescribed investment scheme—

(a) has been or is proposed to be issued or offered for subscription or purchase; or

(b) in respect of which an invitation to subscribe or purchase has been made,

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

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

"officer" has the meaning assigned to it in the Securities Commission Malaysia Act 1993;

[Subs. Act A1499/2015]

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

"over-the-counter derivative" means a derivative other than a standardized derivative;

[Ins. Act A1406/2011]

"participant" means—

(a) a person who may participate in one or more of the services provided by a stock exchange or derivatives exchange; or

(b) a person who, under the rules of an approved clearing house, may participate in one or more of the services provided by the approved clearing house;

"participating organization" means any person who carries on the business of dealing in securities and is recognized as a participating organization by the rules of the stock exchange;

"party"' in relation to a proposed or discharged agreement, means a person who would be a party to the agreement if it were in effect;

"premises" means any place (whether enclosed or built on or not) and in particular, includes—

(a) a building, aircraft, vehicle or vessel;

(b) any structure, whether fixed or movable; and

(c) a part of premises (including a part of premises of a kind referred to in paragraph *(a)* or *(b)*);

"prescribed" means prescribed by the Minister under this Act or any regulations made under this Act, and where no mode is mentioned means prescribed by order published in the *Gazette*, and a power to prescribe includes the power to prescribe differently for different persons, securities, derivatives or transactions, or different classes, categories or descriptions of persons, securities, derivative or transactions;

"prescribed investment" means an interest as defined under subsection 84(1) of the Companies Act 1965 that has been exempted under section 96 of the Companies Act 1965 and in respect of which the Minister has made a prescription under section 5;

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

"public interest directors", in relation to a stock exchange, derivatives exchange or an exchange holding company, means persons who are appointed by the Minister under section 10;

"recognized market" means a stock market or a derivatives market operated or maintained by an operator registered under section 34;

[Ins. Act A1499/2015]

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

"registered person" means a person registered under section 76;

"Registrar" means the Registrar of Companies under the Companies Act 1965 and includes any Regional Registrar, Deputy or Assistant Registrar of Companies;

"regulated activity" means any of the types of regulated activities specified in Part 1 of Schedule 2;

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

"representative" means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such regulated activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

"rules", in relation to—

(a) a stock exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the stock exchange, or the conduct of its participating organizations and, without limiting the generality of the foregoing, includes—

(i) rules contained in the memorandum of association and the articles of association or other constituent document of the stock exchange;

(ii) rules and procedures governing the quotation of securities on the stock market of the stock exchange and listing requirements;

(iii) rules to ensure compliance by participating organizations of any obligations imposed by this Act or any other written law; and

(iv) rules in respect of such other matters as may be necessary or desirable for the proper and efficient operation and management of the stock exchange, including rules specifying fees and charges;

(b) an approved clearing house, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the approved clearing house and, without limiting the generality of the foregoing, includes rules and directions relating to—

(i) the provision of clearing and settlement services, and the suspension or withdrawal of such services;

(ii) the provision of services other than the services referred to in subparagraph (i);

(iii) the persons who may participate in one or more of the services referred to in subparagraph (i) or (ii);

(iv) the specification of fees and charges; and

(v) the default rules;

(c) a central depository, has the meaning assigned to it in the Securities Industry (Central Depositories) Act 1991;

(d) a derivatives exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management,

operations or procedures of the derivatives exchange or the conduct of its affiliates;

(e) an exchange holding company, means the memorandum of association and articles of association, including the rules regulating the activities and conduct of the company in its capacity as an exchange holding company;

[Am. Act A1406/2011]

(f) a recognized self-regulatory organization, means the memorandum of association and the articles of association of a recognized self-regulatory organization, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a recognized self-regulatory organization or the conduct of the members of the recognized self-regulatory organization; and

[Am. Act A1406/2011]

(g) a trade repository, means the memorandum of association and the articles of association, or rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a trade repository;

[Ins. Act A1406/2011]

"securities" means—

(a) debentures, stocks or bonds issued or proposed to be issued by any government;

(b) shares in or debentures of, a body corporate or an unincorporated body; or

(c) units in a unit trust scheme or prescribed investments,

[*Am. Act A1437/2012*]

and includes any right, option or interest in respect thereof

[Am. Act A1406/2011]

"securities laws" has the meaning assigned to it in, the Securities Commission Malaysia Act 1993;

"self-regulatory organization" means an organization that is recognized by the Commission pursuant to section 323;

"settlement", in relation to a market contract, means the discharge of the rights and liabilities of the parties to the market contract whether by performance, compromise or otherwise; and includes partial settlement effected in accordance with the rules of an approved clearing house;

"*Shariah* Advisory Council" means *Shariah* Advisory Council established under Securities Commission Malaysia Act 1993 [*Act 498*];

[Am. Act A1499/2015]

"Specified Exchange" means a person or body that operates a derivatives market outside Malaysia and is specified as a Specified Exchange under section 105;

"specified person" means a person or classes of person specified in Schedule 3;

"specify", where no mode is mentioned, means specify in writing, and a power to specify includes the power to specify differently for different persons, securities, derivatives or transactions, or different classes, categories or descriptions of persons, securities, derivatives or transactions;

"standardized derivative" means a derivative, including a futures contract, that is traded on a derivatives exchange, whose intrinsic characteristics is determined by that derivatives exchange and whose trade is cleared and settled by an approved clearing house;

[Ins. Act A1406/2011]

"stock exchange" means anybody corporate in relation to which an approval under subsection 8(2) is in force;

"stock market" means a market or other place at which, or a facility by means of which—

(a) offers to sell, purchases or exchanges of securities are regularly made or accepted;

(b) offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made; or

(c) information concerning the prices at which or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided;

"subsidiary" has the meaning assigned to it in section 5 of the Companies Act 1965;

"trade repository" means a body corporate approved under section 107B that collects and maintains information or records with respect to over-the-counter derivatives transactions or positions entered by any person, including any terms and conditions thereof, for the purpose of providing a centralized record keeping facility for over-the-counter derivatives;

[Ins. Act A1406/2011]

"trust account" means a trust account referred to in section 111 or 122;

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

[Am. Act A1406/2011]

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

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

(a) securities;

(b) derivatives; or

(c) any other property or asset;

[*Am. Act A1437/2012*]

"unlisted recreational club" means a corporation which provides the holders of its shares or debentures the right to use or enjoy any recreational, holiday or other related facilities and whose shares or debentures are not listed or proposed to be listed for quotation on any stock market of a stock exchange;

"value", in relation to an asset, includes amount;

"voting shares" has the meaning assigned to it in section 4 of the Companies Act 1965.

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

Associated person

3. (1) A reference in this Act to a person associated with another person shall be construed as a reference to—

(a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;

(b) any employee or partner of the person;

(c) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;

(d) where the other person is a body corporate—

(i) a director or secretary of the body corporate;

(ii) a body corporate that is related to the other person; or

(iii) a director or secretary of such a related body corporate;

(e) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—

(i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or

(iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be

required to dispose of such shares in accordance with the directions of the other of them;

(f) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate—

(i) a corporation in partnership with which the other person carries on a business of dealing in derivatives;

(ii) subject to subsection (2), a person who is a partner of the other person, otherwise than as a result of him dealing in securities or dealing in derivatives in partnership with the other person;

(iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;

(iv) a person who is a director of a body corporate that carries on a business of dealing in securities or dealing in derivatives and of which the other person is also a director; or

(v) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities or dealing in derivatives;

(g) a person with whom the other person is, by virtue of any regulation that may be introduced, to be regarded as associated in respect of the matter to which the reference relates;

(h) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or

(i) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in any of the preceding paragraphs, that last mentioned person.

(2) Where, in proceedings under this Act, it is alleged that a person referred to in subparagraph (1)*(f)*(ii) or (v) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of paragraph (1)*(e), (g)* or *(h)* by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity.

Interest in securities

4. (1) Where any property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that he has an interest, he shall be deemed to have interest in those securities.

(2) A right does not constitute an interest in a security where—

(a) a right, being a right or an interest described in the definition of "interest" in section 84 of the Companies Act 1965, was issued or offered to the public for subscription or purchase;

(b) the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased; or

(c) such a right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 84 of the Companies Act 1965.

(3) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—

(a) the body corporate is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person in relation to that security;

(b) that person has a controlling interest in the body corporate; or

(c) that person, or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than fifteen per centum of the votes attached to the voting shares in the body corporate.

(4) For the purposes of paragraph (3)*(c*), a person is an associate of another person if the first-mentioned person is—

(a) a corporation which, by virtue of section 6 of the Companies Act 1965 is deemed to be related to that other person;

(b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether

formal or informal, to act in relation to the security referred to in subsection (3);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;

(d) a body corporate which is, or the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or

(e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(5) A person shall be deemed to have an interest in a security in any one or more of the following circumstances where he—

(a) has entered into a contract to purchase a security;

(b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(c) has the right or power to acquire a security or an interest in a security, under an option, whether the right or power is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the

exercise of a right attached to a security, not being a security of which he is the registered holder.

(6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(7) For the purpose of determining whether a person has an interest in a security it is immaterial that the interest cannot be related to a particular security.

(8) There shall be disregarded—

(a) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purpose of a transaction entered into in the ordinary course of business in connection with the lending of money;

(b) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and

(c) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(9) An interest in a security shall not be disregarded by reason only of—

(a) its remoteness;

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

Prescription of securities, derivatives and capital market products

[Am. Act A1499/2015]

5. (1) Notwithstanding the definition of "securities", "derivatives" , "Islamic securities" or "Islamic derivatives" under this Act and "interest" as defined in subsection 84(1) of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette*, prescribe any instrument or product or class of instruments or products to be—

(a) securities;

(b) derivatives;

(c) capital market products;

(d) Islamic securities;

(e) Islamic derivatives; or

(f) Islamic capital market products,

for the purposes of the securities laws.

[Subs. Act A1499/2015]

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

(a) securities for the purposes of this Act or any particular provision of this Act; or

(b) a derivative for the purposes of this Act or any particular provision of this Act.

(3) In a prescription made under subsection (1) or (2) in respect of securities, derivatives, capital market products, Islamic securities, Islamic derivatives, or Islamic capital market products, the Minister may–

(a) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any securities or Islamic securities, specify in the prescription any provision of this Act to apply to such securities or Islamic securities;

(b) in the case of derivatives or Islamic derivatives, specify in the prescription any provision of this Act to apply to such derivatives or Islamic derivatives; and

(c) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any capital market product or Islamic capital market product, specify in the prescription any provision of this Act to apply to such capital market product or Islamic capital market product.

[Subs. Act A1499/2015]

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

Consequences of agreements becoming derivatives

6. If an agreement that was not a derivative when it was entered into becomes a derivative as a result of an action taken by any of the parties to the agreement at a later time—

(a) the parties to the agreement shall be deemed to have entered into a derivative at that later time; and

(b) the agreement shall constitute the derivative referred to in paragraph *(a)*.

PART II

SECURITIES AND DERIVATIVES MARKETS

Division 1

Markets

Establishment of stock markets or derivatives markets

7. (1) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a stock market or derivatives market that is not–

(a) a stock market of a stock exchange;

(b) a derivatives market of a derivatives exchange;

(c) a stock market of an exchange holding company that is itself approved as a stock exchange;

(d) a derivatives market of an exchange holding company that is itself approved as a derivatives exchange;

(e) a recognized market;

(f) an exempt stock market; or

(g) an exempt derivatives market.

[Subs. Act A1499/2015]

(2) [*Deleted]* *[Del. Act A1499/2015*]

(3) The Minister may, by order published in the *Gazette*—

(a) declare a particular stock market or derivatives market, or a stock market or derivatives market included in a particular class of stock markets or derivatives markets, to be an exempt stock market or exempt derivatives market for the purposes of this Act subject to such terms and conditions as he thinks reasonable and appropriate after having regard to, among other things,—

(i) the types of securities or derivatives traded or to be traded;

(ii) the types of participants;

(iii) the types of investors; or

(iv) the volume of trading,

relating to the particular stock market or derivatives market, or stock market or derivatives market included in the particular class of stock markets or derivatives markets; and

(b) revoke any declaration made under paragraph *(a)* or vary any term or condition as may be specified in the declaration, after having regard to, among other things,—

(i) any breach of the terms and conditions specified in the

declaration; or

(ii) such other matters as the Minister thinks fit.

(4) For the purposes of this section, the facilities specified in Schedule 1 that are—

(a) established and operated by Bank Negara; or

(b) operated by or on behalf of Bank Negara,

shall be deemed to be exempted under subsection (3).

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

[*Am. Act A1499/2015*]

Division 2

Market institutions

Subdivision 1 — Exchanges and exchange holding company

Power of Minister to approve stock exchange or derivatives exchange

8. (1) An application for the approval of a body corporate as a stock exchange or derivatives exchange may be made in writing to the Minister.

(2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as a stock exchange or derivatives exchange, subject to any terms and conditions as he thinks fit, if he is satisfied that—

(a) the body corporate will ensure that, as far as is reasonably practicable, it will operate an orderly and fair market in relation to securities and derivatives that are traded through its facilities;

(b) the body corporate will manage any risks associated with its business and operations prudently;

(c) the body corporate, in discharging its obligations under paragraph *(a)*, will not act contrary to the public interest and in particular the interest of investors;

(d) the body corporate is able to take appropriate action against its participating organizations or affiliates to whom the rules apply for any breach of its rules;

(e) the rules of the body corporate make satisfactory provision—

(i) for an orderly and fair market in relation to the securities or derivatives that are traded through its facilities;

(ii) for the proper regulation and supervision of its participating organizations or affiliates;

(iii) for the exclusion of persons who are not of good character and high business integrity from being recognized as participating organizations or affiliates;

(iv) for the expulsion, suspension or disciplining of its participating organization or affiliates and any person acting on behalf of such participating organization or affiliates, for

conduct that is inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or derivatives exchange;

(v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate or under which derivatives may be traded on the market through its facilities;

(vi) with respect to the conditions governing dealings in securities or dealing in derivatives by its participating organizations or affiliates;

(vii) with respect to the class of securities or derivatives that may be dealt in or traded on its facilities; and

(viii) generally for the carrying on of the business of the proposed stock exchange or derivatives exchange with due regard to the need for the protection of investors and public interest;

(f) the body corporate shall at all times have sufficient financial, human and other resources to ensure the provision of—

(i) an orderly and fair market in relation to securities or derivatives that are traded through its facilities;

(ii) adequate and properly equipped premises for the conduct of its business;

(iii) competent personnel for the conduct of its business; and

(iv) automated systems with adequate capacity, security arrangements and facilities to meet emergencies; and

(g) the interest of the public or the proper regulation of the market will be served by the granting of this approval.

(3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit to the Minister such application together with its recommendation.

(4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.

(5) Without limiting the generality of the terms and conditions specified in subsection (2), the Minister may in writing, on the recommendation of the Commission, amend, revoke or impose new terms and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the stock market or derivatives market.

Commission to approve amendment to rules of stock exchange, derivatives exchange or approved clearing house

9. (1) A stock exchange, derivatives exchange or approved clearing house shall as soon as practicable, submit or cause to be submitted to the Commission for its approval any proposed rules or any proposed amendments to existing rules.

(2) No amendment to the rules of a stock exchange, derivatives exchange or approved clearing house shall have effect unless it has been approved by the Commission under subsection (5).

(3) Where a stock exchange, derivatives exchange or approved clearing house proposes to make any amendment to its rules, the stock exchange, derivatives exchange or approved clearing house shall submit to the Commission—

(a) the text of the proposed amendment; and

(b) an explanation of the purpose of the proposed amendment.

(4) Where—

(a) proposed rules or amendments to existing rules involve the introduction of a class of derivatives, the instrument in respect of which is a commodity, to be offered for trading on a derivatives market of the derivatives exchange; and

(b) the Minister responsible in respect of the commodity is the Minister for the time being charged with the responsibility for plantation industries and commodities,

the Commission shall consult that Minister before notifying the derivatives exchange of its decision under subsection (5).

(5) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (1), give notice in writing to the stock exchange, derivatives exchange or approved clearing house that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

(6) The Commission may, by notice in writing, declare any class of rules of a stock exchange, derivatives exchange or approved clearing house to be a class of rules whose amendments do not require the approval of the Commission under subsection (5), and accordingly, any amendment to the rules of a stock exchange, derivatives exchange or approved clearing house that belongs to that class shall, subject to subsections (7) and (8), have effect notwithstanding that they have not been so approved under subsection (5).

(7) Where the Commission is of the opinion that any amendment to the rules of a stock exchange, derivatives exchange or approved clearing house made under subsection (6) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with

the stock exchange, derivatives exchange or approved clearing house, require the stock exchange, derivatives exchange or approved clearing house to submit such amendment for its approval under subsection (5).

(8) *(a)* where a rule amended by the stock exchange, derivatives exchange or approved clearing house under subsection (6) is the subject of a requirement made by the Commission under subsection (7), such amendment shall cease to have effect from the date of the Commission making such a requirement or such later date as the Commission may determine.

(b) this subsection shall not have effect until a reasonable time has been given to the stock exchange, derivatives exchange or approved clearing house to notify the persons affected by such amendment.

(9) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the stock exchange, derivatives exchange or approved clearing house, by written notice require the stock exchange, derivatives exchange or approved clearing house to amend or supplement its constitution or any of its rules in such manner and within such period as may be specified in the notice.

(10) A stock exchange, derivatives exchange or approved clearing house which contravenes subsection (3) or which contravenes a requirement made under subsection (7) or a written notice made under subsection (9) commits an offence.

Appointment of directors of exchange holding company, stock exchange and derivatives exchange

10. (1) In relation to an exchange holding company, a stock exchange or derivatives exchange other than a stock exchange or derivatives exchange that is referred to in subsection (2),—

(a) one third of the number of directors on the board of such exchange holding company, stock exchange or derivatives exchange, as the case may be, shall be appointed by the Minister, in consultation with the Commission, to be public interest directors of the exchange holding company, stock exchange or derivatives exchange and, notwithstanding the provision of any other written law, such public interest directors so appointed—

(i) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the exchange holding company, stock exchange or derivatives exchange;

[Am. Act A1406/2011]

(ii) shall hold office for a period specified by the Minister which shall not exceed a term of three years but shall be eligible for reappointment; and;

[Subs. Act A1406/2011]

(iii) may have his appointment revoked at any time by the Minister;

[Ins. Act A1406/2011]

(b) no person other than a public interest director referred to in paragraph *(a)* shall accept appointment, reappointment, election or re-election as a director of the exchange holding company, stock exchange or derivatives exchange unless the concurrence of the Commission is obtained and;

[Am. Act A1406/2011]

(c) the Minister may, on the recommendation of the Commission, vary the number of public interest directors appointed under paragraph *(a).*

[Ins. Act A1406/2011]

(2) Notwithstanding the provisions of subsection (1), in relation to the board of a stock exchange or derivatives exchange that is a subsidiary of an exchange holding company, no person shall accept appointment, reappointment, election or re-election as a director of such stock exchange or derivatives exchange unless the concurrence of the Commission is obtained.

[Am. Act A1406/2011]

(3) The Minister shall, in consultation with the Commission, appoint one person from amongst the public interest directors so appointed under subsection (1) to be the non-executive Chairman of the board of the exchange holding company, a stock exchange or derivatives exchange, as the case may be, whose remuneration shall be determined by the board of the exchange holding company, stock exchange or derivatives exchange, as the case may be.

(4) Where the concurrence of the Commission is required under subsection (1) or (2), the Commission may refuse to concur if—

(a) any proposed director is an undischarged bankrupt, whether within or outside Malaysia;

(b) a judgement debt against the proposed director has not been satisfied in whole or in part;

(c) the proposed director has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(d) the proposed director—

(i) has been convicted, whether within or outside Malaysia, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under the securities laws; or

(e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.

(5) For the purposes of this section, a director includes a person who is a chief executive.

[Subs. Act A1406/2011]

Duties of exchange

11. (1) For the purposes of this section, sections 12, 13 and 27—

(a) "exchange" refers to a stock exchange or a derivatives exchange; and

(b) "relevant person" means a participating organisation or an affiliate.

(2) It shall be the duty of an exchange to ensure, so far as may be reasonably practicable, an orderly and fair market in the securities or derivatives that are traded through its facilities.

(3) In performing its duty under subsection (2), the exchange shall—

(a) act in the public interest having particular regard to the need for the protection of investors; and

(b) ensure that where any interests that it is required to serve under any law relating to corporations conflict with the interest referred to in paragraph *(a)*, the latter shall prevail.

(4) It shall be the duty of the exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with such rules.

(5) An exchange shall immediately notify the Commission if it becomes aware of—

(a) any matter which adversely affects, or is likely to adversely affect, the ability of any relevant person to meet its obligations in respect of its business of dealing in securities or dealing in derivatives, including the ability of any relevant person to comply with the minimum financial requirements as may be prescribed under this Act; or

(b) any irregularity, breach of any provision of the securities laws or the rules of the exchange or approved clearing house, or any other matter which, in the opinion of the exchange, indicates or may indicate, that the financial standing or financial integrity of any relevant person or of the chief executive or directors of the relevant person is in question or may reasonably be affected.

(6) Without prejudice to subsection (5), when an exchange reprimands, fines, suspends, expels or otherwise disciplines any of its relevant person, it shall, within seven days, give to the Commission in writing the following particulars:

(a) the name and address of the business of the relevant person;

(b) the reason for and the nature of the action taken;

(c) the amount of the fine;

(d) the period of suspension, if any; and

(e) any other disciplinary action taken.

(7) An exchange shall at all times have sufficient financial, human and other resources to ensure the provision of—

(a) an orderly and fair market in relation to securities or derivatives that are traded through its facilities;

(b) adequate and properly equipped premises for the conduct of its business;

(c) competent personnel for the conduct of its business; and

(d) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

Withdrawal of approval of exchange

12. (1) The Minister may, on the recommendation of the Commission, by notice published in the *Gazette*, and by such other means as the Commission considers appropriate—

(a) withdraw an approval granted under section 8 to an exchange, with effect from the date specified in the notice; or

(b) direct the exchange to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of markets in securities or derivatives, where any of the following circumstances occurs:

(a) the exchange ceases to operate its stock market or derivatives market, as the case may be;

(b) the exchange is being wound up or otherwise dissolved, whether within or outside Malaysia;

(c) the exchange has contravened any term or condition of its approval or is charged with any offence under any securities laws;

(d) the exchange has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;

(e) any information provided for the purposes of section 8, was false or misleading in a material particular;

(f) a judgement debt against the exchange has not been satisfied in whole or in part;

(g) a receiver, a receiver and manager, or equivalent person has been appointed, whether within or outside Malaysia in respect of any property of the exchange;

(h) the exchange has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(i) the exchange on its own accord applies to the Minister to withdraw the approval as a stock exchange or a derivatives exchange granted to it and the Minister, on the recommendation of the Commission, thinks it fit to do so.

(3) For the purposes of paragraph (2)*(a)*, an exchange shall be deemed to have ceased to operate its stock market or derivatives market, if it has ceased to operate

its stock market or derivatives market, as the case may be, for a period of one month unless it has obtained the prior approval of the Minister to do so.

(4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the exchange to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purpose of—

(a) closing down the operations of the exchange or ceasing to provide the services as specified in the notice; or

(b) protecting the interest of investors or the public interest.

(5) Where the Minister has granted permission to an exchange under subsection (4), the exchange shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 7.

(6) The Minister shall not take any action under subsection (1) without giving an exchange an opportunity to be heard.

(7) Where an exchange has ceased to comply with any term or condition specified in section 8, or where the Minister receives a recommendation from the Commission under this section, the Minister may, instead of withdrawing the approval under subsection (1), direct that trading on the exchange be suspended until such time as the exchange has, to the satisfaction of the Minister, complied with such term or condition, or rectified the matter forming the basis of the recommendation by the Commission, or until the Minister revokes the direction.

(8) The Minister shall give the exchange not less than fourteen days' notice in writing of his intention to direct suspension of trading under subsection (7) and the notice shall specify the grounds for the suspension.

Effect of withdrawal of approval of an exchange

13. Any withdrawal of approval or direction issued under section 12 shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into on the stock market or derivatives market operated by the exchange, as the case may be, whether the agreement, transaction or arrangement was entered into before or, where subsection 12(4) applies, after the withdrawal of the approval or issuance of the direction under section 12; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Subdivision 2 — Exchange holding company

Exchange holding company

14. No body corporate shall be an exchange holding company or a holding company of an exchange holding company, unless the body corporate has been approved as an exchange holding company under section 15.

Power of Minister to approve an exchange holding company

15. (1) An application for approval of a body corporate as an exchange holding company may be made in writing to the Minister.

(2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as an exchange holding company, subject to any terms and conditions as he thinks fit, if he is satisfied that it is appropriate to do so—

(a) for the protection of investors;

(b) in the public interest; or

(c) for the proper regulation of a stock market of a stock exchange or a derivatives market of a derivatives exchange.

(3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit to the Minister such application together with its recommendation.

(4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.

(5) The Minister may, on the recommendation of the Commission, impose different conditions or restrictions or give different directions with respect to different applications for approval as an exchange holding company.

(6) For the avoidance of doubt—

(a) to the extent that an exchange holding company would be holding itself out as, or is providing, operating or maintaining, a stock market of a stock exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8;

(b) to the extent that an exchange holding company would be holding itself out as, or is establishing or maintaining, a central depository, the exchange holding company shall obtain an approval in accordance with the provisions of sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991;

(c) to the extent that an exchange holding company is holding itself out as, or is providing clearing and settlement services of —

(i) a clearing house of a stock exchange; or

(ii) a clearing house of a derivatives exchange,

the exchange holding company shall obtain approval in accordance with the provisions of section 38; and

(d) to the extent that an exchange holding company is holding itself out as, or is providing, operating or maintaining, a derivatives market of a derivatives exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8.

(7) Notwithstanding the provisions of this Act and the Securities Industry (Central Depositories) Act 1991, the Minister may, in his discretion, exempt the applicant from any of the requirements of section 8 or 38 of this Act or sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991, as he thinks fit, for the purposes of giving his approval.

(8) Notwithstanding the provisions of section 38, the Commission may, with the approval of the Minister, exempt the applicant from any of the requirements of section 38, as it thinks fit, for the purpose of granting approval to an exchange holding company as an approved clearing house.

Annual Regulatory Report on compliance with ongoing requirements

16. (1) Within three months after the end of each financial year, a body corporate that has been approved as a stock exchange, derivatives exchange or an exchange holding company shall prepare and submit to the Commission a regulatory report on the extent to which it has complied with the requirements under sections 11 and 21, and its rules, during the financial year.

(2) The Commission shall forthwith send a copy of the regulatory report submitted under subsection (1) to the Minister.

(3) For the purposes of subsection (1)—

(a) where a stock exchange or a derivatives exchange is a subsidiary of an exchange holding company, the Commission may specify the entity that is required to submit a regulatory report; and

(b) the Commission and the stock exchange, derivatives exchange or the exchange holding company, as the case may be, may determine between themselves the scope and content of the regulatory report.

(4) Upon receipt of the regulatory report under subsection (1), the Commission may at any other time it thinks necessary—

(a) conduct a regulatory audit of a body corporate that has been approved as a stock exchange, a derivatives exchange or an exchange holding company, as the case may be;

(b) appoint any independent person to assist the Commission in a regulatory audit conducted under this subsection; and

(c) charge the costs related to the conduct of the regulatory audit to the stock exchange, derivatives exchange or the exchange holding company, as the case may be.

(5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the regulatory audit conducted by the Commission under subsection (4).

(6) For the purposes of this section—

(a) “regulatory audit” refers to an audit on the extent to which a stock exchange, a derivatives exchange or exchange holding company,

as the case may be, has complied with its regulatory responsibilities, duties or functions under this Act, the rules, and any securities laws; and

(b) "regulatory report" is a report that is submitted under subsection (1).

Special report by exchange holding company about compliance with ongoing requirements

17. Notwithstanding the provisions of section 16, the Minister may, at any time, require a body corporate that has been approved as a stock exchange, a derivatives exchange or an exchange holding company, as the case may be, to prepare and submit to the Minister a special report on the extent to which the stock exchange, derivatives exchange or the exchange holding company, as the case may be, has complied with the requirements of the securities laws and rules.

Withdrawal of approval of exchange holding company

18. (1) The Minister may, on the recommendation of the Commission, by a notice published in the *Gazette*, and by such other means as the Commission thinks appropriate—

(a) withdraw an approval granted under section 15 to an exchange holding company, with effect from the date specified in the notice; or

(b) direct an exchange holding company to cease to provide or operate such facilities, or provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied

that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of the markets in securities or derivatives, where any of the following circumstances occurs:

(a) the exchange holding company ceases to be a holding company of a stock exchange or a derivatives exchange, as the case may be;

(b) the exchange holding company is being wound up or otherwise dissolved, whether within or outside Malaysia;

(c) the exchange holding company has contravened any term or condition of its approval or is charged with any offence under any securities laws;

(d) the exchange holding company has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;

(e) any information provided for the purposes of section 15 was false or misleading in a material particular; or

(f) an exchange holding company on its own accord applies to the Minister to withdraw the approval as an exchange holding company granted to it and the Minister, on the recommendation of the Commission, thinks fit to do so.

(3) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the exchange holding company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purposes of—

(a) closing down the operations of the exchange holding company or ceasing to provide the services specified in the notice; or

(b) protecting the interest of the investors or the public interest.

(4) Where the Minister has granted permission to an exchange holding company under subsection (3), the exchange holding company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened sections 7, 14 and 37 of this Act and section 3 of the Securities Industry (Central Depositories) Act 1991, if applicable.

(5) The Minister shall not take any action under subsection (1) without giving an exchange holding company an opportunity to be heard.

Effect of withdrawal of approval of exchange holding company

19. Any withdrawal of an approval or issuance of a direction under section 18 shall not operate so as to prejudice sections 13 and 40 of this Act and section 5B of the Securities Industry (Central Depositories) Act 1991.

Listing of exchange holding company on stock exchange

20. (1) Where the approval of the Commission under section 214 has been granted for the securities of an exchange holding company to be listed on a relevant stock exchange, the exchange holding company shall enter into such arrangements as the Commission may require—

(a) for dealing with possible conflicts of interest that may arise from the listing on the relevant stock exchange;

(b) for the purpose of ensuring the integrity of trading of the securities of the exchange holding company; and

(c) for the compliance with obligations as a listed corporation if the exchange holding company was to become a listed corporation,

and the exchange holding company shall comply with such requirements.

(2) The listing requirements of the relevant stock exchange shall be deemed to allow the Commission, instead of the relevant stock exchange, to make decisions and to take action, or to allow the Commission to require the relevant stock exchange to make decisions and to take action on the Commission's behalf on—

(a) the admission to or removal of the exchange holding company from the official list of the relevant stock exchange;

(b) the stopping or suspension of the securities of the exchange holding company from being listed on the relevant stock exchange; and

(c) such other matters as the Commission thinks fit for the purpose of subsection (1).

(3) An arrangement under subsection (1) may provide for the exchange holding company to pay such fees to the Commission as the Commission may determine for services provided by the Commission under the arrangement, or otherwise provided under or for the purposes of this section.

(4) Without prejudice to the provisions of section 9, the Commission may, by notice in writing—

(a) modify the listing requirements of the relevant stock exchange for the purpose of applying to the listing for quotation or trading of the securities of the exchange holding company; and

(b) exempt the exchange holding company from any listing requirement of the relevant stock exchange.

(5) For the purposes of this section, the "relevant stock exchange" means the stock exchange of the exchange holding company.

Duties of exchange holding company

21. (1) It shall be the duty of an exchange holding company to ensure—

(a) insofar as may be reasonably practicable—

(i) an orderly and fair market in relation to securities that are traded on the market through the facilities of the stock exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a stock exchange, as the case may be;

(ii) an orderly and fair market for trading in derivatives on the derivatives market through the facilities of the derivatives exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a derivatives exchange, as the case may be;

(iii) that there are orderly dealings in securities deposited or lodged with a central depository through the facilities of a central depository of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a central depository, as the case may be;

(iv) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in securities cleared or settled through the facilities of a clearing house for a stock market of a stock exchange or through the facilities of any of the subsidiaries of an exchange holding

company that is an approved clearing house, as the case may be; and

(v) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in derivatives cleared or settled through the facilities of a clearing house for a derivatives market of a derivatives exchange or through the facilities of any of its subsidiaries that is duly approved as a clearing house of a derivatives exchange, as the case may be;

(b) the prudent risk management of its business and operations; and

(c) that the stock exchange, derivatives exchange, approved clearing house or central depository, as the case may be, comply with any lawful requirements placed on it under any securities laws and any other laws applicable to it.

(2) In performing its duty under subsection (1) the exchange holding company shall—

(a) act in the public interest, having particular regard to the need for the protection of investors; and

(b) ensure that where its own interest or any interest that it is required to serve under any law relating to corporations conflicts with the interest referred to in paragraph *(a)*, the latter shall prevail.

(3) An exchange holding company shall immediately notify the Commission if it becomes aware of—

(a) any matter which adversely affects or is likely to adversely affect—

(i) the ability of the exchange holding company to meet its obligations in respect of its business as an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house or a central depository, as the case may be, including its ability to comply with any requirements as may be specified by the Commission, if applicable; or

(ii) the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a stock exchange, a derivatives exchange, an approved clearing house or a central depository, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, if applicable; or

(b) any irregularity, breach of any provision of the securities laws, the rules of a stock exchange, a derivatives exchange, an approved clearing house or a central depository, or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.

(4) Where an exchange holding company, which itself has been approved as a stock exchange under section 8, undertakes any function of a subsidiary that is approved as a stock exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

(5) Where an exchange holding company, which itself has been approved as a central depository under section 5 of the Securities Industry (Central Depositories) Act 1991, undertakes any function of a subsidiary that is approved as a central depository under section 5 of the Act, such exchange holding company shall enter into such

arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

(6) Where an exchange holding company, which itself has been approved as a derivatives exchange under section 8, undertakes any function of a subsidiary that is approved as a derivatives exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

(7) Where an exchange holding company, which itself has been approved as a clearing house of a stock exchange or a derivatives exchange under subsection 38(4), undertakes any function of a subsidiary that is approved as an approved clearing house under subsection 38(4), such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

(8) Where the duties and obligations of a stock exchange, a derivatives exchange, an approved clearing house or a central depository, as the case may be, are discharged in accordance with the arrangements referred to in subsection (4), (5), (6) or (7), such duties and obligations shall be deemed to have been satisfied by both the exchange holding company and its subsidiary.

(9) Where the rules of a subsidiary of an exchange holding company which is a stock exchange, a derivatives exchange, an approved clearing house or a central depository provide for such subsidiary to take any action, the exchange holding company shall have the power to take such action on behalf of the relevant subsidiary.

(10) Nothing in subsection (9) shall preclude a subsidiary of an exchange holding company which is a stock exchange, a derivatives exchange, an approved clearing house or a central depository from itself taking any action against any person to

whom its rules apply but such subsidiary shall not take any action under its rules in the event the exchange holding company takes such action pursuant to subsection (9).

Risk Management Committee of exchange holding company

22. An exchange holding company shall establish and maintain a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the exchange holding company and of its subsidiaries, and to submit such policies to the board of the exchange holding company for its consideration.

Restriction on exchange holding company from reducing its shareholding

23. No exchange holding company shall reduce its shareholding in a stock exchange, a derivatives exchange, an approved clearing house or a central depository, as the case may be, to a level below seventy five per centum, or such other percentage as may be specified from time to time by the Minister, of the total issued and paid-up capital in the stock exchange, derivatives exchange, approved clearing house or central depository, as the case may be, without first obtaining the written approval of the Minister.

Disposal and acquisition of assets, *etc.*

24. (1) Without prejudice to the provisions of section 23, where—

(a) an exchange holding company;

(b) a stock exchange;

(c) a derivatives exchange;

(d) an approved clearing house;

(e) a central depository; or

(f) any other relevant body corporate as defined under subsection 26(5),

intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.

(2) Where the Commission makes a specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, stock exchange, derivatives exchange, approved clearing house, central depository, or any other relevant body corporate, as the case may be, or significant in affecting the business direction of such persons.

Control in shareholding of exchange holding company

25. (1) Notwithstanding section 24, no person shall enter into any agreement or arrangement to acquire any voting shares of an exchange holding company by which, if the agreement or arrangement is carried out, he would acquire, together with any other voting shares of the exchange holding company which were then already held by him, or by him and by persons associated with him, voting shares of five per centum or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company, without first obtaining the prior written approval of the Minister.

(2) An application for approval under subsection (1) shall be made by the person intending to acquire voting shares referred to therein and shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.

(3) The Minister may grant his approval subject to such terms and conditions as he thinks fit to impose.

Power to issue directions

26. (1) The Commission may serve a written notice on an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository or a relevant body corporate if the Commission is satisfied that—

(a) a conflict exists or may come into existence between—

(i) the interest of a body corporate that has been approved as an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository or a relevant body corporate, as the case may be; and

(ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the exchange holding company, stock exchange, derivatives exchange, approved clearing house, central depository or the relevant body corporate, as the case may be;

(b) such conflict of interest as set out under paragraph *(a)* is likely to continue or be repeated; or

(c) it is necessary or expedient for—

(i) ensuring fair and orderly markets;

(ii) the protection of investors, or in the public interest;

(iii) ensuring the integrity of the capital markets; or

(iv) the effective administration of securities laws.

[Subs. Act A1406/2011]

(1A) Where the Commission exercises its powers under subsection (1), the Commission may state the reasons in support of the ground for the notice and direct the person referred to in subsection (1) to forthwith take such actions as are specified in the notice, including steps in relation to any of its affairs, business or property.

[Ins. Act A1406/2011]

(2) A notice served under subsection (1) shall take effect immediately.

(3) A body corporate that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.

(4) A body corporate that has been served with a notice under subsection (1) may appeal against the notice to the Minister not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.

(5) For the purposes of this section, “relevant body corporate” means a body corporate of which an exchange holding company is a shareholder who, either alone or with any associated person, is entitled to exercise or control the exercise of more than thirty-three per centum of the aggregate of the nominal amount of all voting shares in the body corporate.

(6) Notwithstanding anything under securities laws, if the Commission thinks it necessary or expedient for the protection of investors or the effective administration of securities laws or in the public interest, the Commission may discharge any of the duties of a stock exchange or derivatives exchange in relation to—

(a) the supervision of the capital market and market participants; or

(b) the enforcement of—

(i) the rules of the stock exchange governing the quotation of securities on the stock market of the stock exchange and the listing requirements; or

(ii) the rules governing compliance by participating organisations of the stock exchange or affiliates of the derivatives exchange.

[Ins. Act A1406/2011]

(7) Where the Commission exercises its power under subsection (6), subsection 11(4) shall not apply to the extent of the power exercised by the Commission.

[Ins. Act A1406/2011]

(8) Where the Commission exercises its power under subsection (6), it may levy on the stock exchange or derivatives exchange a regulatory fee of such amount as may be prescribed by the Minister.

[Ins. Act A1406/2011]

Closure of stock exchange or derivatives exchange

[Subs. Act A1499/2015]

27. (1) The Minister may, on the recommendation of the Commission, direct an exchange to close a stock market or a derivatives market of the exchange.

[Subs. Act A1499/2015]

(2) In exercising his power under subsection (1), the Minister may, on the

recommendation of the Commission–

(a) direct the exchange to close the stock market or the derivatives market for a period not exceeding five business days; and

(b) extend the closure of the stock market or derivatives market under paragraph *(a)* for any further periods each not exceeding five business days.

[Subs. Act A1499/2015]

(3) The Minister shall specify the grounds for the closure in the direction given and the grounds for any extension of closure under subsection (2).

[Subs. Act A1499/2015]

(4) The Commission may make the recommendation in subsection (1) if the Commission is of the opinion that an orderly and fair market for trading in securities on a stock market or trading in derivatives on a derivatives market, of an exchange is being or is likely to be prevented because –

(a) an emergency or natural disaster has occurred within Malaysia; or

(b) there exists an economic or financial crisis or any other circumstances within or outside Malaysia.

[Subs. Act A1499/2015]

(5) The Commission shall, as soon as may be practicable, give a copy of the direction or extension under subsection (2) to an approved clearing house and direct the approved clearing house to do all that it is reasonably capable of doing to give effect to such direction or extension while the direction or extension remains in force.

[Subs. Act A1499/2015]

(6) In this section –

"business day" means any day on which there is official trading on the exchange but for the closure;

"fair market" includes but is not limited to a market that reflects the forces of supply and demand.

[Subs. Act A1499/2015]

Power of Commission in respect of stock exchange or derivatives exchange

[Am. Act A1406/2011]

28. (1) Where the Commission exercises its power under subparagraph 26(1)(c)(i) or (ii), the Commission shall specify in the notice, such actions that are to be taken, including any of the following:

[Am. Act A1406/2011]

(a) prohibit the trading of particular securities or a particular class of securities made available by a corporation on the stock market of a stock exchange;

(b) terminate or suspend trading on the stock exchange or derivatives exchange;

[Am. Act A1406/2011]

(c) confine trading to liquidation of derivatives positions;

[Am. Act A1406/2011]

(d) order the liquidation of all positions or any part thereof or the reduction in such positions;

(e) limit trading to a specific price range;

(f) modify trading days or hours;

(g) alter conditions of delivery;

(h) fix the settlement price at which positions are to be liquidated;

(i) require any person to act in a specified manner in relation to trading in securities or derivatives or any class of securities or derivatives;

[Am. Act A1406/2011]

(j) require margins or additional margins for any securities or derivatives; and

[Am. Act A1406/2011]

(k) modify or suspend any of the rules of the stock exchange or derivatives exchange.

[Am. Act A1406/2011]

(2) Where the Commission issues a notice pursuant to subparagraph 26(1)(c)(i) or (ii), the Commission shall furnish to the Minister a written report setting out the reasons for the giving of the notice.

[Subs. Act A1406/2011]

(3) Any person who is aggrieved by any action taken by the Commission under this section may appeal to the Minister whose decision shall be final.

(4) Notwithstanding any appeal under subsection (3), any action taken by the Commission under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

(5) A stock exchange, a derivatives exchange or an approved clearing house, as the case may be, shall comply with the written notice issued pursuant to subparagraph 26(1)(c)(i) or (ii).

[Am. Act A1406/2011]

Provision of assistance to Commission

29. (1) An exchange holding company, a stock exchange, a derivatives exchange or an approved clearing house shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of an exchange holding company, a stock exchange, a derivatives exchange or an approved clearing house or in respect of such dealing in securities or dealing in derivatives or any other information as the Commission or such person may require for the proper administration of the securities laws.

(2) A person acting on behalf of, or authorized by, the Commission shall be entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading facility of a stock market of a stock exchange or a derivatives market of a derivatives exchange.

(3) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of, or authorized by, the Commission, access in accordance with subsection (2) to the trading facility of a stock market of a stock exchange or a derivatives market of a derivatives exchange commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Suspension order relating to stock exchange, derivatives exchange, approved clearing house or central depository

30. (1) Without prejudice to sections 12, 27 or 28, where the Minister is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of a stock exchange, a derivatives exchange, an approved clearing house or a central depository, the Minister may, on the recommendation of the Commission, make an order ("suspension order") relating to all or any of the following:

(a) the functions of the board of the stock exchange, derivatives exchange, approved clearing house or central depository, or any member of its board;

(b) the functions of any committee (including a sub-committee) established by a board referred to in paragraph *(a)*; or

(c) the functions of the principal officer, by whatever name called, who is responsible for the conduct of the business and operations of the stock exchange, derivatives exchange, approved clearing house or central depository, as the case may be.

(2) For so long as a suspension order is in force, the following provisions shall apply:

(a) none of the functions to which the order relates shall be performed by any board, committee or officer thereof;

(b) any function to which paragraph *(a)* applies may be performed by such person as shall be specified in the order in relation to that function; and

(c) a person referred to in paragraph *(a)* shall not, by act or omission, either directly or indirectly, affect the manner in which functions

therein referred to are performed unless the person to perform the functions under paragraph *(b)* requests for his assistance.

(3) Subject to subsection (6), a suspension order shall continue in force for such period, being a period not exceeding six months, as shall be specified in the order.

(4) A suspension order or any extension thereof under subsection (6) shall take effect when a copy of the order or notice of the extension is served under paragraph (7)*(a*) on the stock exchange, derivatives exchange, approved clearing house or central depository to which the order relates.

(5) Without prejudice to subsection (4), where a suspension order is made or such an order is extended under subsection (6), the Commission shall, where it is practicable to do so, as soon as may be practicable, give a copy of the order or, the notice of its extension, as the case may be to the principal officer of the stock exchange, derivatives exchange, approved clearing house or central depository to which the order relates and to such members of the governing body thereof (if any) as the Commission may consider appropriate in the circumstances.

(6) The Minister may, on the recommendation of the Commission, extend the period during which a suspension order is to remain in force for any further periods each not exceeding three months.

(7) Where a suspension order is made or extended under this section, the Commission shall—

(a) forthwith serve a copy of the order or notice in writing of the extension on the stock exchange, derivatives exchange, approved clearing house or central depository to which the order relates; and

(b) cause the suspension order or the notice of the extension, as the case may be, to be published in at least one national language daily newspaper and one English language daily newspaper.

(8) A person who contravenes a suspension order issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

(9) For the purposes of this section, "principal officer" includes a person, by whatever name called, who either individually or jointly with one or more other persons, is responsible for the conduct of the business and the administration of the stock exchange, derivatives exchange, approved clearing house or central depository.

Power of Commission upon contravention of section 23, 24 or 25

31. (1) Notwithstanding any of the provisions in any memorandum and articles of association, the Companies Act 1965, or any rule of law, but subject to the provisions of this Act, where the Commission is satisfied that any person has contravened the provisions of section 23, 24 or 25, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention—

(a) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such voting shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them;

(b) prohibit the exercise of any voting rights in respect of such shares;

(c) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or

(d) except in liquidation, prohibit the payment of any sums due from the exchange holding company on such shares, whether in respect of capital or otherwise.

(2) A preliminary order made under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Commission thinks fit, if, in the opinion of the Commission, it needs to be publicised.

(3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies, and on any other person specified in the order or to whom the order is directed.

(4) No person shall be given an opportunity to be heard before the Commission makes a preliminary order under subsection (1) against him or which affects him in any manner.

(5) Any defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order, may within fourteen days of the service of the order on the defaulting person, make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.

(6) The Commission may, after considering the representations made under subsection (5), either confirm, revoke or vary the preliminary order in such manner as it thinks fit.

(7) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.

(8) The Commission may give any instruction or direction to the directors or officers of the exchange holding company, stock exchange, derivatives exchange,

approved clearing house, central depository or any other relevant body corporate as defined under subsection 26(5), as the case may be, as may be necessary or requisite to give effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.

(9) Any transaction, including any agreement or arrangement in relation to any shares, which is in contravention of any preliminary order, or of any order confirmed under subsection (6), or of any instruction or direction given by the Commission under subsection (8), shall be void and of no effect.

(10) A person who contravenes any preliminary order, any order confirmed under subsection (6), or any instruction or direction given under subsection (8), commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(11) The satisfaction of the Commission under subsection (1) that the provisions of section 23, 24 or 25 have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

Subdivision 3 — General

Publication of notice of suspension of trading or closure

32. [*Deleted*] *[Del. Act A1499/2015*]

Rights of stock exchange, derivatives exchange or approved clearing house not to be affected by laws relating to contracts

[*Del. Act A1499/2015*]

33. [*Deleted*] *[Del. Act A1499/2015]*

Subdivision 4 — Recognized market

Recognized market operator

34. (1) For the purposes of paragraph 7(1)(*e*), the Commission may upon application by a person, register the person as a recognized market operator subject to any terms and conditions as the Commission considers necessary.

(2) The Commission may, from time to time, add, vary, amend or revoke any terms and conditions imposed under subsection (1).

[Subs. Act A1499/2015]

Application for registration

35. (1) An application under subsection 34(1) shall be accompanied by such documents and information and in such manner as the Commission may specify.

(2) Where an applicant under subsection 34(1) is an operator of a stock market or a derivatives market outside Malaysia, the Commission may, in registering the applicant as a recognized market operator, have regard to, whether—

(a) the applicant is already authorized to operate a stock market or derivatives market in the foreign jurisdiction;

(b) the applicant is from a recognized and comparable jurisdiction; and

(c) the Commission has a regulatory arrangement with the foreign supervisory authority.

(3) Notwithstanding subsections (1) and (2), the Commission may, with the consent of the applicant, treat an application under subsection 34(1) as an application

under section 8 if the Commission is of the opinion that the applicant would be more appropriately regulated as an approved stock exchange or derivatives exchange.

[Subs. Act A1499/2015]

Duties of recognized market operator

36. A recognized market operator shall—

(a) comply with any direction issued by the Commission, whether of a general or specific nature, and the recognized market operator shall give effect to such directions; and

(b) provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires.

[Subs. Act A1499/2015]

Withdrawal of registration

36A. (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice.

(2) Such notice referred to in subsection (1) shall state the grounds in support of the withdrawal.

(3) Notwithstanding the withdrawal under subsection (1), the Commission may permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—

(a) closing down the operations of the recognized market to which the withdrawal relates; or

(b) protecting the interest of the investors or the public interest.

(4) Where the Commission has granted permission to a person under subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 34.

(5) The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator that has been registered under subsection 34(1) unless it has given the recognized market operator an opportunity to be heard.

(6) Any withdrawal of registration made under this section shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement

[Subs. Act A1499/2015]

Change in status

36B. (1) The Commission may, on application by a recognized market operator or on its own initiative, from time to time, review the status of a recognized market operator under this Subdivision.

(2) The Commission may, following the review conducted under subsection (1), require the recognized market operator to make an application for the recognized market to be an approved stock exchange or derivatives exchange under section 8.

(3) The Commission shall not exercise its powers under subsection (2) without giving the person an opportunity to be heard.

[Subs. Act A1499/2015]

Subdivision 5 — Approval of clearing house

Establishing or operating a clearing facility

37. (1) No person shall establish or operate a clearing facility unless the person has been approved to establish or operate a clearing facility under subsection 38(4).

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

(3) Subsection (1) shall not apply to any person providing, or holding out as providing, clearing facilities for an exempt stock market or an exempt derivatives market.

Power of Commission to approve clearing house

38. (1) An application for the approval to establish or operate a clearing house shall be in writing to the Commission and shall be accompanied by a copy of the rules of the proposed clearing house including a copy of its constitution and any information as may be required by the Commission.

(2) The rules of the proposed clearing house must provide for—

(a) the efficient provision of the clearing house facilities in relation to securities and derivatives that are cleared through its clearing facilities;

(b) the proper regulation and supervision of its participating organisations or affiliates that used its clearing facilities;

(c) the clearing house to enter into contracts with participating organisations or affiliates under which they would agree to be bound by the rules of the clearing house;

(d) the making of rules, including rules that make provision for a quick and fair method of settling disputes—

(i) between the clearing house and its participating organisations or affiliates; and

(ii) between those participating organisations or affiliates and their clients;

(e) the expulsion, suspension or disciplining of a participating organisation or affiliate for the failure to comply with the rules of the clearing house; and

(f) satisfactory provision for the class of securities or derivatives that may be cleared on its facilities.

(3) The proposed clearing house shall at all times have sufficient financial, human and other resources to ensure the provision of—

(a) adequately and properly equipped premises for the conduct of its business;

(b) competent personnel for the conduct of its business; and

(c) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

(4) Where the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of a clearing house, it may, with the concurrence of the Minister by notice in writing, approve the person to establish or operate a clearing house subject to such conditions as the Commission thinks fit.

(5) The clearing house shall provide clearing house facilities for a stock market of the relevant stock exchange or for a derivatives market of the relevant derivatives exchange, as the case may be.

Withdrawal of approval

39. (1) The Commission may with the concurrence of the Minister by notice in writing—

(a) withdraw its approval granted under subsection 38(4) to an approved clearing house with effect from the date specified in the notice; or

(b) direct the approved clearing house to cease to provide or operate, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.

(2) The Commission shall not withdraw its approval or issue a direction under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities or derivatives, where any of the following circumstances occurs:

(a) the approved clearing house ceases to provide clearing facilities;

(b) the approved clearing house is being wound up or otherwise dissolved, whether within or outside Malaysia;

(c) the approved clearing house has contravened section 9 or any term or condition of its approval or is charged with any offence under any securities laws;

(d) the approved clearing house has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;

(e) any information provided for the purposes of section 38 was false or misleading in a material particular;

(f) a judgement debt against the approved clearing house has not been satisfied in whole or in part;

(g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether within or outside Malaysia, in relation to or in respect of any property of the approved clearing house;

(h) the approved clearing house has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

(i) the approved clearing house has on its own accord applied to the Commission to withdraw the approval granted to it and the Commission, with the concurrence of the Minister, thinks it fit to do so.

(3) For the purposes of paragraph (2)(*a*), the approved clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such

facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.

(4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Commission may permit the person approved to provide clearing facilities to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice published under that subsection for the purpose of—

(a) closing down the operations of the approved clearing house or ceasing to provide the services specified in the notice; or

(b) protecting the investors or the public interest.

(5) Where the Commission has granted permission to the person approved to provide clearing facilities under subsection (4), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 37.

(6) The Commission shall not take any action under subsection (1) without giving a person an opportunity to be heard.

Effect of withdrawal of approval

40. Any withdrawal of approval or direction issued under section 39 shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into through the approved clearing house whether the agreement, transaction or arrangement was entered into before or, where subsection 39(4) applies, after the withdrawal of the approval or issuance of the direction under section 39; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Subdivision 5A – General

Interpretation

40A. In this Subdivision, unless the context otherwise requires—

"relevant person" means a stock exchange, a derivatives exchange, a recognized market, an approved clearing house or a central depository, as the case may be;

"senior officer" means a person, other than the chief executive officer or a director, having authority and responsibility for planning, directing or controlling the activities of a relevant person, including the chief operating officer, members of decision making committees and other persons performing key functions such as risk management, compliance, internal audit or other functions as may be specified by the Commission;

"statutory manager" means a person appointed by the Commission under this Subdivision for the purposes of managing the whole or such part of the business and affairs of a relevant person.

[Ins. Act A1499/2015]

Publication of notice of suspension of trading or closure

40B. Where an action is taken by the Minister or the Commission under section 12, 18, 27, 28, 354, or 355, as the case may be, the Commission shall publish a notice of the action taken in such manner as the Commission considers appropriate.

[Ins. Act A1499/2015]

Rights of stock exchange, derivatives exchange or approved clearing house not to be affected by laws relating to contracts

40C. Nothing in any law relating to contracts, to the extent of its inconsistency with the provisions of this Act or the rules of a stock exchange, derivatives exchange or approved clearing house, shall render unenforceable or otherwise adversely affect—

(a) any rights to be conferred on a stock exchange, a derivatives exchange or an approved clearing house in relation to securities or derivatives, as the case may be, under this Act or its rules;

(b) any rights to be conferred on a party to a securities or derivative entered into on a stock market of a stock exchange, a derivatives market of a derivatives exchange, an exempt stock market, an exempt derivatives market or such other market as approved under this Act or the rules of a stock exchange, a derivatives exchange or an approved clearing house, as the case may be; or

(c) anything done or omitted to be done under or in relation to a securities or derivative entered into on a stock market of a stock exchange, a derivatives market of a derivatives exchange, an exempt stock market, an exempt derivatives market or such other market as approved under this Act, as the case may be.

[Ins. Act A1499/2015]

Power of Commission to appoint statutory manager

40D. (1) Without prejudice to any provision in this Part, for the purposes of mitigating and managing systemic risk in the capital market or where the Commission considers it is—

(a) in the public interest;

(b) for the protection of investors;

(c) for the proper regulation of a relevant person; or

(d) necessary in the exercise of its powers under section 30,

the Commission may appoint a statutory manager.

(2) The Commission may—

(a) in the case of a recognized market; or

(b) with the prior approval of Minister, in the case of a stock exchange, a derivatives exchange, an approved clearing house and a central depository,

appoint a statutory manager to—

(A) exercise, perform and discharge with respect to the relevant person, all the powers, duties and functions conferred or imposed on, or assigned to, the relevant person, by or under any written law or the articles of association of the relevant person; and

(B) take possession of, and use any such movable or immovable property as was used by the relevant person, for the purpose of carrying on the business or operations of the relevant person.

(3) Where the Commission has appointed a statutory manager under subsection (2), the Commission may make all or any of the following orders in writing to–

(a) grant access to the property of the relevant person to a statutory manager;

(b) transfer control of the whole or part of the business or affairs of the relevant person and management of the whole or such part of the business and affairs of the relevant person, to a statutory manager; or

(c) issue any direction to any person including a statutory manager in relation to the management of the whole or part of the business or affairs of the relevant person.

(4) Every such exercise, performance and discharge of such powers, duties and functions by the statutory manager under subsection (2) shall be as valid and effectual as if it were an exercise, performance and discharge by the relevant person.

(5) The Commission may, during the period an order under this section is in force, suspend the functions, rights and privileges of any directors, chief executive officer or senior officer of the relevant person, and for such period, as the Commission may determine.

(6) Where an order is made under this section, the Commission shall, as soon as may be practicable, give a copy of the order, to the principal officer of the relevant person to which the order relates and to such members of the governing body thereof, if any, as the Commission may consider appropriate in the circumstances.

(7) Where an order has been made under this section, the Commission shall cause the order to be published in at least one national language daily newspaper and one English language daily newspaper.

(8) An order made under this section takes effect on the date specified in the order.

[Ins. Act A1499/2015]

Assistance and access to information, *etc.*

40E. (1) A relevant person or any of its directors, its chief executive officer, secretary, employee or agent and any auditor appointed by the relevant person, shall –

(a) provide all necessary assistance; and

(b) grant full and free access to all information, document, system, trading facility, or any other property relating to the business or operations of a relevant person,

to a statutory manager, to enable the statutory manager to discharge his powers, duties and functions stated in the order made under section 40D.

(2) Any of the persons referred to in subsection (1) who refuses or fails, without lawful excuse, to allow the statutory manager access in accordance with this section commits an offence.

(3) Any of the person referred to in subsection (1) who, with intent to defeat the purposes of this section or with intent to prevent, delay or obstruct the statutory manager from carrying out any of his powers, duties and functions under this section –

(a) destroys, conceals or alters any information, document, system, trading facility, or any other property relating to the business or operations of a relevant person; or

(b) sends or attempts to send or conspires with any other person to sent out of Malaysia any such document or any property of any description belonging to or in the disposition of or under the control of a relevant person,

commits an offence.

(4) Any person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

[Ins. Act A1499/2015]

Remuneration, expenses and indemnity of statutory manager

40F. Where a statutory manager is appointed under subsection 40D(2) –

(a) his remuneration and any expenses properly incurred by him; and

(b) any indemnity to which he is entitled,

shall be charged on, and paid out of any property or asset of the relevant person, which is in the custody or control of the statutory manager.

[Ins. Act A1499/2015]

Annual fees payable

40G. (1) A relevant person shall pay to the Commission an annual fee or any other fees, as the Commission may prescribe.

(2) Any fees paid to the Commission under this Part shall be paid to the Fund established under section 23 of the Securities Commission Malaysia Act 1993.

[Ins. Act A1499/2015]

Non-application of Companies Act 1965

40H. The provisions of the Companies Act 1965 in relation to the offering of shares or debentures to the public by a private company shall not apply where the offer or invitation

to subscribe for or purchase is made by the private company on an approved, registered, recognized stock market or derivatives market, or an exempt stock market or exempt derivatives market, under the securities laws.

[Ins. Act A1499/2015]

Subdivision 6 — Modifications to the law of insolvency and miscellaneous provisions relating to the operations and procedures of the approved clearing house

Interpretation

41. (1) In this Subdivision, unless the context otherwise requires—

"charge" means any form of security, including a mortgage;

"default proceedings" means any proceedings or other action taken by an approved clearing house under its default rules;

"default rules", in relation to an approved clearing house, means such rules of the approved clearing house which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party;

"defaulter" means a participant who is the subject of any default proceedings;

"exchange" means a stock exchange or a derivatives exchange, as the case may be;

"market charge" means a charge, whether fixed or floating, granted in favour of an approved clearing house over any property as specified in the rules of the approved clearing house;

"market collateral" means any property specified in the rules of an approved clearing house held by or deposited with an approved clearing house for the purpose of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts;

"market contract" means—

(a) a contract which is subject to the rules of an approved clearing house and entered into by the approved clearing house with a participant pursuant to a novation for the purpose of the clearing and settlement of transactions using the clearing facility of an approved clearing house; or

(b) a transaction which is or is to be cleared or settled using the clearing facility of an approved clearing house and in accordance with the rules of the approved clearing house, whether or not a novation referred to in paragraph *(a)* is to take place;

"relevant office-holder" means—

(a) the Director General of Insolvency appointed under section 70 of the Bankruptcy Act 1967 [*Act 360*]*;*

(b) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;

(c) any person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;

(d) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person; or

(e) a Special Administrator appointed under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*].

(2) Where—

(a) a charge is granted partly for the purpose specified in the definition of "market charge" and partly for other purposes, the charge is a "market charge" insofar as it has effect for the specified purposes of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts; and

(b) collateral is provided partly for the purpose specified in the definition of "market collateral" and partly for other purposes, the collateral is a "market collateral" insofar as it has been provided for the specified purposes of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts.

Default rules

42. (1) An approved clearing house may have default rules which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party.

(2) Where an approved clearing house takes any default proceedings, all subsequent proceedings or other action taken under its rules for the purposes of the settlement of market contracts of which the defaulter concerned is a party shall be treated

as done under the default rules of the approved clearing house notwithstanding that, but for this subsection, such proceedings or other action would not be treated as done under the default rules of the approved clearing house.

Default proceedings of approved clearing house to take precedence over law of insolvency

43. (1) None of the following shall be regarded to any extent as invalid on the ground of inconsistency with the provisions relating to the distribution of the assets of a person under the laws of insolvency, or on the appointment of a relevant office-holder over any of the assets of a person:

(a) a market contract;

(b) the rules of an approved clearing house relating to the settlement of a market contract;

(c) any proceedings or other action taken under the rules of an approved clearing house relating to the settlement of a market contract;

(d) a market charge;

(e) the default rules of an approved clearing house; or

(f) any default proceedings.

(2) Subject to subsection (3), the powers of a relevant office-holder in his capacity as such, and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—

(a) the settlement of a market contract in accordance with the rules of an approved clearing house; or

(b) any default proceedings.

(3) Subsection (2) shall not operate to prevent a relevant office-holder from seeking to recover any amount referred to under subsection 49(1).

Supplementary provisions as to default proceedings

44. (1) A court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the functions of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken and, accordingly, such functions of the relevant office-holder shall be construed subject to such order.

(2) Nothing in section 8, 10 or 18 of the Bankruptcy Act 1967 or section 176, 222, 224 or 226 of the Companies Act 1965, shall prevent or interfere with any default proceedings.

Duty to report on completion of default proceedings

45. (1) An approved clearing house shall, upon the completion of any default proceedings, make a report on such default proceedings stating in respect of each defaulter—

(a) the net sum, if any, certified by the approved clearing house to be payable by or to the defaulter; or

(b) the fact that no sum is so payable,

as the case may be, and the approved clearing house may include in that report such other particulars in respect of such default proceedings as it thinks fit.

(2) An approved clearing house, which has made a report pursuant to subsection (1), shall supply the report to—

(a) the Commission;

(b) any relevant office-holder acting for—

(i) the defaulter to whom the report relates; or

(ii) that defaulter's estate;

(c) if there is no relevant office-holder referred to in paragraph *(b)*, the defaulter to whom the report relates; and

(d) such other person as the Commission thinks fit.

(3) Where an approved clearing house has made a report pursuant to subsection (1), it may publish notice of that fact in such a manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter, receives a report pursuant to subsection (2), he shall, at the request of a creditor of the defaulter to whom the report relates—

(a) make the report available for inspection by the creditor; and

(b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), "report" includes a copy of a report.

Net sum payable on completion of default proceedings

46. (1) This section shall apply with respect to any net sum certified under subsection 45(1) by an approved clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Where a receiving or winding-up order has been made, or a resolution for voluntary winding-up has been passed, any net sum shall, notwithstanding any of the provisions of section 40 or 41 of the Bankruptcy Act 1967 or section 291 of the Companies Act 1965—

(a) be provable in the bankruptcy of a defaulter or winding up or, , payable to the relevant office-holder as the case maybe; and

(b) be taken into account, where appropriate, under section 41 of the Bankruptcy Act 1967 or that section as applied in the case of a winding-up order under the Companies Act 1965.

Disclaimer of property, rescission of contracts, *etc.*

47. (1) Neither section 59 of the Bankruptcy Act 1967 nor subsection 296(1) of the Companies Act 1965 shall apply in relation to—

(a) a market contract;

(b) a contract effected by an approved clearing house for the purposes of realising property provided as market collateral;

(c) a market charge; or

(d) any default proceedings.

(2) Neither section 47 of the Bankruptcy Act 1967 nor section 223 of the Companies Act 1965 shall apply in relation to any act, matter or thing which has been done pursuant to—

(a) a market contract;

(b) a disposition of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by an approved clearing house for the purpose of realising property provided as market collateral;

(e) a disposition of property in accordance with the rules of an approved clearing house as to the application of property provided as market collateral;

(f) a market charge;

(g) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(h) a disposition of property made in enforcing a market charge; or

(i) any default proceedings.

Adjustment to prior transactions

48. (1) No order shall be made pursuant to sections 53, 53A and 54 of the Bankruptcy Act 1967 or sections 293 and 304 of the Companies Act 1965, in relation to any matter under subsection (2).

(2) The matters to which subsection (1) apply are—

(a) a market contract;

(b) a disposition of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by an approved clearing house for purposes of realising property provided as market collateral;

(e) a disposition of property in accordance with the rules of an approved clearing house as to the application of property provided as market collateral;

(f) a market charge; and

(g) any default proceedings.

Right of relevant office-holder to recover certain amounts arising from certain transactions

49. (1) If a participant ("the first participant") sells securities at an overvalue to, or purchases securities at an undervalue from, another participant ("the second participant") in circumstances as described in subsection (3), and thereafter a relevant office-holder acts for—

(a) the second participant;

(b) the principal of the second participant in the sale or purchase; or

(c) the estate of the second participant or of the person referred to in paragraph *(b)*,

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the principal of the first participant, an amount equal to the identified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

(2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of an approved clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a sale or purchase shall be when—

(a) an identified event has occurred in relation to the second participant or the principal of the second participant; and

(b) either—

(i) the first participant knew, or ought reasonably to have known that an identified event was likely to occur in relation to the second participant or the principal of the second participant; or

(ii) the principal of the first participant knew or ought reasonably to have known that an identified event was likely to occur to the second participant or the principal of the second participant,

and the identified event occurs within the period of six months immediately after the date on which the sale or purchase was entered into.

(4) In this section—

(a) "identified event", in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means—

(i) an act of bankruptcy committed by the second participant or the principal of the second participant, as the case may be;

(ii) the making of a statutory declaration in respect of the second participant or the principal of the second participant, as the case may be, pursuant to section 255 of the Companies Act 1965;

(iii) a meeting of creditors summoned in relation to the second participant or the principal of the second participant, as the case may be, pursuant to section 260 of the Companies Act 1965; or

(iv) the presentation of a petition for the winding up of the second participant or the principal of the second participant, as the case may be, by a court;

(b) "identified gain", in relation to a sale or purchase referred to in subsection (1), means the difference between the market value of the securities which is the subject of the sale or purchase and the value of the consideration for the sale or purchase, as at the time the sale or purchase was entered into.

Law of insolvency in other jurisdictions

50. (1) A court shall not, pursuant to any enactment or rule of law, recognize or give effect to—

(a) any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Malaysia; or

(b) any act of a person appointed in such a place to perform any function under the law of insolvency in such place,

insofar as the making of the order or the doing of the act would be prohibited in the case of a court within Malaysia or a relevant office-holder by provisions made by or under this Act.

(2) In this section, "law of insolvency" in relation to a place outside Malaysia means any law of such place which is similar to, or serves the same purposes as, all or any part of the law of insolvency in Malaysia.

Participant to be a party to certain transactions as principal

51. (1) Where—

(a) a participant in his capacity as such enters into any transaction (including a market contract) with an approved clearing house; and

(b) but for this subsection, the participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, as between, but only as between, the approved clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any civil action, claim or demand)—

(A) be deemed not to be a party to that transaction as agent; and

(B) be deemed to be a party to that transaction as principal.

(2) Where—

(a) two or more participants in their capacities as such enter into any transaction; and

(b) but for this subsection, any such participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, any such participant to whom paragraph *(b)* applies shall for all purposes (including any civil action, claim or demand), except as between, but only as between, him and the person who is his principal in respect of the transaction—

(A) be deemed not to be a party to that transaction as agent; and

(B) be deemed to be a party to that transaction as principal.

Securities or derivatives delivered to an approved clearing house

52. Where securities or derivatives are delivered in settlement of a market contract or provided as market collateral or under a market charge—

(a) to an approved clearing house;

(b) by a participant; and

(c) in accordance with the rules of the approved clearing house,

then, notwithstanding any provision under any law, no civil action, claim or demand, in respect of any right, title or interest in those securities or derivatives held or enjoyed by any person lies, or shall be commenced or allowed, against the approved clearing house.

Securities transfers in settlement

53. (1) Notwithstanding any other provision of law, including the Securities Industry (Central Depositories) Act 1991, in particular section 29A of that Act, a central depository shall give effect to an instruction from an approved clearing house to effect a transfer of securities into or out of a securities account of a depositor provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the approved clearing house.

(2) An instruction under subsection (1) shall be given by an approved clearing house only in relation to a securities account which relates to a depositor who is a party to a market contract or a depositor who had instructed a participant to effect a trade which results in a market contract to which the participant has become a party.

(3) Notwithstanding any other provision of law, where any transfer of securities is effected by the central depository to or from a securities account of a depositor pursuant to subsection (1), no title in such securities shall pass to a depositor except as provided under the rules of the approved clearing house.

(4) Where a transfer of securities has been effected into or out of a securities account of a depositor pursuant to subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that depositor.

(5) In this section, the terms “depositor” and “securities account” shall have the same meaning as in the Securities Industry (Central Depositories) Act 1991.

Purchase and sale of securities

54. (1) An approved clearing house may instruct a stock exchange to effect on behalf of the approved clearing house a sale or purchase of securities if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate a default proceeding or to enable an approved clearing house to

realise any asset comprised in any market charge or provided as market collateral, and the stock exchange shall give effect to any such instruction.

(2) Where a sale or purchase of securities has been effected on behalf of the approved clearing house pursuant to subsection (1) by a stock exchange, the stock exchange shall not be subject to any action or claim by or be liable to any damages to any person.

Immunity

55. (1) The functions to which this section applies are the functions of an approved clearing house so far as relating to or arising out of—

(a) the default rules of the approved clearing house; or

(b) any obligations to which it is subject by virtue of this Subdivision.

(2) A failure by an approved clearing house to comply with its default rules in respect of any matter shall not prevent that matter from being treated for the purposes of this Act as done in accordance with those rules so long as the failure does not affect the rights of any person entitled to require compliance with those rules.

(3) Where a relevant office-holder takes any action in respect of a defaulter which is liable to be dealt with in accordance with the default rules, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except insofar as the loss or damage, as the case may be, is caused by the office-holder's own negligence.

Preservation of rights, *etc.*

56. Except as is expressly provided in this Act, the provisions of this Subdivision shall not operate to limit, restrict or otherwise affect—

(a) any right, title, interest, privilege, obligation or liability of any person; or

(b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

Exemption from regulations on reporting of substantial shareholding and Division 3A of the Companies Act 1965

57. The approved clearing house and central depository, in carrying out its functions under this Subdivision, shall be exempted from the requirements under the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 [*P.U. (A) 174/1998*] and Division 3A of the Companies Act 1965.

Subdivision 7 – Enforceability of netting provisions under qualified capital market agreement

Interpretation

57A. In this Subdivision, unless the context otherwise requires–

"qualified capital market agreement" means–

(a) an agreement with a netting provision, in respect of one or more securities borrowing and lending transactions; or

(b) an agreement specified by the Commission to be a qualified capital market agreement for the purposes of this Part;

"netting provision" means a contractual provision which provides that when the events specified by the parties under a qualified capital market agreement occur, two or more debts, claims or obligations can be set-off against each other or be converted into a net debt, claim or obligation and includes close-out netting arrangement;

"securities borrowing and lending" means an arrangement where any securities borrowing and lending transaction is entered into, other than –

(a) transactions entered into between the approved clearing house and participants that is done in accordance with the rules of the approved clearing house; and

(b) transactions in respect of unlisted debt securities effected under the Real Time Electronic Transfer of Funds and Securities (RENTAS) system.

[Ins. Act A1499/2015]

Enforceability of rights under netting provision

57B. (1) The rights of the parties under a netting provision shall not be stayed, avoided or otherwise limited by the commencement of any other proceeding which has the effect of assuming control or managing the business, affairs and properties to which a party may be subject.

(2) The netting provision of a qualified capital market agreement under subsection (1) shall be enforceable in accordance with its terms.

[Ins. Act A1499/2015]

Application of this Part

57C. No provision in securities laws or in any other written law, including any written law relating to the management of systemic risk or promoting financial stability, whether enacted before or after the commencement of this Act, shall limit, restrict or otherwise affect the operations of Subdivision 6 and 7 of this Part.

[Ins. Act A1499/2015]

PART III

CAPITAL MARKETS SERVICES

Division 1

Licensing and Regulation

Requirement for Capital Markets Services Licence

58. (1) No person shall whether as a principal or agent, carry on a business in any regulated activity or hold himself out as carrying on such business unless he is the holder of a Capital Markets Services Licence or is a registered person.

(2) Subsection (1) shall not apply to the persons or classes of persons as specified in Schedule 3.

(3) Except for in respect of an insurance company licensed under the Insurance Act 1996 [*Act 553*] or a takaful operator registered under the Takaful Act 1984 [*Act 312*] the Commission may impose such terms and conditions as may be deemed appropriate on specified persons.

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

Requirement for Capital Markets Services Representative's Licence

59. (1) No person shall act as a representative in respect of any regulated activity or hold himself out as doing so unless he is the holder of a Capital Markets Services Representative's Licence for that regulated activity or is a registered person with respect to that regulated activity.

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

Civil liability of principal for acts of representative

59A. (1) A person who is authorized or engaged by a principal to act as its representative shall be deemed to be an agent of the principal when –

(a) the agent engages in any conduct, makes any representation or acts within his authority; and

(b) such conduct, representation or act is carried out in the course of the business for which the principal is licensed.

(2) For the purposes of subsection (1), a principal shall not be entitled to rely on any arrangement, agreement or contract entered into –

(a) between the principal and its representative; or

(b) between the principal and its client,

that operates to completely remove or exclude its obligation or liability as the principal of its representative.

(3) A principal shall not be liable for the act of its representative if the representative has ceased to be a representative of the principal and the principal has taken all reasonable steps to inform, or bring to the knowledge of clients of the fact of such cessation.

(4) For the purposes of this section, "principal" means a holder of a Capital Market Services Licence.

[Ins. Act A1499/2015]

Application for grant of licence

[Am. Act A1406/2011]

60. (1) An application for the grant of a licence shall be made to the Commission in such form and manner as the Commission may specify.

[Subs. Act A1406/2011]

(2) The Commission may at any time after receiving an application for the grant of the licence, conduct such inquiry as it may deem necessary to satisfy itself that none of the grounds under subsection 64(1), 65(1) or in any regulation or guideline for the refusal to grant the licence applies, including financial, criminal and professional background checks of the applicant, directors, managers and the controller of the applicant, where relevant.

(3) The Commission may require an applicant to furnish it with such information or documents as the Commission considers necessary in relation to the application.

(4) An application for the grant of a licence shall be accompanied by a non-refundable prescribed fee which shall be paid in such manner as may be specified by the Commission.

[Am. Act A1406/2011]

(5) [Deleted] *[Del. Act A1406/2011]*

(6) In the case of an application for the grant of a Capital Markets Services Representative's Licence, such application shall be—

[Am. Act A1406/2011]

(a) supported by a holder of a Capital Markets Services Licence or a person who has applied for a Capital Markets Services Licence for that regulated activity, in such manner as may be specified by the Commission; and

(b) deemed to be withdrawn with effect from the date on which the holder of a Capital Markets Services Licence who supported the application—

(i) withdraws its support in writing;

(ii) withdraws its application for a Capital Markets Services Licence in respect of that regulated activity; or

(iii) has its application for a Capital Markets Services Licence in respect of that regulated activity refused by the Commission.

(7) For the purposes of this section, sections 64, 66 and 72 the word "controller", in relation to a holder of a Capital Markets Services Licence, means a person who—

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

(b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or

(c) has the power to make or cause to be made, decisions in respect of the business or administration of such holder, and to give effect to such decisions or cause them to be given effect to.

(8) For the purposes of this section, sections 64, 66 and 72 "manager", in relation to a body corporate, means a person who is appointed by the body corporate to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

Grant of licence

[Am. Act A1406/2011]

61. (1) Subject to subsection (3), the Commission may grant a licence.

[Subs. Act A1406/2011]

(2) [Deleted] *[Del. Act A1406/2011]*

(3) In granting a licence, the Commission may—

(a) specify and describe the regulated activity to which the licence is granted;

(b) specify any condition or restriction of the licence as the Commission thinks fit; or

(c) in the case of a Capital Markets Services Representative's Licence—

(i) relate the licence to the holder of a Capital Markets Services Licence which supported the application for the licence; and

(ii) restrict the regulated activity of the licence to the regulated activity of the holder of a Capital Markets Services Licence which supported the application for the licence.

[Subs. Act A1406/2011]

(4) A person who contravenes any condition of, or restriction in, a licence commits an offence.

Power of Commission to impose conditions or restrictions on licences

62. Without prejudice to section 61, the Commission may at any time, where it deems necessary, vary the conditions or restrictions imposed upon the grant of a licence or impose additional conditions or restrictions on a licence while the licence is in force.

[Subs. Act A1406/2011]

Fees *[Subs. Act A1406/2011]*

63. (1) A licensed person shall pay such prescribed licence fee in respect of each regulated activity on a yearly basis and on such date as the Commission may specify.

[Am. Act A1406/2011]

(1A) Where a licensed person fails to pay the prescribed licence fee by the date on which such fee is due, the Commission may impose a late payment fee of a prescribed amount for every day that the payment is late, and such fees shall be recoverable by the Commission as a debt due to the Commission.

[Ins. Act A1406/2011]

(2) Any fees paid to the Commission under this Division shall be paid into the Fund established under section 23 of the Securities Commission Malaysia Act 1993.

[Am. Act A1406/2011]

Grounds for refusal for the grant of Capital Markets Services Licence

[Am. Act A1406/2011]

64. (1) Where an application is made for the grant of a Capital Markets Services Licence under section 60, the Commission may refuse the application on any of the following grounds:

[Am. Act A1406/2011]

(a) the application was not made in accordance with section 60;

(b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act;

[Am. Act A1406/2011]

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

[Am. Act A1406/2011]

(d) the applicant is in the course of being wound up or otherwise

dissolved;

(e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;

(g) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(h) the applicant or any of its directors, chief executive, managers or controller—

(i) has been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that it or he acted fraudulently or dishonestly;

(ii) has been convicted of an offence under the securities laws or any law outside Malaysia relating to capital market;

[Am. Act A1406/2011]

(iia) has been subjected to any action taken by the Commission under section 354, 355 or 356;

[Ins. Act A1406/2011]

(iii) has contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the

public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;

[Am. Act A1406/2011]

(iv) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;

(v) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or

(vi) is an undischarged bankrupt whether within or outside Malaysia;

(i) the Commission has reason to believe that the applicant or any of its directors, chief executive, managers or controller may not be able to act in the best interest of its clients having regard to their reputation, character, financial integrity and reliability;

(j) the Commission is not satisfied as to the financial standing of the applicant or the manner in which the applicant's business is to be conducted;

(k) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;

(l) there are other circumstances which are likely to—

(i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive, managers or controller; or

(ii) reflect discredit on the manner of conducting the business of the applicant or its controller;

(m) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers will not carry on the regulated activity efficiently, honestly or fairly; or

(n) the Commission is of the opinion that it would be contrary to the interests of the public to grant the licence.

[Am. Act A1406/2011]

(2) [Deleted] *[Del. Act A1406/2011]*

(3) [Deleted] *[Del. Act A1406/2011]*

Grounds for refusal for the grant of Capital Markets Services Representative's Licence

[Am. Act A1406/2011]

65. (1) Where an application is made for the grant of a Capital Markets Services Representative's Licence under section 60, the Commission may refuse the application on any of the following grounds:

[Am. Act A1406/2011]

(a) the application was not made in accordance with section 60;

(b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act;

[Am. Act A1406/2011]

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

[Am. Act A1406/2011]

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

(e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(f) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(g) the applicant has—

(i) been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;

(ii) been convicted of an offence under the securities laws or any law outside Malaysia relating to capital market;

[Am. Act A1406/2011]

(iia) been subjected to any action taken by the Commission

under section 354, 355 or 356;

[Ins. Act A1406/2011]

(iii) contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

[Am. Act A1406/2011]

(iv) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or

(v) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;

(h) the Commission is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence;

(i) the Commission has reason to believe that the applicant may not be able to act in the best interests of the clients of a holder of a Capital Markets Services Licence having regard to his reputation, character, financial integrity and reliability;

(j) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties which he may perform in connection with the holding of the licence;

(k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;

(l) the Commission has reason to believe that the applicant will not carry on the regulated activity efficiently, honestly or fairly; or

(m) the Commission is of the opinion that it would be contrary to the interests of the public to grant the licence.

[Am. Act A1406/2011]

(2) [Deleted] *[Del. Act A1406/2011]*

(3) [Deleted] *[Del. Act A1406/2011]*

Power of Commission to enquire into transactions in respect of securities and derivatives

66. (1) The Commission may enquire into any transaction involving the purchase or sale of securities or derivatives entered into or caused to be entered into by—

(a) an applicant for grant of a licence, its directors, chief executive, managers or controller, whether directly or indirectly, during any period of twelve months preceding the application for grant of the licence; or

(b) a licensed person, its directors, chief executive, managers or controller, whether directly or indirectly, at any time,

to ascertain if such person has in such transaction used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.

(2) The person referred to in subsection (1) shall submit to the Commission, the detailed information of any transaction involving the purchase or sale of securities or derivatives for such period, in such form and manner, and within such time, as the Commission may specify by notice in writing.

(3) In addition to any other penalty that may be imposed under this Act, a person who fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information or the information contains an omission of a material particular, is liable to have his application for a grant of licence rejected or his licence revoked under section 72.

[Subs. Act A1406/2011]

Minimum financial requirements

67. No holder of a Capital Markets Services Licence shall carry on any regulated activity in respect of its licence without the written consent of the Commission if it does not meet the minimum financial requirements as may be specified by the Commission or as may be provided in the rules of a stock exchange or a derivatives exchange.

68. [Deleted] *[Del. Act A1406/2011]*

Variation or transfer of licence

[Am. Act A1406/2011]

69. (1) The Commission may, on the application of—

(a) a holder of a Capital Markets Services Licence, vary its licence by adding or removing a regulated activity to or from those already specified in the licence;

[Am. Act A1406/2011]

(b) a holder of a Capital Markets Services Representative's Licence, vary the name of his principal, on whose behalf he may act and the regulated activity to which the licence relates or;

[Am. Act A1406/2011]

(c) a holder of a Capital Markers Services Licence, transfer its licence to any other person, after the holder has obtained a court order under subsection 139(3).

[Ins. Act A1406/2011]

(2) The Commission may require an applicant to supply the Commission with such information or documents as it considers necessary in relation to the application.

(3) An application under subsection (1) shall be accompanied by a prescribed application fee which shall be paid in such manner as may be specified by the Commission.

(4) The Commission may—

(a) approve the application subject to such conditions or restrictions as it thinks fit; or

(b) refuse the application on any of the grounds set out in subsection 64(1) or 65(1) or on any other grounds as may specified by the Commission.

[Am. Act A1406/2011]

(5) The Commission shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

70. [Deleted] [*Del. Act A1437/2012*]

False statements in relation to application for grant, or variation of licence

[Am. Act A1406/2011]

71. A person who, in connection with an application for the grant, or variation of a licence, makes a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to a fine not exceeding one million ringgit.

[Am. Act A1406/2011]

Revocation and suspension of licence

72. (1) A licence shall be deemed to be revoked—

(a) in the case of a holder of a Capital Markets Services Licence, if the holder is wound up or otherwise dissolved, whether within or outside Malaysia; and

(b) in the case of a holder of a Capital Markets Services Representative's Licence, if the representative dies.

(2) The Commission may revoke a licence—

(a) in the case of a holder of a Capital Markets Services Licence, if—

(i) there exists a ground on which the Commission may refuse an application under subsection 64(1);

(ii) the holder fails or ceases to carry on the business in all or any of the regulated activities for which it was licensed for a consecutive period of three months;

(iii) the holder contravenes any condition or restriction in respect of its licence or any direction issued to it by the Commission under this Act;

[Am. Act A1406/2011]

(iv) the holder contravenes any of the rules of the stock exchange, derivatives exchange, approved clearing house or central depository which is binding upon it; or;

[Am. Act A1406/2011]

[Proviso – Deleted Act A1406/2011]

(v) the holder fails to pay any fee as provided for under section 63; or;

[Ins. Act A1406/2011]

(b) in the case of a holder of a Capital Markets Services Representative's Licence, if—

(i) there exists a ground on which the Commission may refuse an application under subsection 65(1);

(ii) he fails or ceases to act as a representative in respect of all or any of the regulated activities for which he was licensed;

(iii) [Deleted] *[Del. Act A1406/2011]*

(iv) the holder contravenes any condition or restriction in respect of his licence or any direction issued to him by the Commission under this Act; or;

[Am. Act A1406/2011]

(v) the holder fails to pay any fee as provided for under section 63;

[Ins. Act A1406/2011]

(3) Where subsection (2) applies, the Commission may, if it considers it desirable to do so—

(a) suspend a licence for a specific period instead of revoking it under subsection (2); and

(b) at any time extend or revoke the suspension.

[Am. Act A1406/2011]

[Proviso Deleted Act A1406/2011]

(4) Subject to subsection (5), the Commission shall not revoke or suspend a licence under subsection (2) or (3) without giving the licensed person an opportunity to be heard.

(5) The Commission may revoke or suspend a licence without giving the licensed person an opportunity to be heard—

(a) in the case of a holder of a Capital Markets Services Licence, on any of the following grounds:

(i) the holder is in the course of being wound up or otherwise dissolved, whether within or outside Malaysia;

(ii) a receiver, receiver and manager or an equivalent person has been appointed, whether within or outside Malaysia in respect of any property of the holder; or

(iii) the holder or any of its directors, chief executive, managers or controller has been convicted of any offence described in subparagraph 64(1)*(h)*(i) or (ii); or

(b) in the case of a holder of a Capital Markets Services Representative's Licence, on any of the following grounds:

(i) the holder is an undischarged bankrupt, whether within or outside Malaysia; or

(ii) the holder has been convicted of any offence described in subparagraph 65(1)*(g)*(i) or (ii).

(6) Without prejudice to subsections (2) and (3), the Commission may, on any ground described in subsection (2), impose any restriction on the activities of a licensed person to which its licence relates and such restriction may be permanent or be made for such period as may be determined by the Commission.

(7) [Deleted] *[Del. Act A1406/2011]*

(8) Where the Commission has revoked or suspended a Capital Markets Services Licence or imposed restrictions on a holder of a Capital Markets Services Licence, such holder shall immediately inform all its representatives by notice in writing of such revocation, suspension or imposition of a restriction.

(8A) Where the Commission has revoked or suspended a Capital Markets Services Licence, the representatives of the licence holder shall cease to be a holder of a Capital Markets Services Representative's Licence for that Capital Markets Services Licence holder.

[Ins. Act A1406/2011]

(8B) A holder of a Capital Markets Services Representative's Licence who cease to hold a licence under subsection (8A) may make an application under paragraph 69(1)*(b)* to vary his licence.

[Ins. Act A1406/2011]

(9) A person whose licence is revoked or suspended under this section shall, for the purposes of this Division, be deemed not to be licensed from the date that the revocation or suspension takes effect, as the case may be.

(10) Any person who—

(a) carries on a regulated activity after its licence has been revoked or has ceased;

[Am. Act A1406/2011]

(b) carries on a regulated activity while its licence has been suspended or is in breach of a restriction imposed under subsection (6); or

(c) contravenes subsection (8),

commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both, and in the case of a continuing offence, to a further

fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Effect of revocation, suspension or cessation of licence, *etc.*

[Am. Act A1406/2011]

73. (1) A revocation, suspension or cessation of a licence or the imposition of a restriction on a licence under section 72 shall not operate so as to—

[Am. Act A1406/2011]

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or cessation of the licence or the imposition of restriction on the licence, as the case may be; or

[Am. Act A1406/2011]

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(2) Where any licence is revoked or suspended under this Division, the Commission may by notice in writing permit the holder of a Capital Markets Services Licence to—

[Am. Act A1406/2011]

(a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or;

[Am. Act A1406/2011]

(b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the licensed person during the period of suspension;

[Am. Act A1406/2011]

(c) [Deleted] *[Del. Act A1406/2011]*

subject to such conditions as the Commission may specify in the notice.

Notification of disqualifying event

74. (1) A licensed person shall, immediately after the happening of an event that is a ground on which the Commission may revoke licence under—

(a) subsection 64(1) or 65(1); or

[Am. Act A1406/2011]

(b) subsection 72(2);

[Subs. Act A1406/2011]

(c) [Deleted] *[Del. Act A1406/2011]*

give to the Commission written notice setting out the particulars of the event.

(2) Subject to subsection (1), it shall be a defence for a licensed person who is required to give notice under subsection (1) if it is proved that when the requirement arose the licensed person was unaware of the event that gave rise to the requirement.

(3) A person who contravenes subsection (1) commits an offence.

Appointment, election and nomination of directors and chief executive of licensed person, *etc.*

75. (1) A person may be appointed, elected or nominated as a director of a holder of a Capital Markets Services Licence only if the person is a fit and proper person where none of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j) ,(k) or (l)* would prevent him from holding such office.

[Am. Act A1406/2011]

(2) A person shall not be appointed as a chief executive of a holder of a Capital Markets Services Licence without the approval of the Commission.

[Subs. Act A1406/2011]

(2A) For the purposes of subsection (2), in approving the appointment of a chief executive, the Commission may take into consideration whether—

(a) any of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j)*, *(k)* or *(l)* would prevent him from holding such office; or

(b) it would be contrary to the interest of the public to approve such appointment.

[Ins. Act A1406/2011]

(3) A holder of a Capital Markets Services Licence shall give the Commission written notice in such form and manner as may be specified by the Commission of the appointment, election or nomination to the office of the director.

[Am. Act A1406/2011]

(4) A director whose name has been notified to the Commission under subsection (3) or a chief executive appointed under subsection (2) who subsequently becomes aware that he does not meet the fit and proper criteria referred to under subsection (1) or (2A) shall immediately inform the Commission.

[Am. Act A1406/2011]

(5) Where a holder of a Capital Markets Services Licence becomes aware that any of its directors or chief executive does not meet the fit and proper criteria referred to under subsection (1) or (2A) , such holder shall immediately upon becoming aware of such disqualification, inform the Commission.

[Am. Act A1406/2011]

(6) A person shall be disqualified from holding the office of a director or chief executive of a holder of a Capital Markets Services Licence, if—

(a) any of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j)*, *(k)* or *(l)* is applicable; or

(b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a Capital Markets Services Licence.

[Subs. Act A1406/2011]

(7) A holder of a Capital Markets Services Licence shall ensure that no person holds office as a director or chief executive, as the case may be, if subsection (6) applies.

(8) Notwithstanding anything in this section, the Commission may direct a Capital Market Services Licence holder to remove the director or chief executive within such period as may be specified in such direction, if—

(a) any of the grounds set out in paragraph 65(1)*(d)*, *(e)*, *(f)*, *(g)*, *(i), (j)*, *(k)* or *(l)* is applicable; or

(b) it would be contrary to the interest of the public for the person to continue to hold the office of a director or chief executive of a holder of a Capital Markets Services Licence.

[Subs. Act A1406/2011]

(9) Notwithstanding the provision of any other written law, the holder of a Capital Markets Services Licence shall within the period specified in the direction given under subsection (8), remove such director or chief executive, as the case may be, and shall take such steps as may be necessary to inform the shareholders of such holder and the Registrar of Companies, where applicable, of such removal.

(10) The removal of a director or chief executive, as the case may be, in accordance with the direction given under subsection (8) shall take effect from the date of the receipt by the director or chief executive, as the case may be, of the notification of removal given by the holder of a Capital Markets Services Licence, notwithstanding the provisions of any other written law or the memorandum of association or articles of association of such holder or any agreement between the holder and such director or chief executive.

(11) A person who contravenes this section or fails to comply with a direction issued under subsection (8), commits an offence.

[Am. Act A1406/2011]

Registered persons

76. (1) A person is a registered person for the purposes of subsection 58(1) where such person is—

(a) specified to be a registered person in Schedule 4;

(b) registered under subsection (2);

(c) registered with a recognized self-regulatory organization under section 323; or

(d) registered with a body that is approved by the Commission.

(2) The Commission may on the application made by any person referred to in paragraph (1)*(b)* register such person for one or more regulated activities.

(3) Any registration under Part 2 of Schedule 4, paragraphs (1)*(b), (c)* and *(d)* shall be subject to such terms and conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered person concerned, amend or revoke any such condition or impose new conditions.

(4) Where the Commission by notice in writing amends or revokes any term or condition or imposes any new condition under subsection (3), the amendment, revocation or imposition shall take effect at the time of the service of the notice or at such time specified in the notice, whichever is the later.

(5) In respect of registered persons referred to in paragraph 1*(a)* as specified in the third column of Part 1 of Schedule 4, the registered person shall comply with any guideline issued by the Commission under section 377 in respect of the carrying on of the particular regulated activity by the registered person.

(6) In respect of persons referred to in paragraph (1)*(a)*, the following shall apply:

(a) registered persons specified in the third column of Part 1 of Schedule 4 may only carry on the regulated activities specified in the second column of Part 1 of Schedule 4;

(b) registered persons specified in the third column of Part 2 of Schedule 4 may only carry on the regulated activities specified in the second column of Part 2 of Schedule 4;

(c) to the extent that such registered persons carry on the regulated activities specified in the second column of Part 1 of Schedule 4—

(i) the provisions under sections 91, 92, 92A, 93, 97 and 139ZN any regulation or guideline made pursuant to these

sections shall apply to such registered persons with the necessary modifications as may be applicable;

[*Am. Act A1437/2012*]

(ii) the individuals employed by such registered persons to carry on the regulated activities shall be fit and proper persons as may be determined by the relevant authority;

(iii) the registered person shall maintain a register containing the names of the individuals referred to in subparagraph (ii) in such form and manner as may be specified by the relevant authority; and

(iv) subject to subsection (5), the relevant authority may authorise in writing any person as an authorised person for the purposes of ensuring compliance by a registered person who is specified in Part 1 of Schedule 4 with the provisions of sections 91, 92, 92A, 93 97 and 139ZN any regulation or guideline made pursuant to aforementioned sections.

[*Am. Act A1437/2012*]

(7) For the purposes of subsection (6), an authorised person may—

(a) require a registered person to furnish him with any information that the authorized person may require to determine whether the registered person has complied with the provisions referred to in subparagraph (6)*(c)*(i); or

(b) require the registered person to take such steps as are necessary to ensure compliance with the provisions referred to in subparagraph (6)*(c)*(i).

(8) A registered person referred to in paragraph (6)*(a)* shall comply with any requirement made under subsection (7).

(9) The Commission may withdraw the registration accorded to any person registered under subsection (2) or any registered person referred to in Part 2 of Schedule 4 if it is necessary for the protection of investors or public interest or for the maintenance of an orderly market or if any term and condition imposed under subsection (3) has not been complied with.

(10) The Commission shall not withdraw the registration under subsection (9) without giving the registered person an opportunity to be heard.

(11) For the purposes of this section, the term "relevant authority" refers to Bank Negara.

Registration of persons providing capital market services

76A. (1) The Commission may specify any service to be a capital market service.

(2) A person providing any capital market service shall apply to be registered under this section.

(3) The Commission may, on an application made under subsection (2), register such person subject to such terms and conditions as the Commission may impose, and the Commission may at any time, by notice in writing, amend or revoke any such term or condition or impose new terms or conditions.

(4) If the Commission, by notice in writing, amends or revokes any term or condition or imposes any new term or condition under subsection (3), the amendment, revocation or imposition shall take effect at the time of the service of the notice or at such time specified in the notice.

(5) The Commission may withdraw the registration accorded under subsection (3) if it is necessary for the protection of investors or in the public interest or if any term or condition imposed under subsection (3) or (4) has not been complied with.

(6) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (5).

[*Ins. Act A1437/2012*]

Register of licence holders

77. (1) The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying—

(a) in relation to each holder of a Capital Markets Services Licence—

(i) its name;

(ii) where the holder is a corporation, the names of the directors and the secretary of the corporation;

(iii) the address of the principal place of business and any branch at which it carries on the business; and

(iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

(b) in relation to a holder of a Capital Markets Services Representative's Licence—

(i) his name;

(ii) the name of the holder of the Capital Markets Services

Licence in relation to whom the Capital Markets Services Representative's Licence was issued; and

(iii) where the business of that holder of the Capital Markets Services Licence is carried on under a name or style other than the name of the holder of the Capital Markets Services Licence, the name or style under which that business is carried on; and

(c) such other information as the Commission thinks relevant.

(2) The Commission shall remove from the register every entry relating to any person who ceases to be licensed under this Division.

(3) A person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1).

Notification of change of particulars

78. (1) Where—

(a) the holder of a Capital Markets Services Licence ceases to carry on all or any of the regulated activities to which the licence relates;

[Am. Act A1406/2011]

(b) the holder of a Capital Markets Services Representative's Licence ceases to be a representative of the Capital Markets Services Licence holder in relation to whom the Capital Markets Services Representative's Licence was issued, and the licence has not been varied under section 69;

(c) a change occurs in any information required to be entered in the

register of licence holders under section 77; or

(d) a change occurs in the information submitted to the Commission in accordance with subsection 60(1) or 60(3),

the holder of the licence shall, not later than fourteen days after the occurrence of the event concerned, give to the Commission, in the specified form, particulars in writing of the event concerned.

(2) Where a licensed person ceases to carry on the business in all or any of the regulated activities to which the licence relates, it shall return the licence to the Commission within fourteen days of the date of the cessation.

Publication of names and addresses

79. (1) The Commission shall cause to be published in such form and manner as the Commission thinks fit, a list of the names and addresses of all holders of a Capital Markets Services Licence.

(2) The information required to be published under subsection (1) shall be published at least once in each year.

(3) If the Commission at any time amends any register kept by it under section 77 by adding or removing the name of a holder of a Capital Markets Services Licence, the Commission shall cause particulars of the amendments to be published.

Appeals

80. (1) Any person who is aggrieved by the decision of the Commission under this Division except on the revocation of a Capital Markets Services Licence for dealing in securities or dealing in derivatives, may within fourteen days after the person has been notified of the decision, appeal in writing to the Commission to review its decision.

(2) A holder of Capital Markets Services Licence for dealing in securities or dealing in derivatives whose licence is revoked by the Commission may within fourteen days after the person has been notified of the decision, appeal to the Minister and the decision of the Minister is final.

(3) Where an appeal is made to the Commission or to the Minister under this section, the decision of the Commission shall not take effect until the appeal is disposed of.

(4) Notwithstanding subsection (3), the Commission may stipulate in the notification under subsection (1), that the decision of the Commission shall take effect immediately on the date when the notification is issued or on any other date as the Commission may specify, if the Commission is of the view that it is necessary in the interest of investors or public interest.

[Subs. Act A1406/2011]

Surrender of licence

81. (1) Subject to subsection (2), a licensed person may surrender the licence by sending it to the Commission together with a written notice of its surrender.

(2) The surrender of a licence shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the licensed person that are outstanding at the time when the notice of surrender was given by the licensed person.

(3) A surrender of a licence made under subsection (1) shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the

agreement, transaction or arrangement was entered into before or after the surrender of the licence; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(4) The Commission shall cause to be published as soon as may be practicable a notice of every surrender of a licence under subsection (1), but any delay in publishing such notice or failure to publish it shall not affect the validity of the surrender.

Division 2

Records

Application of this Division

82. (1) This Division applies to a person who is—

(a) a licensed person who carries on the business of dealing in securities;

(b) a licensed person who carries on the business of fund management;

(c) a licensed person who carries on the business of advising on corporate finance;

(d) a licensed person who carries on the business of investment advice;

(e) a licensed person who carries on the business of financial planning;

(f) a financial journalist; or

(g) an authorized depository agent appointed under section 13 of the Securities Industry (Central Depositories) Act 1991.

(2) In this Division, "financial journalist" means a person who is not a licensed person and, in the course of the person's business or employment contributes advice, or prepares analyses or reports, about securities for publication—

(a) in a newspaper or periodical;

(b) in the course of, or by means of, transmissions made by means of an information service; or

(c) in sound recordings, video recordings or data recordings.

(3) In this Division, a reference to securities is a reference to the securities of a corporation or to the securities which are quoted or dealt in on a stock exchange in Malaysia, as the case may require.

Register of securities

83. (1) Any person referred to in subsection 82(1) shall maintain a register in the specified form of the securities in which he has an interest.

(2) The register required to be kept under this Division shall be kept at such place within Malaysia as may be nominated by the person referred to in subsection (1) for the purposes of this Division provided that such person shall notify the Commission in writing after beginning to keep the register.

(3) A person referred to in subsection 82(1) shall enter in the register, particulars of the securities in which he has interest and particulars of his interest in those securities within seven days after the date of the acquisition.

(4) Where there is a change, not being a prescribed change, in the interest in securities of a person referred to in subsection 82(1), he shall—

(a) enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred; and

(b) the entry shall be made within seven days after the date of the change.

(5) For the purposes of subsection (4), where a person acquires or disposes of securities, there shall be deemed to be a change in the interest of that person.

Notice of particulars to Commission

84. (1) Any person referred to in subsection 82(1) shall give notice to the Commission in such form as may be specified containing such information as may be specified including the place at which he will keep the register of his interest in securities.

(2) The notice shall be given—

(a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or

(b) in the case of any other person, if the person becomes a person referred to in subsection 82(1), within fourteen days from the date of his becoming such a person.

(3) The notice shall be so given notwithstanding that the person has ceased to be a person referred to in subsection 82(1), before the expiration of the period referred to in subsection (2).

(4) A person who ceases to be a person referred to in subsection 82(1) shall give notice to the Commission of his so ceasing in the specified form within fourteen days of his so ceasing.

(5) Any person who fails to give notice as required by this section commits an offence.

Defence to a prosecution

85. (1) It is a defence to a prosecution for contravening or failing to comply with section 83 or 84, if the defendant proves that his failure was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence, and that—

(a) he was not so aware on the date of the summons;

(b) he became so aware less than fourteen days before the date of the summons; or

(c) he became so aware not less than fourteen days before the date of the summons and complied with the relevant section within such time as may be prescribed after becoming so aware.

(2) For the purposes of subsection (1), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person being an employee or agent having duties or acting in relation to his employer’s or principal’s interest in the securities concerned, was aware at that time.

Production of register

86. (1) The Commission may require any person referred to in subsection 82(1) to produce for inspection the register required to be kept pursuant to section 83 and the Commission may make a copy of or make extracts from the register.

(2) A person who fails to produce a register for inspection or fails to allow the Commission to make a copy of or make extracts from the register commits an offence.

Particulars of financial journalists

87. (1) The Commission may by notice in writing require the proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording to supply the Commission with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published or broadcasted in a newspaper, periodical, information service or sound, video or data recording owned, published or broadcasted by that proprietor, publisher or producer or with the names and addresses of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period as may be specified in the notice.

(2) A proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording who contravenes a notice under subsection (1) commits an offence.

Commission may supply copy of the extract of a register

88. The Commission may, upon receipt of the prescribed fee, supply to any person a copy of the extract of a register obtained pursuant to section 86.

Division 3

Conduct of Business

Subdivision 1 — General

Certain representation prohibited

89. [Deleted]

[Del. Act A1499/2015]

Issue of contract notes

90. (1) The Minister may make regulations under subsection 378(3) with respect to the issuance of contract notes to clients of a holder of a Capital Markets Services Licence.

(2) A holder of a Capital Markets Services Licence referred to in subsection (1) shall comply with the requirements of the regulations made by the Minister in relation to contract notes.

(3) A holder of a Capital Markets Services Licence who contravenes any requirement of the regulations in relation to contract notes commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Disclosure of certain interests in securities

91. (1) Where a licensed person sends circulars or other similar written communications in which he made a recommendation, whether expressly or by implication, with respect to any securities, or class of securities, the licensed person shall

cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that the licensed person or a person associated with him has at the date on which the licensed person last sends the circular or other communication.

(2) It is a defence to a prosecution for an offence against subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of a relevant interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being a relevant interest or an interest of the defendant or of a person associated with the defendant, if the defendant establishes that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware that—

(a) he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or

(b) the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities, or securities included in that class,

as the case may be.

(3) For the purposes of subsections (1) and (2)—

(a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;

(b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall

be deemed to have an interest in the acquisition or disposal of those securities; and

(c) notwithstanding the provisions of section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where—

(a) a person has subscribed for or purchased securities for the purpose of offering all or any of them for purchase; and

(b) the person offers any of those securities for purchase,

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where—

(a) securities have been offered for subscription or purchase; and

(b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the person shall not, during the period of ninety days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock market, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) For the purposes of subsection (5), "underwriting" includes sub-underwriting.

(7) A licensed person shall not send to a person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation—

(a) where the licensed person is a natural person, is signed by the licensed person;

(b) where the licensed person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;

(c) where the licensed person is a natural person who carries on business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; or

(d) where the licensed person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.

(8) Where a licensed person sends to a person a circular or other communication or a written offer or recommendation to which subsection (1), (4) or (5)

applies, the licensed person shall preserve a copy of the circular or other communication, or of a written offer or recommendation, duly signed by the person concerned, for a period of seven years.

(9) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(10) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall—

(a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or

(b) where it is signed by a director, an executive officer or the secretary of a corporation, be deemed to have been sent by the corporation.

(11) The Commission may, with the approval of the Minister if it is not detrimental to the interest of investors, exempt in writing any securities or persons or class of securities or persons from this section.

(12) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Recommendations by licensed person

92. (1) A licensed person shall not make a recommendation with respect to any securities or derivatives to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.

[Am. Act A1406/2011]

(2) For the purposes of subsection (1), a licensed person does not have a reasonable basis for making a recommendation to a person unless—

(a) the licensed person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licensed person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;

(b) the licensed person has given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as may be reasonable in all the circumstances; and

(c) the recommendation is based on such consideration and investigation.

(3) A licensed person who contravenes subsection (1) commits an offence.

[Am. Act A1406/2011]

(4) Where the licensed person contravenes subsection (1) or section 91 by making a recommendation to a person and—

(a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;

(b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

(c) the person suffers loss or damage as a result of doing that act or refraining from doing that act,

the licensed person shall be liable to pay damages to the person in respect of that loss or damage.

(5) A licensed person shall not be liable under subsection (4) if it is proved that a reasonable person in the circumstances would have done or omitted to do, that act in reliance on the recommendation even if a licensed person had complied with that subsection in relation to the recommendation.

[Am. Act A1406/2011]

(6) In the case of a contravention of subsection (1), a licensed person shall not be liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that, the licensed person had about the client's investment objectives, financial situation and particular needs when the licensed person makes the recommendation.

[Am. Act A1406/2011]

(7) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

Information to be given to a person who invests in capital market product

92A. (1) The Commission may specify the nature and extent of information to be given to a person who invests in any capital market product and such specification may include—

(a) information that explains the key characteristics of the capital market product;

(b) information that explains the nature of the obligations assumed by the parties dealing in the capital market product;

(c) information that sets out the risks associated with the capital market product; and

(d) details of the essential terms of the capital market product.

(2) Any person who—

(a) issues or provides false or misleading information;

(b) makes any false or misleading statement; or

(c) wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect,

to a person who invests in a capital market product, commits 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.

(3) Nothing in this section shall affect any right of action under any other law that is conferred on the person who invests in a capital market product.

[Ins. Act A1406/2011]

(4) It shall be a defence to a prosecution or any proceeding for a contravention of this section by any person if he proves that–

(a) he had made all enquiries as were reasonable in the circumstances; and

(b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that–

(i) the statement or information was true and not misleading;

or

(ii) there was no material omission.

[Ins. Act A1499/2015]

Priority given to client's order

93. (1) Except as permitted by subsection (2)—

(a) the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or fund management when acting as principal or on behalf of a person associated with or connected to the holder; or

(b) a representative of a holder of a Capital Markets Services Licence when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of that holder or representative who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities of the same class and the holder or representative has not complied with the instruction.

(2) Subsection (1) shall not apply in relation to the entering into of a transaction by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or fund management as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if—

(a) the instructions from the client of such holder required the purchase

or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder or a representative of the holder has been unable to purchase or sell the securities by reason of those conditions; or

(b) the transaction is entered into in prescribed circumstances.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Dealings by employees of holders of licences or participating organizations

94. [Deleted]

[Del. Act A1499/2015]

Duty to furnish Commission with such returns and information as Commission requires

95. [Deleted]

[Del. Act A1499/2015]

Additional obligations on licensed persons

96. (1) In addition to the requirements imposed on licensed persons under this Act, the Commission may impose—

(a) in the case of licensed persons generally, or any class of licensed persons; or

(b) in the case of any particular licensed person, by written direction given to the person,

any further requirements that the Commission considers appropriate with respect to the conduct or the financial affairs of such licensed persons.

(2) A licensed person shall comply with any requirement imposed under subsection (1).

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Subdivision 2 — Securities

Dealings as principal

97. (1) Subject to subsection (4), a holder of a Capital Markets Services License who carries on the business of dealing in securities shall not, as principal, deal in any securities with a person who is not such a holder unless the holder first informs such person that the holder is acting in the transaction as principal and not as agent.

(2) A reference in this section to a holder of a Capital Markets Services License who carries on the business of dealing in securities as principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with such holder;

(b) dealing in securities on behalf of a corporation in which it has a controlling interest; or

(c) where it carries on a business of dealing in securities on behalf of a corporation in which its interest and the interests of its directors together constitute a controlling interest.

(3) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities, who as principal, deals in securities with a person who is not such a holder shall state in the contract note that the holder is acting in the transaction as principal and not as agent.

(4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities entered into by a holder of a Capital Markets Services Licence who is a participating organization and specialises in transactions relating to odd lots of securities.

(5) Where a holder of a Capital Markets Services Licence who carries on the business of dealing in securities contravenes subsection (1) or (3) in respect of a contract—

(a) for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later; or

(b) for a purchase of securities by the holder, the vendor of the securities may rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later.

(6) Any right of action that is conferred on a purchaser or vendor under subsection (5) is in addition to any right that such purchaser or vendor has under any other law.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Shortselling

98. (1) Subject to this section and any regulations that may be made, a person shall not sell securities unless, at the time when he sells them—

(a) he has or, where he is selling as agent, his principal has; or

(b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,

a presently exercisable and unconditional right to vest the securities in a purchaser of the securities.

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

(3) For the purposes of subsection (1)—

(a) a person who, at any particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person; and

(b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the

securities are charged or pledged in favour of another person to secure the repayment of monies.

(4) Subsection (1) shall not apply in relation to any of the following circumstances:

[Am. Act A1406/2011]

(a) a sale of securities by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities who specialises in transactions relating to odd lots of securities, being a sale made by him as principal solely for the purpose of—

(i) accepting an offer to purchase an odd lot of securities; or

(ii) disposing of securities that are less than one marketable parcel of securities by means of the sales of one marketable parcel of those securities;

(b) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:

(i) payment of the consideration in respect of the purchase;

(ii) the receipt by him of a proper instrument of transfer in respect of the securities; or

(iii) the receipt by him of the documents that are, or are documents of title to, the securities;

(c) a sale of securities where—

(i) the securities are included in a class of securities in relation to which there is a provision in the rules of the stock exchange to the effect that the class is a class of securities to which this paragraph applies;

(ii) the sale is made as may be provided by the rules of the stock exchange; and

(iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities;

(d) a sale of securities which are permitted by Bank Negara to be transacted in the short-term money market;

(e) a sale of securities—

(i) of such class or category; or

(ii) which is transacted in such manner or under such circumstances,

as may be prescribed by the Minister; and

(f) the making or trading of a derivative, or anything done in relation thereto, on the derivatives market of a derivatives exchange or on an exempt derivatives market.

[Am. Act A1406/2011]

(5) For the purpose of this section, a "marketable parcel" in relation to securities that are listed for quotation on the stock market of a stock exchange, means a

marketable parcel of those securities within the meaning of the rules of that stock exchange.

(6) A person who instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to effect a sale of securities to which subsection (1) would apply but for paragraph (4)*(c)* shall, at the time of giving the instruction, inform the holder that the sale is a short sale.

(7) A person who, on a stock market of a stock exchange, effects, whether as principal or agent, a sale of securities to which subsection (1) would apply but for paragraph (4)*(c)* shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale.

(8) For the purposes of this section, where a person—

(a) purports to sell securities;

(b) offers to sell securities;

(c) holds himself out as entitled to sell securities; or

(d) instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to sell securities,

he shall be deemed to sell the securities.

Subdivision 3 — Standardized derivatives

[Am. Act A1406/2011]

Trading in standardized derivatives on own account

99. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall not, as principal, trade in any standardized derivative with a person who is not such a holder unless he first informs the person in writing that he is acting in the transaction as principal and not as agent.

(2) A reference in this section to a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives as principal includes a reference to a person—

(a) dealing or entering into a transaction on behalf of a person associated with such holder;

(b) dealing in derivatives on behalf of a corporation in which it has a controlling interest; or

(c) dealing in derivatives on behalf of a corporation in which its interest and the interests of directors of the corporation together constitute a controlling interest.

(3) Nothing in section 107 shall affect any right of action that is conferred on a purchaser or vendor under any other law in relation to the transaction.

[Subs. Act A1406/2011]

100. [Deleted] *[Del. Act A1406/2011]*

.**Trading limits in standardized derivatives**

101. (1) The Commission or a derivatives exchange with the approval of the Commission may, by notice in writing from time to time, specify such limits as it considers necessary on the amount of trading which may be done or positions which may be assumed by any person under a standardized derivative.

(2) In determining whether a person has exceeded the limits referred to in subsection (1), the positions assumed and trading done by any persons directly or indirectly controlled by such a person shall be included with the positions assumed and trading done by that person.

(3) The limits referred to in subsection (1) upon positions and trading shall apply to positions assumed, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding as if the positions were assumed, or the trading done, by a single person.

(4) A person shall not directly or indirectly—

(a) trade or agree to trade in standardized derivatives in excess of the trading limits specified for a period set out by the Commission or the derivatives exchange under this section; or

(b) assume a position under a standardized derivative of any class in excess of any position limit specified by the Commission or the derivatives exchange under this section with respect to that standardized derivative.

(5) This section shall not preclude the Commission or a derivatives exchange from specifying different trading or position limits for different types or classes of standardized derivatives or different limits for the same type or class of standardized derivatives traded for different purposes, different delivery months or different days

remaining until the last day of trading in a standardized derivative for the purpose of subsection (4).

[Subs. Act A1406/2011]

102. [Deleted] *[Del. Act A1406/2011]*

103. [Deleted] *[Del. Act A1406/2011]*

Sequence of sending and carrying out of orders

104. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall not instruct another holder to carry out the instructions of the first-mentioned holder's client unless the consent of that client has been obtained.

(2) Subject to subsection (3), a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall send in the sequence in which they are received by the holder all instructions to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions.

(3) If—

(a) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives proposes to trade in a class of standardized derivatives on the holder's own account;

(b) the person by whom or on whose instructions, the instructions for the trading are to be sent is aware of the instructions of a client of the holder to trade in that class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing at that time; and

(c) the client's instructions have not been sent,

that person shall not send, and shall not give instructions to any other person to send, the instructions to give effect to the proposal of the holder to trade in that class of standardized derivatives before the instructions of the client are sent.

(4) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, or a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, shall not, except—

(a) to the extent necessary to carry out the instructions concerned;

(b) as required by this Act or any other law; or

(c) as required by the rules of any derivatives exchange of which the holder is an affiliate,

disclose to any other person the instructions of a client to trade in a class of standardized derivatives.

(5) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives who is an affiliate of a derivatives exchange and who is concerned in the carrying out, on a derivatives market of the derivatives exchange, of instructions to trade in standardized derivatives shall carry out in the sequence which they are received by the holder all instructions to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions.

(6) If—

(a) during a particular period, a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives sends

instructions (whether or not those instructions consist of or include instructions giving effect to the proposal of the holder to trade in the class of standardized derivatives concerned on the holder's own account) to trade in a class of standardized derivatives at or near the market price for a standardized derivative of that class prevailing immediately before the carrying out of the instructions; and

(b) trading in that class of standardized derivative is effected under those instructions,

the holder shall, except so far as the rules of the derivatives exchange of which the holder is an affiliate otherwise provide, allocate trading to those instructions—

(A) in the sequence in which the trading was effected; and

(B) in the sequence in which the holder sent those instructions.

(7) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives shall keep, in accordance with the regulations, records that set out the prescribed particulars of—

(a) the instructions by a client to trade in standardized derivatives;

(b) the date and time of receipt, sending and carrying out of those instructions;

(c) the person by whom those instructions are received, the person by whom they are sent and the person by whom they are carried out;

(d) the date and time of receipt, sending and carrying out of instructions to trade in standardized derivatives on the holder's own account; and

(e) the person by whom instructions of the kind referred to in paragraph *(d)* are received, the person by whom they are sent and the person by whom they are carried out,

and shall retain those records for the prescribed period.

(8) If—

(a) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives sends, for carrying out on a derivatives market outside Malaysia, instructions to trade in standardized derivatives; and

(b) it is not reasonably practicable for the holder to set out in the records kept by the holder under subsection (7) the prescribed particulars of the date and time of the carrying out of those instructions,

the holder shall set out those particulars as precisely as is reasonably practicable.

(9) In this section, a reference to the sending of instructions to trade in a class of standardized derivatives by a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives is a reference if the holder has—

(a) direct access to the derivatives market on which the instructions are to be carried out, to the sending of the instructions to that derivatives market; or

(b) access to the derivatives market on which the instructions are to be carried out only through another holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, to the sending of the instructions to that other holder.

[Subs. Act A1406/2011]

Trading in standardized derivatives outside Malaysia

105. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carries on the business of fund management in relation to derivatives shall not trade in a standardized derivative on any derivatives market outside Malaysia unless—

(a) the derivatives market is a derivatives market of a Specified Exchange; or

(b) the standardized derivative is of an approved class of standardized derivatives.

(2) If—

(a) the Commission has reason to believe that a situation exists which, in the opinion of the Commission, is likely to affect the proper operation of the derivatives market of any Specified Exchange or cause a disruption to the orderly trading of standardized derivatives on such a derivatives market;

(b) it is shown that a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives or any of its employees, directors or representatives has acted in any manner, in relation to the operation—

(i) of any derivatives market of a derivatives exchange or in respect of which an approved clearing house provides clearing house facilities; or

(ii) of any derivatives market of a Specified Exchange,

which is likely to prejudice the public interest;

(c) a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives has contravened—

(i) securities laws;

(ii) the rules of a derivatives exchange or an approved clearing house of which the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or carrying on the business of fund management in relation to derivatives is an affiliate; or

(iii) any condition applicable in respect of its licence; or

(d) other prescribed circumstances exist in respect of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives,

the Commission may direct—

(A) the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives to cease trading in standardized derivatives, or in any class of standardized derivatives, on the derivatives market of any Specified Exchange; or

(B) that trading in standardized derivatives, or in any class of standardized derivatives, by the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives on the derivatives market of any Specified Exchange be limited to the closing out of standardized derivatives.

(3) For the purposes of this section—

[*Am. Act A1437/2012*]

(a) a Specified Exchange is such derivatives market as may be provided in the rules of the derivatives exchange as a Specified Exchange; or

(b) an approved class of standardized derivatives is such class of standardized derivatives of the derivatives market of a Specified Exchange as provided in the rules of the derivatives exchange as an approved class of standardized derivatives.

(4) Any holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives or fund management in relation to derivatives who contravenes subsection (1) or any direction made under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

[Subs. Act A1406/2011]

106. [Deleted]

[Del. Act A1437/2012]

Failure to comply with sections 99, 101, and 104

107. A person who contravenes sections 99, 101 and 104 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

[Am. Act A1406/2011]

Subdivision 4 – Over-the-counter derivatives

Interpretation

107A. For the purposes of this Subdivision, "derivatives" means over-the-counter derivatives.

[Am. Act A1406/2011]

Approval of trade repository

107B. (1) The Commission may in writing, approve any body corporate to be a trade repository.

(2) The Commission shall not grant the approval under subsection (1) unless the Commission is satisfied that—

(a) the body corporate will be able to carry out the functions as may be specified;

(b) the body corporate has sufficient financial, human or other resources to carry out the functions as may be specified; and

(c) the body corporate has in place rules and procedures to enable it to perform its functions.

[Ins. Act A1406/2011]

Application for granting approval

107C. (1) An application for the grant of approval as a trade repository shall be made to the Commission in such form and manner as may be specified by the Commission.

(2) The Commission may require a body corporate to furnish the Commission with such information or document as the Commission considers necessary for the purpose of the application.

(3) The Commission may in approving the body corporate impose such condition or restriction as the Commission deems fit.

[Ins. Act A1406/2011]

Withdrawal of approval

107D. (1) The Commission may withdraw an approval granted to a trade repository where the Commission is satisfied that—

(a) the trade repository is not able to perform any of its functions and responsibilities as may be specified by the Commission;

(b) the trade repository has breached any term and condition imposed under subsection 107C(3);

(c) the trade repository has breached any provision of the securities laws or any other laws involving fraud or dishonesty;

(d) the trade repository has failed to comply with any direction issued by the Commission under this Subdivision;

(e) the trade repository is being wound up or otherwise dissolved;

(f) the trade repository has not satisfied in whole or in part a judgment debt against it;

(g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to any property of the trade repository;

(h) the trade repository has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

(i) any information or document that is furnished by the trade repository for the purposes of this Subdivision was false or misleading or from which there was a material omission.

(2) Subject to subsection (3), the Commission may withdraw an approval granted to a trade repository upon a request in writing by the trade repository to cease its operation as a trade repository.

(3) Where a trade repository has on its own accord made a request for cessation under subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that—

(a) it is in the interest of the public or the persons referred to under subsection 107J(1) that any matter concerning the trade repository should be investigated before the approval is withdrawn under subsection (2); and

(b) the withdrawal of approval would not be in the interest of the public or the persons referred to under subsection 107J(1).

(4) The Commission shall not take any action under subsection (1) without giving the trade repository an opportunity to be heard.

[Ins. Act A1406/2011]

Appointment of directors or chief executive officer of an approved trade repository

107E. A trade repository shall obtain the prior approval of the Commission before appointing any director or chief executive officer.

[Ins. Act A1406/2011]

Duty to maintain secrecy

107F. (1) A director, officer, servant or agent of a trade repository shall not disclose any information or document which has been obtained by him in the course of his duties except—

(a) in the circumstances set out under section 107G; or

(b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

[Ins. Act A1406/2011]

Permitted disclosure

107G. A person referred to in subsection 107F(1) shall not refuse to disclose any information or document—

(a) which any person referred to in subsection 107J(1), has given permission in writing to disclose;

(b) in the case where any person referred to in subsection 107J(1) is declared a bankrupt within or outside Malaysia;

(c) for the purpose of instituting, or in the course of, any civil proceedings between a trade repository and any person referred to in subsection 107J(1);

(d) to any person duly authorized to investigate into any offence under any law, and such disclosure being, in any case, limited to the affairs of any person referred to in subsection 107J(1);

(e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws or any other written law;

(f) for the purpose of enabling or assisting Bank Negara in giving effect to its objects or carrying out its functions under the Central Bank of Malaysia Act 2009 and any other written law enforced by Bank Negara;

(g) for the purpose of risk assessment and monitoring by the Malaysia Deposit Insurance Corporation in the performance of its duties and functions under the Malaysia Deposit Insurance Corporation Act 2011 [*Act 720*]; or

(h) for the purpose of enabling or assisting auditors of a trade repository to discharge their function.

[Ins. Act A1406/2011]

Powers of Commission to issue directions

107H. (1) The Commission may give a trade repository such directions whether of a general or specific nature if it thinks it necessary or expedient—

(a) for the effective administration of the trade repository;

(b) for ensuring compliance with any conditions or restrictions imposed on the trade repository; or

(c) in the interest of the public or for the protection of investors.

(2) A trade repository who fails to comply with any directions given under this section commits an offence.

[Ins. Act A1406/2011]

Rules of a trade repository

107I. An amendment to the rules of a trade repository shall only have effect after it has been approved by the Commission.

[Ins. Act A1406/2011]

Reporting obligation

107J. (1) A holder of a Capital Markets Services Licence, registered person or any other person dealing in derivatives shall report information as may be specified by the Commission, including any amendment, modification, variation or changes to the information, to a trade repository.

(2) This section shall not apply to dealing in derivatives where Bank Negara or Government of Malaysia is a party.

(3) For the purposes of subsection (1), the Commission may specify the form and manner in which the information is to be reported to the trade repository.

(4) For the purposes of this section, "derivatives" shall include derivatives whose market price, value, delivery or payment obligations are derived from, referenced to or based on exchange rates.

(5) Any person who—

(a) fails to comply with any requirement of this section; or

(b) submits false or misleading information or from which there is a material omission to a trade repository,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(6) A trade repository shall, upon the request by the Commission, provide to the Commission the information obtained by it under subsection (1).

[Ins. Act A1406/2011]

Division 4

Books, Client's Assets Protection and Audit

Subdivision 1 — Books

Keeping of books and furnishing of returns

108. (1) A holder of a Capital Markets Services Licence shall—

(a) maintain, or cause to be maintained, in the national language or English language such accounting records and other books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(b) maintain, or cause to be maintained, such accounting records and other books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the accounting records and other books of a holder of a Capital Markets Services Licence required to be maintained in accordance with this section shall be deemed to have been made by, or with the authority of, the holder.

(3) A holder of a Capital Markets Services Licence shall retain such accounting records and other books as may be required to be maintained under this Act for a period of not less than seven years.

(4) A holder of a Capital Markets Services Licence shall—

(a) furnish such returns and records in such form and manner as may be specified by the Commission; and

(b) provide such information relating to its business as may be specified by the Commission.

(5) Without prejudice to the generality of subsection (1), every holder of a Capital Markets Services Licence shall maintain such accounting records and other books in such form and manner as may be specified by the Commission.

(6) A person who—

(a) contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; or

(b) with intent to defraud, contravenes this section, commits 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.

Subdivision 2 — Treatment of client's assets in respect of securities

Application of this Subdivision

109. This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities whether that business is carried on within or outside Malaysia.

Interpretation

110. In this Subdivision, unless the context otherwise requires—

"a holder of a Capital Markets Services Licence" means a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;

"client's assets" include monies or other property received or retained by, or deposited with, a holder of a Capital Markets Services Licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom.

Certain monies received by a holder of a Capital Markets Services Licence to be paid into a trust account

111. (1) A holder of a Capital Markets Services Licence shall establish and keep in a licensed institution one or more trust accounts designated or evidenced as such into which he shall pay—

(a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a holder of a Capital Markets Services Licence, for the purchase of securities and that are not attributable to securities delivered to a holder of a Capital Markets Services Licence not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder; and

(b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a holder of a Capital Markets Services Licence, from the sale of securities and that are not paid to that person or as that person directs not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder.

(2) Notwithstanding subsection (1), where a holder of a Capital Markets Services Licence receives payment in a place outside Malaysia, the holder may keep such payment in one or more trust accounts in an institution licensed outside Malaysia to provide banking or financial services.

[Subs. Act A1406/2011]

(3) A holder of a Capital Markets Services Licence who—

(a) contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million ringgit; or

(b) with intent to defraud, contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Client's assets other than monies received by a holder of a Capital Markets Services Licence

112. (1) A holder of a Capital Markets Services Licence shall deal with any client's assets other than monies, received, held or deposited with it in the course of its business, and for which it is liable to account to its client, in such manner as may be prescribed in regulations made under this Act.

(2) A holder of a Capital Markets Services Licence who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Withdrawal of monies from trust account

113. (1) A holder of a Capital Markets Services Licence shall not withdraw any monies from a trust account except for the purpose of making a payment—

(a) to, or in accordance with the written instructions of, a person entitled to the monies;

(b) defraying brokerage and any other proper charges; or

(c) that is otherwise authorized by law.

(2) Except as provided in subsection (1), monies held in a trust account shall not be available for payment of the debts of a holder of a Capital Markets Services Licence or be liable to be paid or taken in execution under an order or process of any court.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Holder of a Capital Markets Services Licence to supply copies of entries in books

114. (1) A holder of a Capital Markets Services Licence shall supply, on demand, to its clients or any person authorized by the client, copies of all entries in its books relating to any transaction carried out on behalf of that client and the holder shall be entitled to levy a reasonable charge therefor.

(2) A client or any person authorized by the client shall be entitled at any time to inspect any contract notes or documents relating to the transaction referred to in subsection (1) free of charge.

Claims and liens not affected

115. Nothing in this Subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any monies—

(a) held in a trust account; or

(b) received for the purchase of securities or from the sale of securities before such monies are paid into a trust account.

Subdivision 3 — Treatment of client's assets in respect of derivatives

Application of this Subdivision

116. This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives whether that business is carried on within or outside Malaysia.

Interpretation

117. (1) For the purposes of this Subdivision, unless the context otherwise requires -

"a holder of a Capital Markets Services Licence" means a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives;

"client", in relation to a holder of a Capital Markets Services Licence, means a person on behalf of whom the holder trades or from whom the holder accepts instructions to deal in derivatives;

"client's assets" include monies or other property received or retained by, or deposited with, a holder of a Capital Markets Services Licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom;

"credit facility" means a document evidencing the right of a person to obtain a loan or other facility from another person and, without prejudice to the generality of the foregoing, includes a letter of credit and a bank guarantee;

"property" includes credit facilities;

"relevant credit balance", in relation to a client of a holder of a Capital Markets

Services Licence, means the total of—

(a) the amounts deposited in respect of the client in a client's segregated account, of the holder, less so much of those amounts as has been withdrawn from the account; and

(b) the value of property other than monies that—

(i) have, in respect of the client, been deposited by the holder in safe custody under section 118 and have not been withdrawn from safe custody; and

(ii) under the terms and conditions on which they were deposited with, or received by, the holder, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

"relevant liabilities", in relation to a client of a holder of a Capital Markets Services Licence, means debts and liabilities of the client arising out of dealing in derivatives effected by the holder on behalf of the client;

"settling", in relation to a dealing in derivatives, includes making delivery, or taking delivery, of an instrument to which the derivative relates.

(2) For the purposes of the definition of "relevant credit balance" in subsection (1), the value of an item of property at a particular time is—

(a) if the item is a credit facility, the amount of monies that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain because of that right; or

(b) if it is otherwise than a credit facility, the market value of the property as at the end of the last business day before that time.

Segregation of clients' assets

118. (1) If any client's assets are deposited with, or are received by, a holder of a Capital Markets Services Licence for or on behalf of a client of the holder in connection with—

(a) dealing in derivatives effected or proposed to be effected, whether within or outside Malaysia; or

(b) instructions by such client, whether within or outside Malaysia,

the holder shall—

(A) in respect of monies, deposit the monies in a client's segregated account of the holder kept and maintained within Malaysia or in the place where the monies was deposited with or received by, the holder; or

(B) in respect of property, deposit the property in safe custody within Malaysia or in the place where the property was deposited with or received by the holder, in such a manner that the property is segregated from property other than property deposited by the holder in safe custody under this subsection,

not later than the next bank business day or such other day as may be specified by the Commission after the monies or property is deposited with or received by, the holder that is a day on which the amount or property can be deposited as first mentioned in paragraph (A) or (B), as the case may be.

(2) Without prejudice to the generality of subsection (1), if in connection with dealing in derivatives effected, whether within or outside Malaysia, by a holder of a Capital Markets Services Licence, the holder receives from a person an amount of monies, some or all of which is attributable to dealing in derivatives so effected, whether within or outside Malaysia, on behalf of the clients of the holder, the holder shall, no later than the next bank

business day or such other day as may be specified by the Commission on which the amount can be so deposited, deposit the amount in a client's segregated account kept and maintained within Malaysia or in the place where the holder receives the amount.

(3) A holder of a Capital Markets Services Licence shall not withdraw any monies in the client's segregated account except for the purpose of—

(a) making a payment to or in accordance with the written direction of, a person entitled to the monies;

(b) making a payment for or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of dealing in derivatives effected by the holder on behalf of the client;

(c) defraying brokerage and other proper charges incurred in respect of dealing in derivatives effected by the holder on behalf of the client;

(d) investing it—

(i) on deposit at interest with a licensed bank;

(ii) on deposit with an approved clearing house for a derivatives exchange; or

(iii) in any other prescribed manner; or

(e) making a payment that is otherwise authorised by law or by the rules of a derivatives exchange or an approved clearing house of which the holder is an affiliate,

or as permitted by subsection (7).

(4) A holder of a Capital Markets Services Licence shall not deal with property deposited by the holder in safe custody under subsection (1) except in accordance with the terms and conditions on which the property was deposited with or received by, the holder.

(5) A holder of a Capital Markets Services Licence shall not invest an amount under paragraph (3)*(d)* by depositing it with a person for that person to invest unless the holder—

(a) has told the person that the amount has been withdrawn from a client's segregated account of the holder and is monies to which the clients of the holder are entitled; and

(b) has obtained from the person a written statement that is signed by the person, setting out the amount and acknowledging that the holder has informed the person as required under paragraph *(a)*.

(6) If, at any particular time, the total amount of the relevant liabilities of a client of a holder of a Capital Markets Services Licence exceeds the relevant credit balance of the client, the holder may, in respect of the client, deposit in a client's segregated account of the holder an amount of monies not greater than the amount of the excess, and, if the holder does so, the amount so deposited is to be taken, subject to subsection (7), to be monies to which the client is entitled.

(7) If—

(a) a holder of a Capital Markets Services Licence has, in respect of a client of the holder, deposited an amount under subsection (6) in a client's segregated account of the holder; and

(b) the relevant credit balance of the client exceeds the total amount of the relevant liabilities of the client,

the holder may withdraw from the account so much of the amount referred to in paragraph *(a)* as does not exceed the amount of the excess referred to in paragraph *(b)*.

(8) A holder of a Capital Markets Services Licence shall keep, in relation to any client's segregated account, accounting records that—

(a) are separate from any other accounting records of the holder;

(b) record separately in respect of each client of the holder particulars of the amounts deposited in and the amounts withdrawn from the client's account; and

(c) record separately from the particulars referred to in paragraph *(b)*—

(i) particulars (including particulars of withdrawals) of so much of the amounts deposited in accordance with subsection (2) in the account as was not attributable to dealing in derivatives effected by the holder on behalf of its clients;

(ii) particulars of all amounts deposited in the account under subsection (6); and

(iii) particulars of all amounts withdrawn from the account under subsection (7).

(9) A holder of a Capital Markets Services Licence shall keep records that—

(a) relate to the deposits of property in safe custody by the holder under subsection (1); and

(b) record separately the particulars of the property deposited in respect of each client.

(10) Section 108 shall apply in relation to accounting records and any other records that are required by subsections (8) and (9) to be kept by the holder, and shall apply as if those accounting records and other records were accounting records required by that section to be kept by the holder.

(11) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Monies in segregated account not available for payment of debt, *etc*.

119. (1) Notwithstanding anything contained in the Companies Act 1965, but subject to subsections (2) and (3)—

(a) monies deposited by a holder of a Capital Markets Services Licence under section 118 in a client's segregated account of the holder;

(b) property in which monies deposited by a holder of a Capital Markets Services Licence as mentioned in paragraph *(a)* has been invested under paragraph 118(3)*(d)*; and

(c) property deposited by a holder of a Capital Markets Services Licence in safe custody under subsection 118(1),

shall not be available for the payment of a debt or liability of such holder or liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

(2) Nothing in subsection (1) affects the right of a client of a holder of a Capital Markets Services Licence to recover monies or property to which the client is entitled.

(3) Subsection (1) does not apply in relation to monies that a holder of a Capital

Markets Services Licence is entitled to withdraw monies from a client's segregated account of the holder for the purpose of making a payment to the holder or otherwise under subsection 118(3).

(4) If a holder of a Capital Markets Services Licence invests monies under paragraph 118(3)*(d)* by depositing it with a person for the person to invest, neither that monies nor any property in which the person invests any of that monies, is available for the payment of a debt or liability of the person or is liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

(5) Without prejudice to the rights of a holder of a Capital Markets Services Licence under any other written law, subsection (4) may only be invoked by the holder or any person claiming on behalf of or in the name of the holder for the purpose of settling any liabilities due to an approved clearing house, in respect of derivatives effected by the holder for the clients to whom any monies or property referred to in subsection (4) relates.

(6) Nothing in section 118 and this section shall affect a claim or lien that a holder of a Capital Markets Services Licence has, in relation to a business of dealing in derivatives carried on by it, under an agreement, any law within or outside Malaysia, against or on—

(a) monies deposited by the holder under section 118 in a client's segregated account of the holder;

(b) property in which monies so deposited has been invested under paragraph 118(3)*(d)*; or

(c) property deposited by the holder in safe custody under subsection 118(1).

(7) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Subdivision 4— Treatment of client's assets in respect of fund management

Application of this Subdivision

120. (1) This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of fund management.

(2) Nothing in this Subdivision shall apply to a corporation which manages a portfolio of securities or derivatives solely for or on behalf of any of its related corporations, provided that the second-mentioned corporation's securities or derivatives being managed by the first-mentioned corporation are not securities or derivatives held on trust or on behalf of or beneficially belonging to any other person, or as a result of any investment contract entered into by the second-mentioned corporation.

(3) For the purposes of this section, "investment contract" has the meaning assigned to it in subsection 84(1) of the Companies Act 1965.

Interpretation

121. For the purposes of this Subdivision, unless the context otherwise require—

"a holder of a Capital Markets Services Licence" means a holder of a Capital Markets Services Licence who carries on the business of fund management;

"client's assets" includes monies or other property received or retained by, or deposited with a holder of a Capital Markets Services Licence received in the course of his business for which the holder is liable to account to its client, and includes, monies received or property deposited with or held by a custodian or by any other person as may be permitted by the Commission under this Subdivision for which it is liable to account or deliver to the client;

"custodian", in relation to a client of a holder of a Capital Markets Services Licence, means—

(a) a licensed bank as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client;

(b) a licensed merchant bank as defined in the Banking and Financial Institutions Act 1989 appointed by a fund manager with the prior written consent of the client;

(c) a trust company registered under the Trust Companies Act 1949 [*Act 100*];

(d) Amanah Raya Berhad;

(e) a participating organisation;

(f) a wholly owned subsidiary of any institution specified under paragraphs *(a)*, *(b)* and *(e)* that provides nominee services;

[Am. Act A1406/2011]

(fa) any institution licensed or authorized to provide custodian services outside Malaysia; or;

[Ins. Act A1406/2011]

(g) any other person as may be specified in writing by the Commission;

[Am. Act A1406/2011]

"trust account", means a current, deposit or property account which—

(a) is kept with a custodian; or

(b) is kept by any person as may be permitted by the Commission under subsection 122(2).

Operation of trust account

122. (1) A holder of a Capital Markets Services Licence shall open a trust account for its client's assets and shall make arrangements for a custodian to maintain such trust account.

(1A) Subsection (1) shall not apply where a client makes his own arrangement for a custodian to maintain a trust account.

[Ins. Act A1406/2011]

(2) The Commission may, where it thinks fit to do so, exempt a holder of a Capital Markets Services Licence from the requirement under subsection (1) to arrange for a custodian to maintain the trust account and permit any other person to maintain the trust account.

(3) A holder of a Capital Markets Services Licence shall deposit client's assets into the trust account maintained by a custodian or any other person as may be permitted by the Commission under subsection (2), as the case may be, not later than the next bank business day or such other day as may be specified by the Commission, following the day on which the holder receives the client's assets.

(4) Notwithstanding subsection (1), where client's assets that are required by this section to be deposited into a trust account are received by a holder of a Capital Markets Services Licence in a place outside Malaysia, the holder may deposit such assets into a trust account maintained by a custodian outside Malaysia.

[Am. Act A1406/2011]

(5) A holder of a Capital Markets Services Licence shall not withdraw from or deal with client's assets in a trust account except for the purpose of making a payment—

(a) to the person entitled thereto; or

(b) that is otherwise authorized by law.

(6) Except as otherwise provided in this Subdivision, client's assets held in a trust account shall not be available for the payment of the debts of a holder of a Capital Markets Services Licence or liable to be paid or taken in execution under an order or process of court for the payment of the debt of a holder of a Capital Markets Services Licence.

(7) The holder of a Capital Markets Services Representative's licence which permits the holder to carry on the business of fund management shall neither accept nor hold client's assets unless he does so on behalf of a holder of a Capital Markets Services Licence and in the course of employment under a contract of employment with such holder.

(8) Nothing in this Subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any client's assets held in a trust account or against or upon any client's assets received for the purchase or from the sale of securities before such assets are deposited into the trust account.

(9) A person who—

(a) contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; or

(b) with intent to defraud, contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Client's assets

123. (1) A holder of a Capital Markets Services Licence shall not deal in securities or deal in derivatives for or on behalf of a client unless, to the extent that the holder receives client's assets—

(a) the holder does so on the basis that the assets shall be applied solely for specified purposes agreed when or before the holder receives the assets;

(b) pending such application, the assets are deposited by the next bank business day or such other day as may be specified by the Commission to a custodian with whom a trust account is maintained in accordance with this Subdivision or to any other person as may be permitted by the Commission under subsection 122(2); and

(c) a separate book entry shall be recorded and maintained for each client by the holder in accordance with this Act or any guidelines issued by the Commission, in relation to client's assets.

(2) A holder of a Capital Markets Services Licence who contravenes subsection (1) commits an offence.

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

124. (1) A holder of a Capital Markets Services Licence shall supply, on demand, to his client or any person authorized by the client, copies of all entries in his books relating to the client's transaction.

(2) A person referred to in subsection (1) shall be entitled to inspect any contract note or document relating to the client's transaction free of charge.

Subdivision 5 — Range of actions the Commission may take to protect clients under certain circumstances

[Am. Act A1406/2011]

Commission's actions to protect client's assets, *etc*.

125. (1) This section applies to the following persons:

(a) a licensed person;

(b) a trustee approved by the Commission under section 260, section 289 or Part IIIA;

(c) a custodian as defined under section 121;

(d) a private retirement scheme administrator approved under Part IIIA;

(e) any person registered under subsection 76(2) or any registered person referred to in Part 2 of Schedule 4; and

(f) any person who maintains a trust account for clients' assets.

[Subs. Act A1406/2011]

(2) Without prejudice to section 354, 355 or 356, where—

(a) a licensed person or a trustee approved by the Commission under section 260, section 289 or Part IIIA has contravened this Act or guidelines issued under this Act;

(b) the interests of the clients of the holder of a Capital Markets Services Licence or the interests of debenture holders or unit holders are likely to be jeopardised, or are jeopardised;

(c) any of the grounds exists for which an approval may not be granted under section 260 or 289;

(d) any of the grounds exists for which a licence may be revoked or suspended under section 72 or any action which may be taken pursuant to section 262, 290 or 292;

(e) the interests of the members of a private retirement scheme are likely to be jeopardised, or are jeopardised;

(f) a private retirement scheme provider approved under section 139Q has contravened this Act or any guidelines issued under this Act;

(g) any circumstances exists for which an approval granted under Part IIIA of this Act may be withdrawn;

(h) any circumstances exists for which an action can be taken under this Act to replace or remove a trustee approved under Part IIIA of this Act; or

(i) any circumstances exists for which the Commission may take action under subsection 76(9),

the Commission may take any one or more of the following actions:

(A) direct any person in subsection (1)—

(i) not to deal with monies and properties of its clients or members in such manner as the Commission thinks appropriate;

(ii) to transfer the monies and properties of its clients or members to any other person as may be specified by the Commission; or

(iii) to transfer any records or documents in relation to monies or properties to any other person as may be specified by the Commission;

(B) prohibit any person in paragraphs (1)*(a)*, *(d)*, *(e)* and *(f)* from—

(i) entering into transactions of a specified description, in specified circumstances or to a specified extent;

(ii) soliciting business from persons of a specified description; or

(iii) carrying on business in a specified manner;

(C) require any person in paragraphs (1)*(a)*, *(d)*, *(e)* and *(f)* to carry on business in a specified manner; or

(D) direct any person in paragraphs (1)*(a)*, *(d)*, *(e)* and *(f)* to maintain property within or outside Malaysia such that—

(i) the property maintained is of the value and of the description that appear to the Commission to be necessary to ensure that such person will be able to meet its liabilities; and

(ii) the property is maintained in a manner that will enable such person at any time freely to transfer or otherwise dispose of the property.

[Subs. Act A1406/2011]

(3) Where a direction, condition, prohibition or requirement imposed under subsection (2) is in force, the Commission may, where it considers appropriate to do so by notice in writing given to the person on whom the direction, condition, prohibition or requirement is imposed—

[Am. Act A1406/2011]

(a) withdraw the direction, condition, prohibition or requirement; or

(b) substitute another direction, condition, prohibition or requirement for, or vary the direction, condition, prohibition or requirement,

and such direction, condition, prohibition or requirement so withdrawn or substituted shall remain in force in accordance with the terms thereof until it is—

(A) withdrawn; or

(B) substituted by another direction, condition, prohibition or requirement, or varied, by the Commission under this section.

(4) Nothing in this Act, any rules, any terms of any contract or any other law shall invalidate any action taken by the Commission under this section.

[Am. Act A1406/2011]

(5) The Commission shall not take any action under this section without giving a licensed person or a trustee an opportunity to be heard.

(6) Subsection (5) shall not apply if the Commission considers that any delay in taking an action under this section by giving an opportunity to be heard would be prejudicial to the public interest or the interest of the clients of the licensed person.

(7) For the purposes of this section, where the person in paragraph (1)(c) or (f) is a licensed institution or an Islamic bank; a direction, condition, prohibition or requirement on such person shall be made through Bank Negara.

[Ins. Act A1406/2011]

Subdivision 6 — Audit

Appointment of auditor

126. (1) This Subdivision applies to the business of a holder of a Capital Markets Services Licence, an exchange holding company, a stock exchange, a derivatives exchange, an approved clearing house, a central depository and a recognised self-regulatory organisation.

[Am. Act A1406/2011]

(2) A reference to a relevant person in this Subdivision shall be construed as a reference to persons referred to in subsection (1).

(3) Notwithstanding the provisions of the Companies Act 1965, a relevant person shall appoint an auditor to carry out for the year in respect of which he is appointed an audit of the accounts of the relevant person.

(3A) For the purposes of subsection (3), where the relevant person is a holder of a Capital Markets Services Licence who carries on the business of dealing in securities, dealing in derivatives or fund management, the auditor appointed shall be an auditor registered under section 31O of the Securities Commission Malaysia Act 1993.

[Ins. Act A1406/2011]

(4) A relevant person shall not appoint a person who is an associate of the relevant person as an auditor of any of its accounts.

(5) A relevant person—

(a) shall remove an auditor who becomes ineligible by virtue of subsection (4); and

(b) may in any other case, with the Commission's written consent, remove an auditor from office.

(6) An auditor of a relevant person may resign from his office by giving a notice in writing to that effect to the Commission provided that such notice shall be accompanied by—

(a) a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the Commission; or

(b) if he considers that there are no such circumstances, a statement that there are none.

(7) Notwithstanding any other provisions of this Act, the Commission may at any time remove an auditor appointed by a relevant person if the Commission is not satisfied with the manner in which the auditor is performing his duties.

Relevant person to lodge auditor's report

127. (1) A relevant person shall, within three months after the close of each financial year, or such further period as the Commission may permit under subsection (2), lodge with the Commission, the auditor's report containing information on such matters as may be specified.

(2) Where an application for the extension of the period of three months specified in subsection (1) is made by a relevant person to the Commission and if the

Commission is satisfied that there are special reasons for requiring the extension, the Commission may extend that period by a further period of not exceeding three months subject to such conditions as the Commission thinks fit to impose.

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

(4) For the purposes of subsection (1), "financial year", in relation to a relevant person, means the financial year of the corporation within the meaning of the Companies Act 1965.

Duties of auditor

128. (1) Where in the performance of his duties as auditor for a relevant person, an auditor becomes aware—

(a) of any matter which in his opinion may constitute a breach of this Act or any securities laws;

(b) of any irregularity that may have a material effect upon the accounts of the relevant person, including any irregularity that jeopardises or may jeopardise the funds or property of the clients of the relevant person, where applicable;

(c) that losses have been incurred by the relevant person who is the holder of a Capital Markets Services Licence which renders the relevant person to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Act;

(d) that the auditor is unable to confirm that the claims of clients or creditors of the relevant person are covered by the assets of the relevant person;

(e) that an offence in connection with the business of the relevant person has been committed; or

(f) in the case of a relevant person who is a holder of a Capital Markets Services Licence, that there has been a contravention of the rules of a stock exchange, a derivatives exchange, an approved clearing house or a central depository,

the auditor shall immediately report the matter to—

(A) in the case of a participating organization, the stock exchange and the Commission;

(B) in the case of a holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives, the derivatives exchange and the Commission; or

(C) in any other case, the Commission.

(2) No auditor shall be liable to be sued in any court in respect of any statement made by the auditor in good faith in the discharge of his duties under this Subdivision.

(3) The Commission may at any time require an auditor appointed under this Subdivision—

(a) to submit such additional information in relation to his audit as the Commission may specify;

(b) to enlarge or extend the scope of his audit of the business and affairs of the relevant person in such manner or to such extent as the Commission may specify;

(c) to carry out any specific examination or establish any procedure in any particular case;

(d) to submit a report on any of the matters referred to in paragraphs *(a)* to *(c)*; or

(e) to submit an interim report on any of the matters referred to in paragraphs *(a)* to *(d)*,

and the Commission may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and may specify the remuneration which the relevant person shall pay to the auditor in respect thereof.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the relevant person shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(5) The relevant person shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this Subdivision.

Duty of relevant person or its directors or officers to furnish information

129. (1) A relevant person and any director or officer of the relevant person shall—

(a) furnish to an auditor appointed under any provision of this Subdivision—

(i) all the information within its or his knowledge or which it or he is capable of obtaining; or

(ii) any information which the auditor requires to enable him to carry out his duties; and

(b) ensure that all the information which is furnished to the auditor, including information furnished under paragraph *(a)*, is not false or misleading in any material particular.

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

(3) It shall be a defence to any proceedings in defamation in respect of any statement made in any such report of an auditor or in any such further report of a relevant authority if the defendant satisfies the court that the statement was made *bona fide* and without malice.

Power of Commission to appoint independent auditor, *etc.*

130. (1) Where—

(a) a relevant person has failed to submit the auditor's report in compliance with subsection 127(1); or

(b) the Commission has received a report under section 127 or 128,

the Commission may, if the Commission is satisfied that it is in the interests of the relevant person concerned, the members or the clients of that relevant person to do so, appoint in writing an independent auditor or such other person or body of persons as the Commission may decide, to examine, audit and report, either generally or in relation to any particular

matter, upon the books, accounts and records of, and assets held by the relevant person.

(2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an independent auditor, person or body of persons appointed by the Commission under this section should be borne by the relevant person concerned, the Commission may, by order in writing, direct such relevant person to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

(3) Where a relevant person has failed to comply with an order of the Commission under subsection (2), the amount specified in the order may be sued for and recovered by the Commission in a court as a debt due to the Commission.

Power of Commission to appoint an independent auditor, *etc*., upon application

131. (1) Upon receipt of an application in writing from a person who alleges that a relevant person has failed to account to him in respect of any monies or assets held or received by that relevant person for or on his behalf, the Commission may appoint in writing an independent auditor or such other person as the Commission may decide to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of, and assets held by that relevant person.

(2) Every application under subsection (1) shall state—

(a) particulars of the circumstances under which the relevant person received the monies or assets in respect of which he is alleged to have failed to account;

(b) particulars of those monies or assets and of the transactions of the applicant and the relevant person relating thereto; and

(c) such other particulars as the Commission may require.

(3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made *bona fide* and without malice, be privileged.

(4) The Commission shall not appoint an independent auditor or such other person under subsection (1) unless the Commission is satisfied—

(a) that the applicant has good reason for making the application; and

(b) that it is expedient in the interests of the relevant person or the applicant or the general public that the books, accounts and records of, and assets held by the relevant person should be examined, audited and reported upon.

Independent auditor, *etc*., to report to Commission

132. An independent auditor or such other person appointed by the Commission under section 130 or 131 shall, upon the conclusion of the examination and audit in respect of which such auditor or other person was appointed, make a report thereon to the Commission.

Powers of independent auditor appointed by the Commission

133. An independent auditor or such other person appointed by the Commission under section 130 or 131 to examine and audit the books, accounts and records of, and assets held by a relevant person may, for the purpose of carrying out such examination and audit—

(a) examine on oath any director, executive officer or the secretary of the relevant person concerned and any of the relevant person's employees and

agents and any other auditor appointed under this Act in relation to those books, accounts, records and assets;

(b) employ such persons as he considers necessary; and

(c) by instrument in writing under his hand authorise any person employed by him to do, in relation to such examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the power conferred by this paragraph.

Prohibition against communication of certain matters by independent auditors, *etc.*, and employees

134. Except for the purpose of carrying into effect the provisions of this Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent auditor or such other person appointed by the Commission under section 130 or 131 and an employee of such auditor or other person shall not communicate any matter, which may come to his knowledge in the performance of his duties to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the auditor by whom he is employed.

Books, accounts and records to be produced upon demand

135. (1) Upon request by an independent auditor or such other person appointed by the Commission under section 130 or 131 or by a person who produces a written authority in that behalf given under paragraph 133*(c)* —

(a) a relevant person and any of its directors, executive officer or secretary, employee or agent shall produce any books, accounts and records of, and any assets held by the relevant person relating to his business; and

(b) an auditor appointed by a relevant person shall produce any books, accounts and records held by him relating to the business of the relevant person.

(2) A relevant person and any of its directors, executive officer, secretary, employee or agent and any auditor appointed by the relevant person, shall answer all questions relevant to an examination and audit which are put to him by an independent auditor or such other person appointed by the Commission under sections 130 and 131 or by a person who produces a written authority in that behalf given under paragraph 133*(c)*.

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

Penalty for destroying, concealing or altering books or sending books or property out of Malaysia

136. (1) A person who, with intent to defeat the purposes of this Subdivision or with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Subdivision —

(a) destroys, conceals or alters any books or property relating to the business of a relevant person; or

(b) sends or attempts to send or conspires with any other person to send out of Malaysia any such books or any property of any description belonging to or in the disposition of or under the control of a relevant person,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) If in a prosecution for an offence under subsection (1) it is proved that the person charged—

(a) destroyed, concealed or altered any books or property referred to in subsection (1); or

(b) sent or attempted to send or conspired to send out of Malaysia any such books or any property referred to in subsection (1),

the onus of proving that in so doing he did not act with intent to defeat the purposes of this Subdivision or with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Subdivision shall lie on him.

Rights of exchange to impose obligations

137. The provisions of this Subdivision shall not prevent a stock exchange or a derivatives exchange, as the case may be, from imposing on any participating organization or holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives and who is an affiliate of a derivatives exchange, any further obligation or requirement which such stock exchange or derivatives exchange thinks fit with respect to—

[Am. Act A1406/2011]

(a) the audit of accounts;

(b) the information to be furnished in reports from auditors; or

(c) the keeping of accounts, books and records.

Division 5

Vesting

Interpretation

138. In this Division, unless the context otherwise requires—

"business" means any activity which a holder of a Capital Markets Services Licence carries on pursuant to its licence and includes all property derived from, or used in connection with, or for the purpose of carrying on such activity and all rights and liabilities arising from such activity;

"liabilities" includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

"property" means any movable or immovable property and includes—

(a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, future, vested or contingent or which is otherwise of value;

(b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property, of which the person executing the conveyance is proprietor, possessed or entitled to a contingent right, either for the whole interest or for any less interest;

(c) securities;

(d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;

(e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent; and

(f) any other tangible or intangible property;

"securities account" means an account established by a central depository for a depositor for the recording of securities and for dealings in such securities by the depositor;

"security" includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent.

Application to court to facilitate agreement or arrangement for transfer of whole or part of business of licensed person

139. (1) Where the Commission has granted its approval for a holder of a Capital Markets Services Licence in relation to an agreement or arrangement—

(a) for the sale, disposal or transfer in any manner of the whole or any part of the business of such holder;

(b) for the amalgamation or merger of such holder with any other person; or

(c) for the reconstruction of such holder,

the holder whose business is to be transferred (referred to in this section as "the transferor") and the entity to whom the transfer is to be made (referred to in this

section as “the transferee”) may make a joint application to the court by way of *ex parte* originating summons for such order of the court as may be required by them to facilitate or enable the agreement or arrangement to be given effect to.

[Subs. Act A1406/2011]

(2) In an application to the court under subsection (1), there may be sought all or any of the following orders:

(a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as “the transfer date”);

(b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities applicable to that matter respectively;

(c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee;

(d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor;

(e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or

other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client;

(f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal;

(g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the transferee either alone or, as the case may be, jointly with the other person;

(h) for any monies received from commission, interest and other sources payable by any person to the transferor to be payable by the person to the transferee;

(i) for any negotiable instrument or order for payment of monies drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been drawn on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee;

(j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee;

(k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee, and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date;

(l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies, and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;

(m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee;

(n) for all such other incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.

(3) On the hearing of an application under subsection (2), the court may grant an order in the terms applied for, or with such modifications or variations as the court deems just or proper in the circumstances of the case.

(4) Where the order of the court granted under subsection (3) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law, and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

(5) The order of the court granted under subsection (3) shall, subject to the directions of the court, be published by the transferee in at least one national language national daily newspaper and one English language national daily newspaper as approved by the Commission.

(6) The transferor shall, within thirty days from the date the order of the court was granted under subsection (3), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Minister or the Commission, as the case may be, with—

(a) the Registrar of Companies; and

(b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.

(7) Where an order of the court granted under subsection (3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

(a) the court shall, where such alienated land is in Peninsular Malaysia, including the Federal Territory of Putrajaya, pursuant to subsection 420(2) of the National Land Code 1965 [*Act 56/1965*], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator immediately after the order is granted so that the Registrar of Titles or the Land Administrator can effect the provisions of subsections 420(2), (3) and (4) respectively;

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been granted, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance *[Sabah Cap. 68]*;

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under section 171 of the Sarawak Land Code of Sarawak [*Cap. 81*]; or

(d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984 [*P.U.(A)291/84*].

(8) An order of the court granted under subsection (3) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement

of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where the property or business is or, where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

PART IIIA

PRIVATE RETIREMENT SCHEME INDUSTRY

Division 1

Preliminary

Interpretation

139A. In this Part, unless the context otherwise requires—

"accrued benefits" means the amount of a member's beneficial interest in a private retirement scheme;

"contribution" means an amount paid by a contributor in respect of a private retirement scheme;

"contributor" means any person who makes contribution into a private retirement scheme and includes a member or an employer who makes contribution into a private retirement scheme on behalf of his employees;

"employer-sponsored retirement scheme" means a retirement scheme established by a corporation for the purpose, or having the effect of providing retirement benefits to employees of that corporation or for its related corporation;

"employer trustee" means a trustee of an employer-sponsored retirement scheme;

"member" means an individual who has a beneficial interest under a private retirement scheme or an employer-sponsored retirement scheme;

"principal officer" means a person who is a director, chief executive officer, chief operation officer or head of compliance of a private retirement scheme provider;

"private retirement scheme" means a retirement scheme governed by a trust, offered or provided to the public for the sole purpose, or having the effect, of building up long term savings for retirement for members where the amount of the benefits is to be determined solely by reference to the contributions made to the scheme and any declared income, gains and losses in respect of such contributions but does not include—

(a) any pension fund approved under section 150 of the Income Tax Act 1967; or

(b) any retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law;

"private retirement scheme administrator" means a person who is approved under section 139C to perform the function of record keeping, administration and customer service for members and contributors in relation to contributions made in respect of a private retirement scheme and such other duties and functions as may be specified by the Commission;

"private retirement scheme provider" means a person who provides and manages a private retirement scheme;

"rules" means the memorandum of association, the articles of association or any other rules or directions by whatever name called and wherever contained, governing the operation, management or procedures of, or services provided by a private retirement administrator;

"scheme trustee" means a trustee of a private retirement scheme;

"supervisory authority" means any authority, body or agency whether within or outside Malaysia, other than the Commission, which is responsible for the supervision or oversight of any person referred to in section 139ZM;

"terms of reference" means a set of terms which defines the scope, application, operation and procedures of a private retirement scheme administrator.

[Ins. Act A1406/2011]

Division 2

Private retirement scheme

Subdivision 1 – Private retirement scheme administrator

Requirement for approval to establish or operate a private retirement scheme administrator

139B. (1) A person shall not establish, operate, or assist in establishing or operating, or hold himself out as, a private retirement scheme administrator unless the person is approved by the Commission.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

[Ins. Act A1406/2011]

Application for approval

139C. (1) The Commission may approve a body corporate to establish, operate or maintain a private retirement scheme administrator.

(2) An application for approval to establish, operate or maintain a private retirement scheme administrator shall be made to the Commission in such form and manner as may be specified by the Commission.

(3) 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.

(4) The Commission may approve an application under this section, subject to any terms and conditions as the Commission thinks fit.

(5) The Commission may vary, add to or remove any terms and conditions imposed under subsection (4) at any time as the Commission deems necessary.

(6) Any person who contravenes any term or condition imposed under subsection (4) or (5) commits an offence.

[Ins. Act A1406/2011]

Refusal to approve

139D. Where an application is made under section 139C, the Commission may refuse the application on any of the following grounds:

(a) the application was not made in accordance with section 139C;

(b) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

(d) the applicant is in the course of being wound up or otherwise dissolved;

(e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;

(g) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(h) the applicant or any of its directors, chief executive or managers—

(i) has been convicted, whether within or outside Malaysia, of an offence involving fraud, dishonesty or violence;

(ii) has been convicted of an offence under any securities laws or any law outside Malaysia relating to capital market;

(iii) has been subjected to any action taken by the Commission under section 354, 355 or 356;

(iv) has contravened any provision made by or under any written law whether within or outside Malaysia appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty,

incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;

(v) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;

(vi) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or

(vii) is an undischarged bankrupt whether within or outside Malaysia;

(i) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers may not be able to act in the best interest of its members having regard to their reputation, character, financial integrity and reliability;

(j) there are other circumstances which are likely to—

(i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive or managers; or

(ii) reflect discredit on the manner of conducting the business of the applicant;

(k) the applicant does not have sufficient financial, human or other resources to carry out its functions; or

(l) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers will not be able to act in the interest of the public or the members.

[Ins. Act A1406/2011]

Appointment of directors of a private retirement scheme administrator

139E. (1) No appointment, election or nomination of a director or chief executive of a private retirement scheme administrator can be made without the prior approval of the Commission.

(2) The private retirement scheme administrator shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

[Ins. Act A1406/2011]

Withdrawal of approval

139F. (1) The Commission may withdraw an approval granted to a private retirement scheme administrator where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139D;

(b) the private retirement scheme administrator fails to commence operations within six months from the date of approval unless otherwise specified by the Commission;

(c) the private retirement scheme administrator is not able to perform any of its duties or responsibilities under section 139H;

(d) the private retirement scheme administrator has contravened any term and condition imposed by the Commission;

(e) the private retirement scheme administrator has failed to comply with any direction issued by the Commission under this Act; or

(f) the private retirement scheme administrator has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

(2) Subject to subsection (3), the Commission may withdraw an approval upon a request in writing made to the Commission by a private retirement scheme administrator to cease operating as a private retirement scheme administrator.

(3) Where a private retirement scheme administrator made a request for cessation of its operations under subsection (2), the Commission may refuse to withdraw the approval if the Commission considers that—

(a) it is in the interest of the public or the members that any matter concerning the private retirement scheme administrator should be investigated before the approval is withdrawn under subsection (2); or

(b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) Notwithstanding the withdrawal of an approval, the Commission may require the private retirement scheme administrator to continue to carry on such activities affected by the withdrawal as the Commission may specify, on or after the date on which the withdrawal takes effect, for the purposes of—

(a) closing down the operations of the private retirement scheme administrator or ceasing to provide the services; or

(b) protecting the interest of the public or the members.

(5) Where the Commission requires the private retirement scheme administrator to continue its activities under subsection (4), the private retirement scheme administrator shall not, by reason of its carrying on the activities, be regarded as having contravened section 139B.

(6) The Commission shall not take any action under subsection (1) without giving the private retirement scheme administrator an opportunity to be heard.

[Ins. Act A1406/2011]

Effect of withdrawal

139G. Any withdrawal issued under section 139F shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into the system operated by the private retirement scheme administrator where—

(i) the agreement, transaction or arrangement was entered into before the withdrawal of approval; or

(ii) the agreement, transaction or arrangement was entered into after the withdrawal of approval under the circumstances provided under subsection 139F(4); or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[Ins. Act A1406/2011]

Duties and responsibilities of a private retirement scheme administrator

139H. (1) The duties and responsibilities of a private retirement scheme administrator shall include—

(a) receiving instructions in such form and manner as may be specified by the Commission;

(b) transmitting such instructions in such form and manner as may be specified by the Commission;

(c) keeping records of all transactions or monies received or paid out;

(d) providing information to an approved private retirement scheme provider, scheme trustee, member or any other person as may be specified by the Commission; and

(e) discharging such other duties and functions as may be specified by the Commission.

(2) A private retirement scheme administrator shall at all times exercise its duties and responsibilities in the public interest, having particular regard to the need for the protection of members.

(3) A private retirement scheme administrator shall immediately notify the Commission if it becomes aware of any matter which adversely affects or is likely to adversely affect the interest of members.

(4) A private retirement scheme administrator shall not impose any fee or charges or vary such fee or charges, on a private retirement scheme provider or a member without the prior approval of the Commission.

(5) A private retirement scheme administrator shall not outsource or delegate any of its duties and responsibilities, systems or operations to any person without the prior approval of the Commission.

[Ins. Act A1406/2011]

Terms of reference and rules of a private retirement scheme administrator

139I. (1) A private retirement scheme administrator shall put in place a set of terms of reference and rules approved by the Commission governing or relating to the proper administration of the private retirement scheme administrator.

(2) No amendment to the terms of reference or rules shall be made without the prior approval of the Commission.

[Ins. Act A1406/2011]

Monies received by a private retirement scheme administrator

139J. (1) All monies received by a private retirement scheme administrator in respect of a private retirement scheme for the benefit of a member shall be paid into a trust account in such form and manner as may be specified by the Commission.

(2) A private retirement scheme administrator shall not withdraw any monies from a trust account except—

(a) in accordance with the written instruction of a person entitled to the monies or for his benefit; or

(b) otherwise authorized by law.

(3) Except as provided in subsection (2), monies held in a trust account shall not be available for payment of the debts of a private retirement scheme administrator or be liable to be paid or taken in execution under an order or process of any court.

(4) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding five million ringgit.

[Ins. Act A1406/2011]

Accounts and reports in respect of a private retirement scheme administrator

139K. The provisions of Subdivision 6 of Division 4 of Part III shall apply to a private retirement scheme administrator.

[Ins. Act A1406/2011]

Power of Commission to take action in respect of private retirement scheme administrator

139L. (1) Where the Commission reasonably believes that the interests of the members are likely to be adversely affected or are adversely affected, the Commission may, by issuing a written direction, take any one or more of the following actions:

(a) require a private retirement scheme administrator to take any action to do or not to do any act or thing, in relation to its business and affairs, or its directors or officers, which the Commission considers necessary;

(b) notwithstanding any written law or any limitation contained in the rules of the private retirement scheme administrator—

(i) remove from office any director or chief executive of the private retirement scheme administrator;

(ii) appoint any person to the office of director or chief executive of the private retirement scheme administrator and provide

in the direction for the person so appointed to be paid by the private retirement scheme administrator;

(iii) appoint a person to advise the private retirement scheme administrator in relation to the proper conduct of its business and affairs and provide in the direction for the person so appointed to be paid by the private retirement scheme administrator; or

(iv) require the private retirement scheme administrator to furnish the Commission any information or record as the Commission considers necessary.

(2) Where the Commission withdraws an approval under section 139F, the Commission may, by issuing a written direction, take any one or more of the following actions:

(a) notwithstanding any written law, the Commission or any person appointed by the Commission to act on its behalf, assume control of the whole or such part of any regulated assets, business and affairs of a private retirement scheme administrator and to carry on the whole or such part of business and affairs of the private retirement scheme administrator; or

(b) subject to subsections (4) and (5), direct a private retirement scheme administrator to transfer any regulated assets to any other person as may be specified by the Commission.

(3) For the purposes of this section, "regulated assets" means—

(a) all information or records obtained, stored or processed; and

(b) systems developed, operated or maintained,

by a private retirement scheme administrator in carrying out its duties and responsibilities.

(4) All information or records obtained, stored or processed by a private retirement scheme administrator shall belong to the Commission at all times.

(5) Where the regulated assets are transferred to such person under paragraph (2)*(b)*, the private retirement scheme administrator shall be entitled to such compensation as may be determined by the Commission for the systems developed, operated or maintained by the private retirement scheme administrator.

(6) Subsection (5) shall not apply where the withdrawal of approval is for the reason set out under subparagraphs 139D*(h)*(i), (ii), (iii), (iv), (v) or paragraph 139F(1)*(e)*.

[Ins. Act A1406/2011]

Duty to take reasonable security measures

139M. A private retirement scheme administrator shall take all reasonable measures to protect information and documents relating to the affairs or the account of the members against any unauthorized access, alteration, disclosure or dissemination.

[Ins. Act A1406/2011]

Duty to maintain secrecy

139N. (1) A person who has by any means access to any information or document relating to the affairs or the accounts of any contributor shall not give, divulge, reveal or otherwise disclose the information or document to any person except—

(a) in the circumstances set out under section 139O; or

(b) to the Commission if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

[Ins. Act A1406/2011]

Permitted disclosure

139O. A person referred to in subsection 139N(1) shall not refuse to disclose any information or document—

(a) which the contributor, or his personal representative, has given permission in writing to disclose;

(b) in the case where the contributor is declared a bankrupt within or outside Malaysia;

(c) for the purpose of instituting, or in the course of, any civil proceedings—

(i) relating to the account of a contributor in a private retirement scheme; and

(ii) where a private retirement scheme administrator, a private retirement scheme provider, a contributor or an employer contributing on behalf of a contributor, is a party to the civil proceedings,

provided that where a contributor is not a party to the civil proceedings, his prior written consent has been obtained;

(d) to any person duly authorized to investigate into any offence under any law and such disclosure being, in any case, limited to the affairs or the account of the contributor suspected of the offence;

(e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws;

(f) for the purpose of enabling or assisting auditors of a private retirement scheme administrator to discharge their function; or

(g) in a summary or collection of information, framed in such a way so as not to enable the identity of any contributor, to whom the information relates, to be ascertained.

[Ins. Act A1406/2011]

Subdivision 2 – Private retirement scheme provider

Requirement for approval to establish, offer or provide a private retirement scheme

139P. (1) A person shall not establish, offer or provide a private retirement scheme or hold himself out as establishing, offering or providing a private retirement scheme unless the Commission approves—

(a) the person as a private retirement scheme provider under section 139Q;

(b) the private retirement scheme under section 139V; and

(c) the scheme trustee under section 139ZC.

(2) A person shall not take or use or adopt the name or title "private retirement scheme" or "retirement scheme" in relation to its business or make any representation to such effect in any manner unless—

(a) it is a scheme approved under section 139V;

(b) it is a pension fund approved under section 150 of the Income Tax Act 1967;

(c) it is a retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law; or

(d) it is a scheme prescribed by the Minister not to be a private retirement scheme for the purposes of this Part.

(3) A person shall not take or use or by inference adopt the name or title "retirement plan" or "retirement product" or make any representation to such effect in any manner without the approval of the Commission.

(4) Subsection (3) shall not apply to any person solely under the supervision or oversight of Bank Negara.

(5) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

[Ins. Act A1406/2011]

Application for approval

139Q. (1) An application for approval as a private retirement scheme provider shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(2) 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.

(3) The Commission may approve an application under this section, subject to any conditions or restrictions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any conditions or restrictions imposed under subsection (3) at any time as the Commission deems necessary.

(5) Any person who contravenes any conditions or restrictions imposed under subsection (3) or (4) commits an offence.

[Ins. Act A1406/2011]

Refusal to approve

139R. Where an application is made under section 139Q, the Commission may refuse the application on any of the following grounds:

(a) the applicant is not a holder of a Capital Markets Services Licence who carries on the business of fund management;

(b) the application was not made in accordance with section 139Q;

(c) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;

(d) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission;

(e) the applicant is in the course of being wound up or otherwise dissolved;

(f) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(g) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;

(h) the applicant has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or

(i) the Commission has reason to believe that the applicant or any of its principal officer will not be able to act in the interest of the public or the members.

[Ins. Act A1406/2011]

Withdrawal of approval

139S. (1) The Commission may withdraw an approval granted to an approved private retirement scheme provider where the Commission is satisfied that—

(a) the approved private retirement scheme provider ceases to hold a Capital Markets Services Licence who carries on the business of fund management;

(b) there exists a ground on which the Commission may refuse an application under section 139R;

(c) the approved private retirement scheme provider fails to launch the approved private retirement scheme within six months from the date the private retirement scheme is approved;

(d) the approved private retirement scheme provider or any of its principal officer—

(i) has contravened any conditions or restrictions imposed by the Commission;

(ii) has failed to comply with any direction issued by the Commission under this Act;

(iii) has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2); or

(iv) has not acted efficiently, honestly or fairly; or

(e) the conduct of the approved private retirement scheme provider has had an adverse effect on—

(i) the financial soundness of the approved private retirement scheme; or

(ii) the interest of the members.

(2) Subject to subsection (3), the Commission may withdraw an approval upon a request in writing made to the Commission by an approved private retirement scheme provider to cease operating as a private retirement scheme provider.

(3) Where an approved private retirement scheme provider made a request under subsection (2), the Commission may refuse to withdraw the approval where the Commission considers that—

(a) it is in the interest of the public or the members that any matter concerning the approved private retirement scheme provider should be investigated before the approval is withdrawn under subsection (2); or

(b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) Notwithstanding the withdrawal of an approval, the Commission may require the private retirement scheme provider to continue to carry on such activities affected by the withdrawal as the Commission may specify, on or after the date on which the withdrawal takes effect, for the purposes of—

(a) closing down the operations of the approved private retirement scheme provider; or

(b) protecting the interest of the public or the members.

(5) Where the Commission requires a private retirement scheme provider to continue its activities under subsection (4), the private retirement scheme provider shall not, by reason of its carrying on the activities, be regarded as having contravened section 139P.

(6) The Commission shall not take any action under subsection (1) without giving the private retirement scheme provider an opportunity to be heard.

[Ins. Act A1406/2011]

Effect of withdrawal

139T. Any withdrawal issued under section 139S shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the private retirement scheme entered into by the private retirement scheme provider where—

(i) the agreement, transaction or arrangement was entered into before the withdrawal of approval; or

(ii) the agreement, transaction or arrangement was entered into after the withdrawal of approval under the circumstances provided under subsection 139S(4); or

(b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph *(a)*.

[Ins. Act A1406/2011]

Notification of disqualifying event

139U. (1) An approved private retirement scheme provider shall, immediately after the happening of an event under section 139S, give to the Commission written notice setting out the particulars of the event.

(2) A person who contravenes subsection (1) commits an offence.

[Ins. Act A1406/2011]

Subdivision 3 – Private retirement scheme

Application for approval of a private retirement scheme

139V. (1) An application for approval of a private retirement scheme shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(2) 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.

(3) In granting an approval under this section, the Commission may, where it considers appropriate—

(a) approves the private retirement scheme subject to such terms and conditions as it thinks fit; or

(b) approves the private retirement scheme with such revisions and subject to such terms and conditions as it thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) A person who contravenes any term or condition imposed under subsections (3) or (4) commits an offence.

[Ins. Act A1406/2011]

Refusal to approve

139W. Where an application is made under section 139V, the Commission may refuse the application on any of the following grounds:

(a) the applicant is not an approved private retirement scheme provider;

(b) the application is not made in accordance with section 139V;

(c) the private retirement scheme does not comply with any requirement of this Act or any guidelines made under this Act;

(d) any information or document furnished to the Commission in respect of a private retirement scheme is false or misleading or from which there is a material omission; or

(e) the Commission has reason to believe that the approval will not be in the interest of the public or the members of any private retirement scheme.

[Ins. Act A1406/2011]

Withdrawal of approval

139X. (1) The Commission may withdraw an approval granted to an approved private retirement scheme where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139W;

(b) the approved private retirement scheme is not launched within six months from the date of approval;

(c) the approved private retirement scheme provider has failed to comply with any of the terms and conditions imposed in relation to the private retirement scheme or any direction issued by the Commission under this Act; or

(d) it is necessary in order to protect the interest of the public or the members.

(2) Subject to subsection (3), the Commission may, upon a request in writing made to the Commission by the private retirement scheme provider, withdraw an approval granted to the approved private retirement scheme.

(3) Where a request in writing is made to the Commission under subsection (2), the Commission may refuse to withdraw the approval where the Commission considers that—

(a) it is in the interest of the public or the members that any matter concerning the approved private retirement scheme should be investigated before the approval is withdrawn under subsection (2); or

(b) the withdrawal of the approval would not be in the interest of the public or the members.

(4) The Commission shall not take any action under subsection (1) without giving the approved private retirement scheme provider an opportunity to be heard.

[Ins. Act A1406/2011]

Contributions to vest in member as accrued benefits

139Y. (1) A contribution in respect of a member of an approved private retirement scheme shall vest in the member as accrued benefits as soon as it is paid to either the approved private retirement scheme provider or the scheme trustee, whichever is earlier.

(2) Income or profits derived from the investment of accrued benefits of a member of an approved private retirement scheme, after taking into account any loss arising from any such investment, shall also vest in the member as accrued benefits as

soon as they are received by either the approved private scheme provider or the scheme trustee, whichever is earlier.

(3) Notwithstanding subsections (1) and (2), the Commission may specify the manner in which accrued benefits will be accounted for and vested in a member.

[Ins. Act A1406/2011]

Preservation of accrued benefits

139Z. For the purpose of preserving accrued benefits in an approved private retirement scheme, no private retirement scheme provider or scheme trustee shall pay or otherwise dispose of any part of the accrued benefits to any member or any other person except in the manner as may be specified by the Commission.

[Ins. Act A1406/2011]

Protection of accrued benefits

139ZA. No part of any accrued benefits in an approved private retirement scheme in respect of a member shall be taken in execution of a judgment debt or be the subject of any charge, pledge, lien, mortgage, transfer, assignment or alienation by or on behalf of the member and any purported disposition contrary to this section is void.

[Ins. Act A1406/2011]

Effect of withdrawal

139ZB. (1) A withdrawal of an approval to a private retirement scheme under section 139X shall not affect any right of a member in respect of accrued benefits that the member is entitled to as provided under section 139Y.

(2) Where the Commission withdraws an approval under section 139X, the Commission may, by issuing a written direction, direct the private retirement scheme provider or the scheme trustee to transfer the accrued benefits to another approved private retirement scheme.

[Ins. Act A1406/2011]

Subdivision 4 – Scheme trustee

Approval of scheme trustee

139ZC. (1) A person shall not act or be appointed to act as a scheme trustee in relation to a private retirement scheme without the approval of the Commission.

(2) An application to be a scheme trustee shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(3) The Commission may approve the application under this section, subject to any terms and conditions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) A scheme trustee who contravenes subsection (1) or any terms or conditions imposed under subsection (3) or (4) commits an offence.

[Ins. Act A1406/2011]

Refusal to approve

139ZD. (1) Where an application is made under section 139ZC, the Commission may refuse the application on any of the following grounds:

(a) the applicant—

(i) is a shareholder who beneficially holds shares in the private retirement scheme provider;

(ii) is beneficially entitled to monies owed by the private retirement scheme provider to it; or

(iii) is a related corporation of—

(A) the persons referred to in subparagraphs (i) and (ii); or

(B) the private retirement scheme provider;

(b) the application was not made in accordance with section 139ZC;

(c) the applicant has failed to comply with any requirements of this Act or any guidelines made under this Act;

(d) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or

(e) the Commission has reason to believe that the applicant will not be able to act in the interest of the public or the members.

(2) Notwithstanding paragraph (1)*(a)*, a person is not prevented from being appointed or from acting, as a scheme trustee by reason only that—

(a) the monies that the private retirements scheme provider owes to the scheme trustee or any related corporation of the scheme trustee are monies to which the scheme trustee or any related corporation of the scheme trustee is entitled to as scheme trustee, in accordance with the provisions or covenants of the deed; or

(b) the scheme trustee or a related corporation of a scheme trustee, despite being a beneficial owner in the shares of the private retirement scheme provider, does not have the right to exercise more than one-twentieth of the voting power at any general meeting of the private retirement scheme provider.

[Ins. Act A1406/2011]

Withdrawal of approval

139ZE. The Commission may withdraw an approval granted to an approved scheme trustee where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139ZD;

(b) the scheme trustee has contravened any term or condition imposed by the Commission;

(c) the scheme trustee has failed or refused to act in accordance with the provisions or covenants of the deed;

(d) the scheme trustee has failed to comply with any direction issued by the Commission under this Act; or

(e) the scheme trustee has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

[Ins. Act A1406/2011]

Division 3

Trustee for employer-sponsored retirement scheme

Approval of employer trustee

139ZF. (1) A person shall not act or be appointed to act as an employer trustee in relation to an employer-sponsored retirement scheme without the approval of the Commission.

(2) An application to be an employer trustee shall be made to the Commission in such form and manner as may be specified by the Commission and shall be accompanied by a prescribed application fee.

(3) The Commission may approve the application under this section, subject to any terms and conditions as the Commission thinks fit.

(4) The Commission may vary, add to or remove any terms and conditions imposed under subsection (3) at any time as the Commission deems necessary.

(5) An employer trustee who contravenes subsection (1) or any terms or conditions imposed under subsection (3) or (4) commits an offence.

[Ins. Act A1406/2011]

Refusal to approve

139ZG. Where an application is made under section 139ZF, the Commission may refuse the application on any of the following grounds:

(a) the application was not made in accordance with section 139ZF;

(b) the applicant has failed to comply with any requirement of this Act or any guidelines made under this Act;

(c) any information or document that is furnished by the applicant to the Commission is false or misleading or from which there is a material omission; or

(d) the Commission has reason to believe that the applicant will not be able to act in accordance with the provisions and the covenants of the trust deed.

[Ins. Act A1406/2011]

Withdrawal of approval

139ZH. The Commission may withdraw an approval granted to an approved employer trustee where the Commission is satisfied that—

(a) there exists a ground on which the Commission may refuse an application under section 139ZG;

(b) the employer trustee has contravened any terms or conditions imposed by the Commission;

(c) the employer trustee has failed or refused to act in accordance with the provisions or covenants of the deed;

(d) the employer trustee has failed to comply with any direction issued by the Commission under this Act; or

(e) the employer trustee has failed to provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission as required under subsection 139ZL(2).

[Ins. Act A1406/2011]

Division 4

General

Power to make regulations

139ZI. The Commission may, with the approval of the Minister, make any regulations—

(a) concerning all matters relating to the private retirement scheme administrator, private retirement scheme provider, private retirement scheme, scheme trustee and employer trustee under this Part; or

(b) concerning duties, standards and conduct of persons involved in a private retirement scheme.

[Ins. Act A1406/2011]

Fee payable

139ZJ. (1) The following persons under this Part—

(a) a private retirement scheme administrator;

(b) an approved private retirement scheme provider;

(c) a scheme trustee of an approved private retirement scheme; or

(d) an employer trustee of an employer-sponsored retirement scheme,

shall pay the fees as set out under regulations made under this Act.

(2) Any fee paid to the Commission under this Part shall be paid into the Fund established under section 23 of the Securities Commission Malaysia Act 1993.

[Ins. Act A1406/2011]

False or misleading statement to the Commission

[*Am. Act A1437/2012*]

139ZK. (1) For the purposes of this Part, any person who makes or submits to the Commission any statement or information that is false or misleading or wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

(2) Where a statement or information under subsection (1) has been submitted or provided to the Commission and a person becomes aware before the private retirement scheme is launched that the statement or information may be false or misleading, that person shall forthwith notify the Commission and shall take such action as the Commission may require.

[Ins. Act A1406/2011]

Power to issue directions, *etc.*

139ZL. (1) Without prejudice to sections 125**,** 354, 355 and 356, where the Commission—

(a) is satisfied that there exists a ground for withdrawal of approval under section 139F, 139S, 139X, 139ZE or 139ZH;

(b) becomes aware that a statement or information provided or submitted to it under this Part is false or misleading or from which there is a material omission; or

(c) is satisfied that the interest of the members are likely to be jeopardised, or are jeopardised,

the Commission may issue a direction in writing to any person to take such steps as may be specified in the direction to—

(A) comply with, observe, enforce or give effect to—

(i) any requirement or provision of this Act or any securities laws;

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

(iii) any term, condition or restriction imposed under or pursuant to this Act; or

(B) take such steps to remedy a breach or to mitigate the effect of such breach.

(2) Any person referred to under this Part shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns, and the provision of such information relating to its operations or any other information as the Commission or the person acting on behalf of

or with the authority of the Commission may require for the proper administration of securities laws.

(3) A person who fails to comply with any direction issued under subsection (1) or fails to provide assistance under subsection (2) commits an offence.

[Ins. Act A1406/2011]

Disclosure of information to the Commission

139ZM. (1) For the purposes of this Part, the Commission may request the following person to submit to the Commission any information or document which the Commission requires for the effective regulation or supervision of the private retirement scheme industry:

(a) a private retirement scheme provider;

(b) a partner or an associate of the private retirement scheme provider; or

(c) any person who provides outsourcing services to persons mentioned in paragraph *(a)* or *(b)*.

(2) For the purposes of subsection (1), where the person under paragraph (1)*(b)* or *(c)* is solely under the supervision or oversight of Bank Negara, the Commission shall make such request through Bank Negara.

[Ins. Act A1406/2011]

Recommendations by licensed person

139ZN (1) A licenced person shall not make a recommendation with respect to any private retirement scheme to a person who may reasonably be expected to rely on the

recommendation without having a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), a licenced person does not have a reasonable basis for making a recommendation to a person unless—

(a) the licenced person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licenced person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;

(b) the licenced person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and

(c) the recommendation is based on such consideration and investigation.

(3) If the licenced person contravenes subsection (1) and —

(a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;

(b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

(c) the person suffers loss or damage as a result of doing that act or refraining from doing that act,

the licensed person shall be liable to pay damages to the person in respect of that loss or damage.

(4) A licenced person shall not be liable under subsection (3) if it is proved that a reasonable person in the circumstances would have done or omitted to do that act in reliance on the recommendation even if a licenced person had complied with that subsection in relation to the recommendation.

(5) In the case of a contravention of subsection (1), a licenced person shall not be liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that the licenced person had about the client's investment objectives, financial situation and particular needs when the licenced person makes the recommendation.

[*Ins. Act A1437/2012*]

False or misleading declaration or furnishing false documents to provider and administrator

139ZO. (1) A person shall not—

(a) make, orally or in writing, or sign any declaration, return, certificate or other document required by this Act or the rules of a private retirement scheme administrator, which is false, misleading or from which there is a material omission; or

(b) provide any information or furnish any document which is false, misleading or in which there is a material omission,

to a private retirement scheme administrator or an approved private retirement scheme provider.

(2) A person who contravenes subsection (1) with the intention to deceive a private retirement scheme administrator or an approved private retirement scheme provider commits an offence and shall, on conviction, be liable with imprisonment for a term not exceeding three years or to a fine not exceeding one million ringgit or to both.

(3) A person who is convicted of an offence under subsection (2) in relation to withdrawal of accrued benefits shall, within six months from the conviction date, return the entire amount withdrawn.

[*Ins. Act A1437/2012*]

False or misleading statements, *etc.*

139ZP. A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce any person to make a contribution to a private retirement scheme if, when he makes the statement or disseminates the information—

(a) he does not care whether the statement or information is true or false; or

(b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Use of manipulative and deceptive devices

139ZQ. It shall be unlawful for any person directly or indirectly to—

(a) use any device, scheme or artifice to defraud;

(b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(c) make any untrue statement of a material fact or to omit to state a material fact which is necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading,

in connection with the—

(A) acquisition or disposal of beneficial interest under a private retirement scheme;

(B) making of contributions to a private retirement scheme; or

(C) withdrawal of any sums from a private retirement scheme.

[*Ins. Act A1437/2012*]

Penalty for offences under sections 139ZP and 139ZQ

139ZR. A person who contravenes section 139ZP and 139ZQ commits an offence and shall be punished, on conviction, with imprisonment for a term not exceeding ten years and a fine of not less than one million ringgit.

[*Ins. Act A1437/2012*]

Nomination

139ZS. Notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution, or disposition, of the estates of deceased persons, or in any practice or custom in relation to this matter, a member may nominate any person to receive any payment or disposal of any part of accrued benefits of the member, after the death of the member, subject to any regulations or guidelines made under this Act.

[*Ins. Act A1499/2015*]

PART IV

CAPITAL MARKET COMPENSATION FUND

Division 1

Interpretation

Interpretation for the purposes of Part IV

140. In this Part –

"auditor" means an auditor registered with the Audit Oversight Board pursuant to section 31O of the Securities Commission Malaysia Act 1993;

"Capital Market Compensation Fund" means the Capital Market Compensation Fund established under section 158;

"Corporation" means the Capital Market Compensation Fund Corporation established under section 141;

"event of default" means an event in which a relevant person is considered to be unable, or likely to be unable, to satisfy claims made against it in circumstances as may be determined by the Corporation;

"relevant authority" means the Commission, stock exchange, derivative exchange or body established outside Malaysia that carries out similar functions to the Corporation and any other body as may be specified by the Commission;

"relevant person" means a holder of a Capital Markets Services Licence who carries on the business of—

(a) dealing in securities;

(b) dealing in derivatives and who is an affiliate of the relevant derivatives exchange; or

(c) fund management;

"rules" means the memorandum of association, the articles of association, or any other rules or directions by whatever name called and wherever contained, governing the operation, management or procedures of the Corporation.

[*Subs. Act A1437/2012*]

Division 2

The Capital Market Compensation Fund Corporation

The Corporation

141. (1) A body corporate known as the **"**Capital Market Compensation Fund Corporation" is established.

(2) The Corporation shall have perpetual succession and a common seal.

(3) The Corporation may sue and be sued in its corporate name.

(4) Subject to and for the purposes of the administration and management of the Capital Market Compensation Fund, the Corporation may, upon such terms as it deems fit—

(a) enter into contracts;

(b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and

(c) convey, assign, surrender, yield up, charge, mortgage, demise, lease, reassign, transfer, or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Corporation

(5) The Corporation may from time to time employ such persons on the terms and conditions as the Corporation may determine.

[*Subs. Act A1437/2012*]

Functions of the Corporation

142. (1) The Corporation shall manage and administer the Capital Market Compensation Fund and process and handle claims for compensation under this Part.

(2) The Minister may, on the recommendation of the Commission, give his approval to the Corporation to borrow any sum of money as it thinks necessary for the purposes of discharging its functions.

[*Subs. Act A1437/2012*]

Powers of the Corporation

143. The Corporation shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions including to—

(a) establish processes and procedures which are fair, reasonable and transparent to determine claims for compensation;

(b) pay out compensation;

(c) petition the winding up of a relevant person;

(d) determine the financial and operational condition of a relevant person and the likelihood of the relevant person triggering an event of default;

(e) determine, charge, collect and receive contributions, levies, fees and other payments from relevant persons or claimants and expend the same in furtherance of all or any of the functions of the Corporation; and

(f) take any action in respect of its function in managing and administering the Capital Market Compensation Fund.

[*Subs. Act A1437/2012*]

Duties and responsibilities of the Corporation

144. The Corporation shall–

(a) exercise its power in good faith in accordance with the provisions of this Act; and

(b) comply with any direction or guidelines issued by the Commission.

[*Subs. Act A1437/2012*]

Membership of the Corporation

145. (1) The Corporation shall consist of the following members who shall be appointed by the Minister on the recommendation of the Chairman of the Commission:

(a) a Chairman;

(b) one representative from the Commission;

(c) one representative from the exchange holding company; and

(d) two other members who possess knowledge or experience in the capital market.

(2) Every member of the Corporation shall at all times exercise his duties in good faith.

(3) Subject to his instrument of appointment, a member of the Corporation shall hold office for a term not exceeding three years and is eligible for reappointment.

[*Subs. Act A1437/2012*]

Removal, resignation and vacation of office of any member of the Corporation

146. (1) The Minister on the recommendation of the Chairman of the Commission may at any time revoke the appointment of any member of the Corporation if—

(a) the member has failed to discharge his duties in a proper manner; or

(b) the member absents himself from three consecutive meetings of the Corporation without leave of the Chairman of the Corporation and in the case of the Chairman of the Corporation, without leave of the Chairman of the Commission.

(2) A member may at any time resign his office by giving a written notice of not less than thirty days to the Minister.

(3) The office of a member of the Corporation shall be vacated if—

(a) he dies;

(b) he has been convicted under any law for an offence involving fraud, dishonesty or violence whether within or outside Malaysia;

(c) he becomes a bankrupt; or

(d) he is of unsound mind or is otherwise incapable of discharging his duties.

[*Subs. Act A1437/2012*]

Meetings

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

(2) The Corporation may invite any person to attend any meeting for the purpose of advising it on any matter under discussion, but such person so attending shall not be entitled to vote at the meeting.

(3) Three members of the Corporation shall constitute a quorum at any meeting of the Corporation, one of whom shall be the representative of the Commission.

(4) Subject to the provisions of this Act, the Corporation shall determine its own procedures.

[*Subs. Act A1437/2012*]

The Corporation may establish committee

148. (1) The Corporation may establish any committee as it considers necessary or expedient to assist it in the performance of its functions under this Part.

(2) The Corporation may appoint any person to be a member of any committee established under subsection (1).

(3) A committee established under subsection (1) may elect any of its members to be chairman and may regulate its own procedures.

(4) In the exercise of its duties under this section, such committee shall act in accordance with any direction given by the Corporation.

(5) The committee shall meet as often as may be determined by the chairman of the committee.

(6) A committee may invite any person to attend any meeting of the committee for the purpose of advising it on any matter under discussion, but such person so attending shall not be entitled to vote at the meeting.

[*Subs. Act A1437/2012*]

Delegation of the Corporation's functions and powers

149. (1) The Corporation may delegate any of its functions and powers to—

(a) any member of the Corporation; or

(b) any committee established by the Corporation.

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

[*Subs. Act A1437/2012*]

Remuneration, allowances or other expenses

150. Members of the Corporation or a committee or any other person invited to attend any meeting of the Corporation or the committee under section 147 or 148 may be paid such remuneration, allowances or other expenses as determined by the Minister on the recommendation of the Chairman of the Commission.

[*Subs. Act A1437/2012*]

Disclosure of interest

151. (1) A member of the Corporation having directly or indirectly, by himself or a member of his family, any interest in any matter under discussion by the Corporation shall disclose to the Corporation the fact and nature of his interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting and after the disclosure, the member having an interest in the matter shall—

(a) not participate or be present in any deliberation or decision of the Corporation on that matter; and

(b) be disregarded for the purpose of constituting a quorum of the meeting for the deliberation and decision of that matter.

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

(4) No act or proceedings of the Corporation shall be invalidated on the ground that any member of the Corporation has contravened the provisions of this section.

[*Subs. Act A1437/2012*]

Power to engage persons to render assistance

152. The Corporation may, either generally or in a particular manner, engage under such terms and conditions as the Corporation may determine from time to time, any person who is not an employee of the Corporation to render such assistance as the Corporation may require or specify in connection with the performance of its functions or the discharge of its duties under this Part, or to perform or discharge the same on behalf of and in the name of the Corporation.

[*Subs. Act A1437/2012*]

Duty to maintain secrecy

153. (1) A member, employee or agent of the Corporation shall not give, divulge, reveal or otherwise disclose any information or document which has been obtained by him in the course of his duties except—

(a) in the circumstance set out under section 154; or

(b) to the Commission—

(i) for the purpose of enabling or assisting the Commission in the discharge of its functions under the securities laws or any other written law; and

(ii) if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

[*Subs. Act A1437/2012*]

Permitted disclosure

154. A person referred to in subsection 153(1) shall not refuse to disclose any information or document—

(a) for the purpose of enabling or assisting auditors of the Corporation to discharge their functions;

(b) for the purpose of instituting, or in the course of, any civil proceedings between the Corporation and a relevant person;

(c) to any person duly authorized to investigate into any offence under any law, and such disclosure is limited to the affairs of the relevant person under investigation; or

(d) in respect of a relevant person who is in receivership, or in the course of being wound up or otherwise dissolved within or outside Malaysia.

[*Subs. Act A1437/2012*]

Powers of the Commission to issue directions

155. The Commission may, from time to time, give the Corporation such general or specific directions consistent with the provisions of this Part or where the Commission thinks necessary in the public interest or for the protection of investors.

[*Subs. Act A1437/2012*]

Cooperation and coordination

156. (1) The Corporation shall provide assistance to the Commission or to any person acting on behalf of or with the authority of the Commission, as the Commission or such person requires, including the furnishing of information relating to the operations of the Corporation or any other information.

(2) The Corporation may enter into arrangements to cooperate with any relevant authority to obtain or share any information or document as it deems necessary in the interests of investors or in relation to any relevant persons.

[*Subs. Act A1437/2012*]

Act or omission done in good faith

157. No action or other proceedings for damages shall be brought, instituted or maintained in any court against—

(a) the Corporation;

(b) any member of the Corporation;

(c) any member of any committee established by the Corporation; or

(d) the employee of the Corporation,

in respect of any act done or statement made or omitted to be done or made, in good faith in the execution of any functions, powers and responsibilities under this Part.

[*Subs. Act A1437/2012*]

Division 3

The Capital Market Compensation Fund

Establishment of the Capital Market Compensation Fund

158. (1) A fund to be known as the Capital Market Compensation Fund is established which shall be administered by the Corporation.

(2) The Corporation shall hold the assets of the Capital Market Compensation Fund in trust for the purposes as provided under this Part.

[*Subs. Act A1437/2012*]

Assets constituting the Capital Market Compensation Fund

159. (1) The Capital Market Compensation Fund shall consist of the following:

(a) monies provided to the Capital Market Compensation Fund by the Commission;

(b) monies provided to the Capital Market Compensation Fund by the relevant stock exchange and derivatives exchange;

(c) contributions made by the Capital Market Development Fund;

(d) contributions made by a relevant person as provided for under section 160;

(e) interest and profits accruing from time to time from the investment of the Capital Market Compensation Fund;

(f) any sum of money borrowed by the Corporation pursuant to subsection 142(2);

(g) monies recovered by or on behalf of the Corporation in the exercise of a right of action conferred under this Part;

(h) monies paid by an insurer under a contract of insurance or indemnity entered into by the Corporation under section 170 of this Part; and

(i) all other monies lawfully paid into the Capital Market Compensation Fund pursuant to this Act or any other guidelines issued by the Commission.

(2) The Corporation is empowered to credit all direct operating income to the fund, and charge against the Fund, all expenses and costs incurred by the Corporation in managing the Fund.

[*Subs. Act A1437/2012*]

Contribution and levies

160. (1) A participating organization, an affiliate, a holder of a Capital Markets Services Licence for dealing in securities other than a participating organization and holder of a Capital Markets Services Licence for fund management shall upon being licenced under this Act pay a contribution at a rate to be prescribed by the Minister to the Capital Market Compensation Fund.

(2) All contributions made under this section shall not be refundable except as may be specified by the Commission.

[*Am. Act A1499/2015*]

(3) In addition to the contributions under this section, the Commission may impose a levy of an amount to be prescribed by the Minister on any category of relevant persons to sustain the operation of the Capital Market Compensation Fund.

[*Subs. Act A1437/2012*]

Conservation of the Capital Market Compensation Fund

161. (1) It shall be the duty of the Corporation to conserve the Capital Market Compensation Fund consistent with the provisions of this Part or any regulations made under this Part.

(2) The Corporation may invest the monies of the Capital Market Compensation Fund available for investment in such manner as may be specified by the Commission.

[*Subs. Act A1437/2012*]

Financial year

162. For the purposes of this Part, the financial year of the Capital Market Compensation Fund shall commence on 1 January and ends on 31 December of each year.

[*Subs. Act A1437/2012*]

Accounts and audit

163. (1) The Corporation shall keep or cause to be kept proper accounts and other records in respect of the operations of the Corporation and shall prepare statements of accounts for each financial year.

(2) At the end of each financial year, within three months after the close of the financial year or as soon as the accounts of the Corporation have been audited, the Corporation shall cause a copy of the statement of accounts to be submitted to the Commission.

(3) Within three months after the end of each financial year, the Corporation shall prepare and submit a regulatory report to the Commission on the extent to which it has complied with the requirements under this Part and its rules during the financial year.

(4) Upon receipt of the report under subsection (3), the Commission may at any time if it deems it necessary to do so, conduct a regulatory audit on the Corporation.

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

[*Subs. Act A1437/2012*]

Annual report

164. (1) The Corporation shall, within three months after the close of each financial year, prepare a report of its activities for that financial year and send a copy of the report to the Commission.

(2) The report under subsection (1) shall include the following:

(a) claims referred to the Corporation and the compensation paid out;

(b) audited annual accounts of the Corporation; and

(c) any other matters as may be directed by the Commission.

[*Subs. Act A1437/2012*]

Division 4

Provisions relating to claims

Rules of the Corporation

165. (1) The Corporation shall make rules to be approved by the Commission governing the proper administration of the Corporation and the Capital Market Compensation Fund.

(2) The Corporation shall not amend its rules without the prior approval of the Commission.

(3) The rules of the Corporation may include—

(a) the scope and category of claimants who are eligible to make a claim from the Capital Market Compensation Fund;

(b) the manner in which claims are to be made;

(c) the manner in which claims are to be determined and awarded by the Corporation;

(d) the processing or administrative fees;

(e) the circumstances in which the Corporation may make an interim payment prior to a final determination of a claim;

(f) the circumstances in which the Corporation may make a payment to a person other than the claimant;

(g) the circumstances in which a claim may be refused by the Corporation; and

(h) the manner in which the outcome of a claim may be notified to the claimant and the relevant person.

[*Subs. Act A1437/2012*]

Appeal to the Commission

166. (1) Any claimant who is aggrieved by a determination of the Corporation in relation to a claim, may appeal in writing to the Commission within thirty days from the date on which the claimant is notified of the determination of the Corporation.

(2) The Commission shall decide on an appeal within a period of three months from the date the appeal is made.

[*Subs. Act A1437/2012*]

Assistance to the Corporation

167. (1) A relevant person shall provide such assistance to the Corporation, or to a person acting on behalf of or with the authority of the Corporation, as the Corporation or such person reasonably requires, including the furnishing of such returns, and the provision of such information or documents relating to the operations of the relevant person or any other information or documents as the Corporation or such person may require for the purpose of determination of a claim under this Part.

(2) The Corporation may, whether on its own motion or on application made by any claimant, summon and examine witnesses whom it considers to be material to its inquiry into a claim.

(3) A person who refuses or fails, without lawful excuse, to assist the Corporation or a person acting on behalf of, or authorized by, the Corporation, in accordance with subsection (1) or (2) commits an offence and shall, on conviction, be

liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

[*Subs. Act A1437/2012*]

Subrogation of the Corporation to rights and remedies of claimant upon payment from the Capital Market Compensation Fund

168. If the Corporation makes a payment out of the Capital Market Compensation Fund in respect of a claim from the Capital Market Compensation Fund under this Act—

(a) the Corporation is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and

(b) the claimant shall not make any claim or have any right under bankrupty or legal proceeding or otherwise to receive in respect of the loss—

(i) any sum out of the assets of the relevant person concerned; or

(ii) any sum if the loss was caused by an act or omission of a director, officer, representative or employee of the relevant person,

until the Corporation has been reimbursed the full amount of the payment made by it out of the Capital Market Compensation Fund, including any interest paid thereof.

[*Subs. Act A1437/2012*]

Power of the court to make certain orders

169. (1) Notwithstanding the provisions of the Companies Act 1965, the court may on the petition of the Corporation, order the winding up of a relevant person in accordance with the provisions of the Companies Act 1965.

(2) Without prejudice to subsection (1), the court may, on an application by the Corporation, make the following orders:

(a) an order vesting securities or such other property in the Corporation or a trustee appointed by the court; and

(b) an order appointing a receiver in respect of the property of a relevant person or the property that is held by such relevant person or his appointed custodian for or on behalf of another person whether on trust or otherwise.

(3) A trustee appointed by an order of the court under paragraph (2)(*a*)—

(a) may require any person to deliver to him any securities or such other property or to give to him all information concerning the securities or derivatives contracts that may reasonably be required;

(b) may acquire and take possession of the securities or such other property;

(c) may deal with the securities or such other property in any manner as he thinks fit; and

(d) shall have such other powers in respect of the securities or such other property as may be specified by the court.

(4) A person appointed by order of the court under paragraph (2)(*b*) as a receiver of the property of a relevant person—

(a) may require the relevant person to deliver to him any property of which he has been appointed receiver or to give to him all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

(c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the relevant person might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the court may specify.

(5) The proceeds of the dealing in or disposal of securities or derivatives contracts under paragraph (2)*(a)* shall be paid into the court and the Corporation may apply to the court for payment out of the proceeds for settling the claims pursuant to this Part.

(6) For the purposes of this section, the Corporation may, with the consent of the Commission, make an application to the court to be joined as a party in any action brought by the Commission under section 360 or 361 of this Act.

(7) For the purposes of this section—

(a) "property held by a relevant person" includes such property held by the relevant person through his appointed custodian; and

(b) "property", in relation to a relevant person, includes monies, securities, or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the relevant person or another person in the course of or in connection with the business of the relevant person.

[*Subs. Act A1437/2012*]

Power of the Corporation to enter into contract of insurance

170. The Corporation may enter into a contract of insurance under which the Corporation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Act, the rules of the Corporation or any guidelines issued by the Commission.

[*Subs. Act A1437/2012*]

Application of insurance money

171. A claimant against the Capital Market Compensation Fund shall not have—

(a) a right of action against a person with whom a contract of insurance or indemnity is made under this Act in respect of such contract; or

(b) a right or claim with respect to any monies paid by the insurer in accordance with such contract.

[*Subs. Act A1437/2012*]

Monies in the Capital Market Compensation Fund upon winding up of the relevant stock exchange

172. In the event of a relevant stock exchange being wound up under the Companies Act 1965, the Corporation shall make available to the liquidator of the relevant stock exchange any remaining contribution of the stock exchange in the Capital Market Compensation Fund, which shall then form part of the assets of the relevant stock exchange and be available to the liquidator for distribution in accordance with the Companies Act 1965.

[*Subs. Act A1437/2012*]

173. [Deleted] *[Del. Act A1437/2012]*

PART V

MARKET MISCONDUCT AND OTHER PROHIBITED CONDUCT

Application of this Part

174. This Part shall apply to—

(a) in respect of securities —

(i) acts and omissions occuring within Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Malaysia; and

(ii) acts and omissions occurring outside Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within Malaysia; and

(b) in respect of derivatives—

(i) acts occurring within Malaysia in relation to derivatives, whether traded within or outside Malaysia; and

(ii) acts occurring outside Malaysia in relation to derivatives traded within Malaysia.

Division 1

Prohibited conduct – Securities

Subdivision 1 – Offences relating to false trading and market rigging, stock market manipulation, etc.

False trading and market rigging transaction

175. (1) Subject to section 180, no person shall create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market within Malaysia or a false or misleading appearance with respect to the market for, or the price of, any such securities.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without affecting the generality of subsection (1), a person who—

(a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;

(b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

(4) In a prosecution of a person for an act referred to in subsection (3) it is a defence if the defendant establishes that—

(a) the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance; and

(b) he did not act recklessly, whether or not he created a false or misleading appearance,

of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In a prosecution for an offence against subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in paragraph (3)*(a)* to a transaction of sale or purchase of securities includes—

(a) a reference to the making of an offer to sell or purchase securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

Stock market manipulations

176. (1) Subject to section 180, no person shall effect, take part in, engage in, be concerned in, or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of—

(a) raising;

(b) lowering; or

(c) pegging, fixing, maintaining or stabilising,

the price of securities of the corporation on a stock market in Malaysia, for the purpose which may include the purpose of inducing other persons, whether or not another person is induced, to acquire or dispose of the securities of the corporation or of a related corporation.

(2) A reference in this section to a transaction, in relation to securities of a corporation, includes—

(a) a reference to the making of an offer to sell or purchase such securities of the corporation; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the corporation.

False or misleading statements, *etc.*

177. A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information—

(a) he does not care whether the statement or information is true or false; or

(b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in securities

178. (1) A person shall not—

(a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;

(b) by any dishonest concealment of material facts;

(c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in securities.

(2) In a prosecution for an offence under paragraph (1)*(d)*, in relation to the recording or storing of information, it shall be a defence if the defendant establishes that when the information was recorded or stored, he had no reasonable grounds for expecting that the information would be available to any person.

Use of manipulative and deceptive devices

179. It shall be unlawful for any person, directly or indirectly in connection with the subscription, purchase or sale of any securities—

(a) to use any device, scheme or artifice to defraud;

(b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

Person or transaction to whom or which section 175 or 176 does not apply

180. The Minister may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which section 175 or 176 does not apply.

Dissemination of information about illegal transactions

181. A person shall not circulate or disseminate, or authorize or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a corporation that is related to that corporation, in contravention of section 175, 176, 177, 178 or 179 if—

(a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or

(b) the person has received, or expects to receive directly or indirectly, any consideration or benefit for circulating or disseminating, or authorizing or being concerned in the circulation or dissemination, the statement or information.

Penalty for offence under Subdivision 1

182. A person who contravenes section 175, 176, 177, 178, 179 or 181 commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit.

Subdivision 2 – Insider trading

Information

183. For the purposes of this Subdivision, "information" includes—

(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;

(b) matters relating to the intentions, or likely intentions, of a person;

(c) matters relating to negotiations or proposals with respect to—

(i) commercial dealings; or

(ii) dealing in securities;

(d) information relating to the financial performance of a corporation;

(e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and

(f) matters relating to the future.

Information generally available

184. (1) For the purposes of this Subdivision, information is generally available if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed.

(2) The information referred to in subsection (1) includes information that consists of deductions or conclusions made or drawn from such information.

Material effect on price or value of securities

185. For the purposes of this Subdivision, an information that on becoming generally available would or would tend to have a material effect on the price or value of securities, refers to such information which would or would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities.

Trading in securities

186. For the purposes of this Subdivision, trading in securities that is ordinarily permitted on the stock market of a stock exchange is to be taken to be permitted on that stock market even though trading in any such securities on that stock market is suspended.

Reference to "procure"

187. For the purposes of this Subdivision and section 201 but without limiting the meaning of the term "procure" as provided in this section, if a person incites, induces, encourages or directs an act or omission by another person, the first-mentioned person is deemed to procure the act or omission by the other person.

Prohibited conduct of person in possession of inside information

188. (1) A person is an "insider" if that person—

(a) possesses information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or the value of securities; and

(b) knows or ought reasonably to know that the information is not generally available.

(2) An insider shall not, whether as principal or agent, in respect of any securities to which information in subsection (1) relates—

(a) acquire or dispose of, or enter into an agreement for or with a view to the acquisition or disposal of such securities; or

(b) procure, directly or indirectly, an acquisition or disposal of, or the entering into an agreement for or with a view to the acquisition or disposal of such securities.

(3) Where trading in the securities to which the information in subsection (1) relates is permitted on a stock market of a stock exchange, the insider shall not, directly or indirectly, communicate the information referred to in subsection (1), or cause such information to be communicated, to another person, if the insider knows, or ought reasonably to know, that the other person would or would tend to—

(a) acquire, dispose of, or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates; or

(b) procure a third person to acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit.

(5) The Minister may make regulations in respect of any particular class, category or description of persons or any particular class, category or description of transactions, relating to securities, to whom or which this section does not apply.

Proof of contravention of section 188

189. In a prosecution of an offence under subsection 188(2) or (3), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of section 190, 191, 192, 193, 194, 195, 196, 197 or 198, or any regulations made under subsection 188(5), preclude the act from constituting a contravention of subsection 188(2) or (3).

Secrecy arrangements by corporation

190. (1) For the purposes of this Subdivision, a corporation is deemed to possess any information—

(a) which an officer of the corporation—

(i) possesses and which came into his possession in the course of his duties as an officer of the corporation; or

(ii) knows or ought reasonably to have known because he is an officer of the corporation; or

(b) which an officer of the corporation possesses and which came into his possession in the course of his duties as an officer of a related corporation of the first-mentioned corporation where—

(i) the officer is an insider by reason of being in possession of the information;

(ii) the officer is involved in, the decision, transaction or agreement of the first-mentioned corporation in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or

dispose of such securities or enter into an agreement to do so, or communicating the information in circumstances referred to in subsection 188(3); or

(iii) it is reasonable to expect that the officer would communicate the information to another officer of the first-mentioned corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.

(2) In this section, "information" refers to information which a corporation is deemed to possess and where a person in possession of the information is an insider.

(3) A corporation does not contravene subsection 188(2) by entering into the transaction or agreement at any time merely because of information in the possession of the corporation if—

(a) the decision to enter into the transaction or agreement was taken on behalf of the corporation by a person or persons other than an officer of the corporation in possession of the information;

(b) the corporation had in operation at that time arrangements that could reasonably be expected to ensure that—

(i) the information was not communicated to a person or one of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement;

(ii) no advice with respect to the decision to enter into, or be involved in, the transaction or agreement was given to that person by the person in possession of the information; or

(iii) the person in possession of the information would not be involved in the decision to enter into or be involved in, the

transaction or agreement, or involved in the transaction or agreement; and

(c) the information was not so communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement or was not involved in the transaction or agreement.

Secrecy agreements by partnerships

191. (1) For the purposes of this Subdivision, a partner of a partnership is deemed to possess any information—

(a) which another partner possesses and which came into the other partner's possession in his capacity as a partner of the partnership;

(b) which an employee of the partnership possesses and which came into the employee's possession in the course of his duties; or

(c) if a partner or an employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is a partner or an employee as such, it is presumed that every partner and employee of the partnership know or ought reasonably to know that matter or thing.

(2) In this section, "information" refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.

(3) A partner of a partnership does not contravene subsection 188(2) by entering into the transaction or agreement referred to in that subsection at any time merely

because one or more (but not all) partners, or an employee or employees of the partnership, were in actual possession of information at the time if—

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

(i) a partner who is taken to possess the information merely because another partner, or an employee of the partnership, was in possession of the information; or

(ii) an employee of the partnership who was not in possession of the information;

(b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that—

(i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in, or made the decision with respect to the entering into the transaction or agreement in question;

(ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information; and

(iii) the partner or employee in possession of the information would not be involved in the decision to enter into, or be involved in, the transaction or agreement; and

(c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not

involved in the decision to enter into, or be involved in, the transaction or agreement.

(4) A partner of a partnership does not contravene subsection 188(2) by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is deemed to possess information that is in the possession of another partner or employee of the partnership.

Underwriting and sub-underwriting

192. (1) Subsection 188(2) shall not apply in respect of—

(a) the entering into of an underwriting agreement or a sub-underwriting agreement; or

(b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph *(a)*.

(2) Subsection 188(3) shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person—

(a) to enter into an underwriting agreement or a sub-underwriting agreement in relation to any such securities; or

(b) to acquire any such securities under an obligation to do so in an agreement referred to in paragraph *(a)*.

Non application of section 188 to transactions carried out under schemes of arrangement, *etc*. under any written law

193. (1) Section 188 shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take-overs relating to corporations.

(2) Subsection 188(2) shall not apply to an approved clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of an approved clearing house.

(3) Subsection 188(2) shall not apply to a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from an approved clearing house pursuant to section 54.

Exception for corporation with knowledge of its intention

194. (1) A corporation does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation merely because the corporation is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation because an officer of the corporation is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the corporation became aware of the matter referred to in that subsection in the course of his duties.

(4) Subject to subsection (5), a person does not contravene subsection 188(2) by entering into a transaction or an agreement on behalf of a corporation in relation to securities other than those of the corporation merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first-mentioned corporation or in the course of acting as an agent of the first-mentioned corporation.

Exception of knowledge of individual's own intentions or activities

195. An individual does not contravene subsection 188(2) by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

Unsolicited transaction

196. (1) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative does not contravene subsection 188(2) by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the stock market of a stock exchange in securities which are quoted for trading on the stock market of that stock exchange if—

(a) the transaction or agreement is entered into under a specific instruction by the other person which was not solicited by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative;

(b) the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative has not given

any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and

(c) the other person is not associated with the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or its representative.

(2) Nothing in this section shall affect the application of subsection (1) in relation to the principal.

Exception for redemption of units of a unit trust scheme under buy-back covenant

197. Subsection 188(2) shall not apply in respect of the redemption by a trustee under a trust deed relating to a unit trust scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest .

Parity of information defence

198. (1) A person does not contravene subsection 188(2) if—

(a) the securities that are the subject of the transaction or agreement or the action of procuring a transaction or an agreement are not securities which are permitted on the stock market of a stock exchange;

(b) the court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement; and

(c) that person acquires or disposes of such securities on such terms and in such circumstances that—

(i) he does not obtain any gain or avoid any loss, including an unrealised gain or unrealised avoidance of loss in price or value, of the securities, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available; and

(ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.

(2) In a prosecution for an offence under subsection 188(3) where the person communicated information or caused information to be communicated to another person, it shall be a defence—

(a) if the court is satisfied that the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner likely to make it generally available pursuant to section 184; or

(b) if the court is satisfied that the other party knew of, or ought reasonably to have known, the information before the information was communicated.

Subdivision 3 – Civil remedies

Civil liability for contravention of section 175, 176, 177, 178, 179 or 181

199. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened section 175, 176, 177, 178, 179 or 181 may recover the amount of loss or damage by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) This section shall not affect any liability under any other written law in respect of the conduct constituting the contravention.

Civil action by Commission

200. (1) Where it appears to the Commission that any person has contravened section 175, 176, 177, 178, 179 or 181 the Commission may institute civil proceedings in the court against that person, whether or not that person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution.

(2) For a proceeding instituted by the Commission under subsection (1) against any person who has contravened section 175, 176, 177, 178, 179 or 181 the Commission may if it considers that it is in the public interest to do so, by civil action against such person in contravention—

(a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and

(b) claim civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, being an amount not exceeding one million ringgit.

(3) An amount recovered by the Commission in an action under subsection (2) shall be applied—

(a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and

(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

(4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)*(b)*, in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (3)*(b)*.

(5) To the extent that any of the amount obtained in a civil proceeding under subsection (1) has not been distributed pursuant to paragraph (3)*(b)*, it shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray —

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission may determine, with the approval of the Minister.

[*Subs. Act A1437/2012*]

(6) Civil proceedings under subsection (2) or 199(1) may be commenced at any time within twelve years from—

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the person who instituted the proceedings, as the case may be, discovered the contravention,

whichever is the later.

(7) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection 199(1) or under any other law.

Recovery of loss or damages

201. (1) A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who has contravened section 188 may recover the amount of loss or damages by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) In subsection (1), "loss or damages" includes an unrealised loss or gain, as the case may be, in the price or value of securities of a corporation being the difference between—

(a) the price or value of securities in a transaction in connection with which the person first-mentioned in subsection (1) claims to have suffered loss or damages; and

(b) the price which would have been the likely price of the securities in the transaction, or the value which it is likely that such securities

would have had at the time of that transaction, if the contravention had not occurred.

(3) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities from a person (the "seller") who did not possess the information, in contravention of subsection 188(2), the seller may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the seller, the difference between—

(a) the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, from the seller; and

(b) the price at which the securities would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, referred to in paragraph *(a)* if the information had been generally available.

(4) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities to a person (the "buyer") who did not possess the information, in contravention of subsection 188(2), the buyer may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the buyer, the difference between—

(a) the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, to the buyer; and

(b) the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, referred to in paragraph *(a)* if the information had been generally available.

(5) Where—

(a) an insider—

(i) acquired or agreed to acquire securities; or

(ii) procured another person to acquire or agree to acquire securities,

in contravention of subsection 188(2); or

(b) an insider communicated information referred to in subsection 188(1) to another person, in contravention of subsection 188(3),

and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider had been charged with an offence in respect of the contravention or whether or not the contravention had been proved in a prosecution, the Commission may, if the Commission considers that it is in the public interest to do so, by civil action, take any or both of the following actions, against the insider:

(A) recover an amount equal to three times the amount being the difference between the price at which the securities were acquired or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available;

(B) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

[*Subs. Act A1499/2015*]

(6) Where—

(a) an insider—

(i) disposed of or agreed to dispose of securities; or

(ii) procured another person to dispose of or agree to dispose of securities,

in contravention of subsection 188(2); or

(b) an insider communicated information referred to in subsection 188(1) to another person, in contravention of subsection 188(3),

and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider had been charged with an offence in respect of the contravention or whether or not the contravention had been proved in a prosecution, the Commission may, if the Commission considers that it is in the public interest to do so, by civil action, take any or both of the following actions, against the insider:

(A) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available;

(B) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

[*Subs. Act A1499/2015*]

(7) An amount recovered or obtained by the Commission in an action pursuant to subsection (5) or (6), respectively, shall be applied—

(a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and

(b) secondly—

(i) where it relates to subsection (5), to compensate the sellers who disposed of securities of the same class on the stock market of the stock exchange when information was not generally available between the time when the first contravention of subsection 188(2) occurred and the time when information became generally available; and

(ii) where it relates to subsection (6), to compensate the buyers who acquired securities of the same class on the stock market of the stock exchange when the information was not generally available between the time when the first contravention of subsection 188(2) occurred and the time when the information became generally available.

(8) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (7)*(b)*, in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (7)*(b)*.

(9) To the extent that any of the amount recovered or obtained in a civil action under subsection (5) or (6) has not been distributed pursuant to subsection (7), it shall be —

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission may determine, with the approval of the Minister.

[*Subs. Act A1437/2012*]

(10) Civil proceedings under this section may be commenced at any time within twelve years from—

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the person who instituted the proceedings, as the case may be, discovered the contravention,

whichever is the later.

(11) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection (1) or under any other law.

Division 2

Prohibited conduct – Derivatives

Subdivision 1 – Offences relating to false trading, bucketing etc.

False trading

202. No person shall create or cause to be created or do anything that is calculated to

create a false or misleading appearance of active trading in derivatives on a derivatives market or a false or misleading appearance with respect to the market for, or the price of trading in, derivatives on the derivatives market.

Bucketing

203. No person shall execute, or hold himself out as having executed, an order for the purchase or sale of derivative on a derivatives market without having effected a *bona fide* purchase or sale of the derivatives in accordance with the rules and practices of the derivatives market.

Dissemination of information about false trading

204. No person shall circulate, disseminate or authorize, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of dealing in derivatives or a class of derivatives will, or is likely to, rise or fall because of the market operations of one or more persons, which operations, to his knowledge, are conducted in contravention of section 202.

Manipulation of price of derivatives and cornering

205. No person shall, directly or indirectly—

(a) manipulate or attempt to manipulate the price of derivatives that may be dealt in on a derivatives market, or of any underlying instrument which is the subject of such derivatives; or

(b) corner, or attempt to corner, any underlying instrument which is the subject of a derivative.

Employment of devices, *etc*. to defraud

206. No person shall, directly or indirectly, in connection with any transaction with any other person involving dealing in derivatives—

(a) employ any device, scheme or artifice to defraud that other person;

(b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person; or

(c) make any false statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

False or misleading statements

207. No person shall, directly or indirectly, for the purposes of inducing the entering into a derivative, make—

(a) any statement which, at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive with respect to any material fact; or

(b) any statement which, by reason of the omission of a material fact, is rendered false or misleading.

Prohibition of abuse of information obtained in official capacity

208. Any person who, in relation to dealing in derivatives, has any information which if generally known might reasonably be expected to affect materially the price of the subject-

matter of such dealing and which—

[Am. Act A1406/2011]

(a) he holds by virtue of his official capacity or former official capacity;

(b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity; and

(c) he knows is unpublished price-sensitive information in relation to an underlying instrument which is the subject of a derivative or in relation to the dealing in a derivatives,

[Am. Act A1406/2011]

shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

Penalties for offence under Subdivision 1

209. Any person who contravenes any of the provisions of this Subdivision commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding ten years and to a fine not less than one million ringgit.

Subdivision 2 – Civil remedies

Civil liability for contravention of section 202, 203, 204, 205, 206, 207 or 208

210. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened section 202, 203, 204, 205, 206, 207 or 208, may recover the amount of loss or damage by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in

respect of the contravention or, whether or not a contravention has been proved in a prosecution.

(2) This section shall not affect any liability under any other written law in respect of the conduct constituting the contravention.

Civil action by Commission

211. (1) Where it appears to the Commission that any person has contravened section 202, 203, 204, 205, 206, 207 or 208 the Commission may institute civil proceedings in the court against that person, whether or not such person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against such person in contravention—

(a) recover an amount which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person; and

(b) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

(2) An amount recovered by the Commission in an action pursuant to this section shall be applied—

(a) firstly, to reimburse the Commission for all costs of the investigations and proceedings in respect of the contravention; and

(b) secondly, to compensate persons who have suffered loss or damage as a result of the contravention.

(3) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (2)*(b)*, in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (2)*(b)*.

(4) To the extent that any of the amount obtained in a civil action under subsection (1) has not been distributed pursuant to paragraph (2)(*b*), it shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission may determine, with the approval of the Minister.

[*Subs. Act A1437/2012*]

(5) Civil proceedings under subsection (1) or 210(1) may be commenced at any time within twelve years from—

(a) the date on which the cause of action accrued; or

(b) the date on which the Commission or the plaintiff, who instituted the proceedings, as the case may be, discovered the contravention,

whichever is the later.

(6) Any right of action that is conferred under this section shall not affect the right of action that is conferred on a person who has suffered loss or damage referred to in subsection 210(1) or under any other law.

PART VI

ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

"Division 1

Listed and Unlisted Capital Market Product

Requirement for approval, registration, authorization or recognition

212. (1) This Part does not apply to a private retirement scheme.

(2) A person who proposes to undertake a proposal, scheme, transaction, an arrangement or activity, or issue securities or offer for subscription or purchase of securities, or issue an invitation to subscribe for or purchase securities, in relation to—

(a) the listing and quotation of securities of a corporation on a stock market;

(b) the transfer of a listing and quotation of securities of a corporation from an alternative market to the main market;

(c) the listing or quotation of securities other than securities in paragraph *(a)*, including units of a business trust or Islamic

securities on a stock market;

(d) an acquisition or disposal of asset which results in a significant change in the business direction or policy of a listed corporation, listed unit trust scheme or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity, under paragraphs *(a)* and *(b)*,

shall seek the approval of the Commission under Division 1A.

(3) A person who proposes to effect a compromise, arrangement or scheme by way of issue of securities for the amalgamation of two or more listed corporations, shall seek the approval of the Commission under Division 1A.

(4) A person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company or listed corporation, or to list such securities on a securities exchange outside Malaysia shall seek the approval of the Commission under Division 1A.

(5) A person who intends to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase unlisted capital market products including unlisted Islamic securities but excluding units in a unit trust scheme*,* shall—

(a) seek authorization of the Commission or in the case of a foreign securities or capital market product, recognition by the Commission, under Division 3A; and

(b) register with the Commission, a disclosure document containing information and particulars as may be specified by the Commission under section 92A.

(6) Notwithstanding subsection (5) or any other written law, a person shall register a business trust with the Commission, or in the case of a foreign business trust, seek recognition by the Commission, under Division 3B, if the person intends to—

(a) establish, operate, or assist in establishing or operating the business trust;

(b) hold himself out as operating the business trust; or

(c) offer or make available units in the business trust.

(7) The Commission may specify—

(a) any other proposal, scheme, transaction, arrangement or activity; or

(b) the originating, offering or making available of any other capital market product,

that must comply with the requirements under this Part.

(8) The requirements under subsections (2), (3), (4), (5) and (6) shall not apply to any proposal, scheme, transaction, arrangement, activity, product or matter specified under Schedule 5 or as may be prescribed by the Minister.

(9) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and be liable to a fine not exceeding three million ringgit.

[*Subs. Act A1437/2012*]

Division 1A

Application for Approval

Application for Approval

213. (1) In this Division and Schedule 5, unless the context otherwise requires—

"expert" includes an engineer, a valuer, an 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; and

(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;

"private company" and "public company" have the meaning assigned to them in subsection 4(1) of the Companies Act 1965;

"proposal" means a proposal referred to in subsection 212(2).

(2) An applicant seeking approval for matters provided under section 212 shall make an application to the Commission for approval and shall submit documents and information to the Commission in the form and manner as the Commission may specify.

(3) Notwithstanding subsection (2), the Commission may require an applicant to furnish it with additional information or document as the Commission considers necessary in relation to the application.

[*Subs. Act A1437/2012*]

Grant of approval

214. (1) The Commission may in relation to an application for an approval made under subsection 213(2)—

(a) approve the application; or

(b) approve the application—

(i) subject to such terms and conditions;

(ii) with such revision; or

(iii) with such revision and subject to such terms and conditions,

as the Commission deems fit or necessary.

(2) The Commission may vary, add to or remove any term and condition imposed under subsection (1) at any time.

(3) No person can effect, carry out or implement any of the proposal in the application made under subsection 213(2) unless—

(a) the Commission has approved the application under this section; or

(b) the applicant has obtained the prior approval of the Commission to effect, carry out or implement any part of the proposal in the application.

(4) A person shall not be deemed to have taken any step to effect, carry out or implement a proposal in an application under subsection 213(2), if—

(a) a person enters into an agreement in respect of a proposal in the application; and

(b) the terms of the agreement are not binding until the fulfilment of any condition as may be set out in the agreement, including that of the approval to be given under this section.

(5) A person who contravenes any term or condition imposed under subsection (1) or (2) commits an offence.

[*Subs. Act A1437/2012*]

Refusal of an application

214A. (1) The Commission may refuse to approve an application made under subsection 213(2) if—

(a) the applicant has failed to comply with any requirement of this Act or any guidelines issued by the Commission*;*

(b) the application contains any statement or information that is false or misleading or from which there is a material omission;

(c) the Commission is not satisfied with an issuer's corporate governance record or is concerned with the integrity of any of the issuer's directors;

(d) the Commission has reason to believe that the approval of the application would be detrimental to the interest of investors;

(e) the Commission has reason to believe that the approval of the application would be contrary to public interest; or

(f) in the case of an application for the listing or quotation of a business trust, the business trust has not been registered with or recognized by the Commission under Division 3B.

(2) If the Commission is satisfied that—

(a) there is a contravention of subsection 215(1);

(b) there is a breach of any term or condition imposed under section 214; or

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

the Commission may—

(A) revoke an approval given under section 214;

(B) revise an approval; or

(C) impose such further terms or conditions as the Commission deems fit or necessary,

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 the application in accordance with an approval given under section 214.

(3) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (2).

(4) In respect of an application made under subsection 213(2)—

(a) any person may make an announcement of an application before submitting such application to the Commission for its approval; or

(b) the Commission may direct an applicant to make an announcement in relation to the application or any matter under this Division in accordance with the rules of the stock exchange, where the Commission deems necessary.

(5) For the purposes of subsection (4), an "announcement" includes any publication by press notice or any other form of a firm intention to make an offer for any securities.

(6) Any person who contravenes subsection 214(3) or paragraph 214A(4)*(b)* commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

[*Subs. Act A1437/2012*]

False or misleading statements, *etc.*

215. (1) If any statement or information is required to be submitted to the Commission under this Division—

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

(b) financial adviser or an expert; or

(c) any other person,

shall not—

(A) submit or cause to be submitted any statement or information that is false or misleading;

(B) submit or cause to be submitted any statement or information from which there is a material omission; or

(C) 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) If—

(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

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

(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 inform the Commission of the facts referred to in subparagraph *(b)*(i) or (ii), where applicable, and shall take such action as the Commission may require pursuant to subsection 214A(2).

(4) For the purposes of paragraph (3)*(b)*, a person who knows or becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.

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

[*Subs. Act A1437/2012*]

Application monies to be paid into a trust account where no prospectus is required

215A. (1) Any monies received from any person in relation to an application that has been approved by the Commission under section 214 and for which prospectus is not required, shall be paid into a trust account established and kept in a licenced institution by the issuer for such person until permission for the listing or quotation on the official list of a stock exchange or other similar exchange outside Malaysia is granted.

(2) If the permission referred to in subsection (1) is refused, the issuer shall forthwith repay without interest all monies referred to in subsection (1) and if any such monies are not repaid within fourteen days after the issuer becomes liable to repay it, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period.

(3) Monies paid into a trust account under this section shall not be available for payment of the debts of the issuer, or be paid or taken in execution under an order or process of any court.

(4) Any condition imposed by an issuer requiring or binding any person to waive compliance with this section or purporting to do so shall be void.

(5) The Commission may specify such categories of applicants that shall not be subject to this section.

(6) A person who contravenes this section commits 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.

[*Subs. Act A1437/2012*]

Division 2

Take-overs, Mergers and Compulsory Acquisitions

Interpretation

216. (1) In this Division, unless the context otherwise requires—

"acquirer" means—

(a) 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

(b) 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;

"close relative" means a mother, father, child, brother, sister, an adopted child or a step child;

[Ins. Act A1499/2015]

"Code" means the Malaysian Code on Take-Overs and Mergers made in accordance with section 217;

"company", in relation to a company being taken over, means —

(a) a corporation listed on a stock exchange;

(b) a public company as may be specified by the Commission; or

(c) any other entity as may be specified by the Commission;

[Subs. Act A1499/2015]

"control", means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than thirty-three per centum, or such other amount as may be prescribed in the Code in a company, howsoever effected;

[Am. Act A1370/2010]

"dissenting shareholder" [*Del. Act A1499/2015*]

"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 or voting rights are subject to a take-over offer;

"offeror" means a person who makes or proposes to make a take-over offer;

"officer", [*Del. Act A1499/2015*]

"prescribed institution" has the meaning assigned to it in the Development Financial Institutions Act 2002 [*Act 618*];

[Ins. Act A1499/2015]

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

"share", except for the purposes of sections 222, 223 and 224, means a share which is not a preference share, in a company, or a unit in an entity specified by the Commission;

[Subs. Act A1499/2015]

"shareholder" means a shareholder in a company or a unit holder in an entity specified by the Commission;

[Am. Act A1499/2015]

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

(a) a take-over or merger transaction howsoever effected which has the effect or potential effect of obtaining or consolidating control in the company;

(b) a partial offer or;

[Am. Act A1499/2015]

(c) a take-over offer by a parent company for the voting shares or voting rights in its subsidiary.

[Subs. Act A1499/2015]

(d) *[Deleted]* *[Del. Act A1499/2015]*

"voting shares", means a share which entitles the holder thereof to the right to vote at a general meeting;

[Subs. Act A1499/2015]

(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 close relative of any of its directors, or the spouse of any such director or any such relative, or any related trusts;

[Am. Act A1499/2015]

(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;

(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 close relative 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)*;

[Am. Act A1499/2015]

(g) partners of a partnership;

[Subs. Act A1499/2015]

(h) an individual and any person who is accustomed to act in accordance with the instructions of the individual, and the close relative of, companies controlled by , or related trusts of, the individual; and

[Ins. Act A1499/2015]

(i) a person, other than a licensed bank or a prescribed institution, who, directly or indirectly, provides finance or financial assistance, in connection with an acquisition of voting shares or voting rights, with a person who receives such finance or financial assistance;

[Ins. Act A1499/2015]

(3A) In relation to a take-over offer of an entity other than a corporation or a public company, the Commission may specify persons who may be presumed to be persons acting in concert.

[Ins. Act A1499/2015]

(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.

(6) For the purposes of sections 222, 223 and 224—

"dissenting shareholder" includes any shareholder and convertible securities holder, 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;

"convertible securities" means securities such as warrants, options and other securities that are issued by the offeree which are capable of being converted into new voting shares of the offeree;

"share" means a voting share, in a company, or a unit in an entity specified by the Commission, and includes convertible securities as if those securities were shares of a separate class of a company and any reference to a holder of shares, and to shares being allotted, is to be read accordingly.

[Ins. Act A1499/2015]

Malaysian Code on Take-Overs Mergers and Compulsory Acquisition

[Am. Act A1499/2015]

217. (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 governing take-over offer, merger or compulsory acquisition.

[Subs. Act A1499/2015]

(4) The Commission shall administer the Code 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—

(i) to interpret this Division and the Code;

(ii) 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

(b) 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 thinks fit with respect thereto.

[Subs. Act A1499/2015]

(5) [Deleted]

[Del. Act A1499/2015]

Compliance with Code, guidelines, directions, practice notes and rulings

[Subs. Act A1499/2015]

218. (1) A person who makes a take-over offer shall do so in accordance with the provisions of the Code, guidelines, directions, practice notes and any ruling issued by the Commission.

[Am. Act A1499/2015]

(2) Subject to section 219, an acquirer who has obtained control in a company shall make a take-over offer for the remaining voting shares in accordance with the provisions of the Code, guidelines, directions, practice notes and any ruling issued by the Commission.

[Subs. Act A1499/2015]

(3) Subject to section 219, an acquirer who has obtained control shall not acquire any additional voting shares in that company except in accordance with the provisions of the Code, guidelines, directions, practice notes and any ruling issued by the Commission.

[Subs. Act A1499/2015]

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power of Commission to appoint independent adviser

218A. (1) Where an offeree has failed to appoint an independent adviser as required under the Code, the Commission may, if the Commission is satisfied that it is in the interest of the shareholders of the offeree to do so, appoint an independent adviser or such other person or body of persons as the Commission may decide, to provide comments, opinions, information and recommendation on the take-over offer in an independent advice circular.

(2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an independent adviser, person or body of persons appointed by the Commission under this section should be borne by the offeree concerned, the Commission may, by order in writing, direct the offeree to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

(3) Where an offeree has failed to comply with an order of the Commission under subsection (2), the amount specified in the order may be sued for and recovered by the Commission in a court as a debt due to the Commission.

[Ins. Act A1499/2015]

Powers of independent adviser appointed by Commission

218B. An independent adviser or such other person appointed by the Commission under section 218A, shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of his functions.

[Ins. Act A1499/2015]

Prohibition against communication of certain matters by independent advisers and employees

218C. Except for the purpose of carrying into effect the provisions of this Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent adviser or such other person appointed by the Commission under section 218A and an employee of such independent adviser or other person shall not communicate any matter, which may come to his knowledge in the performance of his duties to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the independent adviser by whom he is employed.

[Ins. Act A1499/2015]

Access to books, accounts and records, etc.

218D. (1) Upon request by an independent adviser or such other person appointed by the Commission under section 218A, an offeree and any of its directors, its executive officer or secretary, employee or agent shall give access to any information, books, accounts and records of, and any assets held by the offeree relating to his business.

(2) An offeree and any of its directors, its executive officer, secretary, employee or agent appointed by the offeree, shall answer all questions relevant to the preparation of an independent advice circular which are put to him by an independent adviser.

[Ins. Act A1499/2015]

Exemptions

219. (1) 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, guidelines, directions, practice notes and any ruling issued by the Commission.

[Am. Act A1499/2015]

(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, guidelines, directions, practice notes and rulings

[Subs. Act A1499/2015]

220. (1) Notwithstanding the provisions of subsection 218(4), where any person who is under an obligation to comply with, observe or give effect to the provisions of this Division, the Code, guidelines, directions, practice notes or any ruling issued by the Commission contravenes or fails to comply with, observe or give effect to any such provision or ruling, the Commission may take one or more of the following actions:

[Am. Act A1499/2015]

(a) direct the person in breach to comply with, observe or give effect to any such provision of this Division, the Code, guidelines, directions, practice notes or rulings;

[Am. Act A1499/2015]

(b) impose a penalty, in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million ringgit;

(c) reprimand the person in breach;

(d) require a stock exchange or derivatives exchange to deprive the person in breach from having access, directly or indirectly, to the facilities of the stock exchange or derivatives exchange;

[Subs. Act A1499/2015]

(da) prohibit the person in breach from having access, directly or indirectly, to the capital market;

[Ins. Act A1499/2015]

(e) where the person in breach is a listed corporation, require 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 the corporation or the class of securities of the corporation from the official list;

[Subs. Act A1499/2015]

(f) where the person in breach is a corporation that is not listed, require any stock exchange to prohibit the listing of any of its securities;

[Am. Act A1499/2015]

(g) [Deleted] *[Del. Act A1499/2015]*

(h) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;

[Am. Act A1499/2015]

(i) where the person in breach is an adviser, refuse to accept or consider any submission relating to any matter under this Division from such person.

[Ins. Act A1499/2015]

(2) The Commission shall give a written notice to a person in breach of its intention to take action under subsection (1) and shall give the person in breach 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)* or *(h),* on an application by the Commission, make an order directing the person in breach to comply with, observe or give effect to those provisions of the Code, guidelines, directions, practice notes, or rulings.

[Am. Act A1499/2015]

(4) For the purposes of paragraph (1)*(h)*, in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(5) Where a person has failed to comply with a penalty imposed by the Commission under paragraph (1)*(b)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(6) Without prejudice to any other remedy, where a direction under paragraph (1)*(h)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(7) To the extent that any of the amount obtained under paragraph *(1)(h)* or subsection (6) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital markets investors and professionals; or

(ii) the cost of regulating the capital markets,

as the Commission may determine, with the approval of the Minister.

[Subs. Act A1437/2012]

(8) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any of the provisions of the securities laws against the person in breach.

(8A) Where a person has failed to comply with any direction issued under subsection (1), the Commission may deprive such person from any capital market services by requiring a licensed person, registered person or capital market service provider not to act or continue to act for such person, for any period as may be determined by the Commission.

[Ins. Act A1499/2015]

(9) For the purposes of this section—

"breach" means a failure to comply with, observe or give effect to the provisions of this Division, the Code, guidelines, directions, practice notes or any ruling issued by the Commission in circumstances where there is an obligation to do so.

[Am. Act A1499/2015]

"person in breach" means a person who contravenes or fails to comply with, observe or give effect to the provisions of this Division, the Code, guidelines, directions, practice notes or any ruling issued by the Commission in circumstances where the person is under an obligation to do so.

[Am. Act A1499/2015]

False or misleading documents, information, *etc.*

221. (1) Where any document or information is required to be submitted to the Commission in relation to a take-over offer, merger or compulsory acquisition—

[Am. Act A1499/2015]

(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—

(A) submit or cause to be submitted any document or information that is false or misleading;

(B) provide or cause to be provided any document or information from which there is material omission; or

(C) 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) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

[Subs. Act A1499/2015]

Compulsory acquisition

222. (1) Where an offeror—

(a) has made a take-over offer for all the shares or all the shares in any particular class in an offeree; and

(b) has received acceptances of not less than nine-tenths in the nominal value of the offer shares,

the offeror may, within four months of the date of the take-over offer, acquire the remaining shares or remaining shares in any particular class in the offeree, by issuing a notice in the form or manner specified by the Commission to such effect, to all dissenting shareholders provided that the notice—

(A) is issued within two months from the date of achieving the conditions under paragraphs *(a)* and *(b)*; and

(B) is accompanied by a copy of a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied;

[Subs. Act A1499/2015]

(1A) For the purpose of paragraph (1)*(b)*, the acceptances shall not include shares already held at the date of the take-over offer by the offeror or persons acting in concert;

[Ins. Act A1499/2015]

(2) Where an offeror has given notice to any dissenting shareholder under subsection (1), the dissenting shareholder may, by demand in writing, within one month from the date of such notice, require the offeror to provide in writing the names and addresses of all other dissenting shareholders as shown in the register of members, and the offeror may only acquire the shares of the dissenting shareholders after fourteen days from the posting of those names and addresses to the dissenting shareholder.

[Subs. Act A1499/2015]

(3) Upon the giving of the notice and statutory declaration under subsection (1), 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.

[Subs. Act A1499/2015]

(4) A person commits an offence if he—

(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,

(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 224, 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 all such dissenting shareholders 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 monies paid to him pursuant to the law relating to unclaimed monies.

Right of minority shareholder

223. (1) Subject to section 224, if a take-over offer relates to all the shares or to all shares in any class 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 to which the take-over offer relates; and

(b) those shares, with or without any other shares or any other shares of that class to which the take-over offer relates, as the case may be, which the offeror or persons acting in concert 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 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 specified by the Commission 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.

[Am. Act A1499/2015]

(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 222(1).

(5) A person who contravenes subsection (2) commits an offence.

Application to court

224. (1) Where a notice is given under subsection 222(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 222(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 223(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 that —

(a) the application was unnecessary, improper or vexatious; or

(b) 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 for entitling him to give notice under subsection 222(1), make an order authorising the offeror to give notices under subsection 222(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 mentioned in paragraph *(a)*, amount to not less than the minimum specified in subsection 222(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.

Non-application of section 180 of the Companies Act 1965

225. The provisions of section 180 of the Companies Act 1965 shall not apply in respect of take-over offers to which subsection 222(1) applies.

Division 3

Prospectus

Interpretation

226. In this Division, and Divisions 4 and 5, unless the context otherwise requires—

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

"excluded invitation" or "excluded offer" means an invitation or offer which is specified in Schedule 6 or which is prescribed by the Minister to be an excluded invitation or excluded offer under paragraph 229(1)*(b)*;

"excluded issue" means an issue which is specified in Schedule 7 or which is prescribed by the Minister to be an excluded issue under paragraph 230(1)*(b)*;

"preliminary prospectus" means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of,

or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

"promoter" means—

(a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;

(b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or

(c) in relation to a prospectus in any other case, a person,

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

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

"shelf prospectus" means a prospectus issued under a shelf registration scheme;

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

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

Invitation

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

Offer for subscription or purchase

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

Excluded offers and invitations

229. (1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—

(a) the offer or invitation is specified in Schedule 6; or

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

to be an excluded offer or an excluded invitation.

(2) Schedule 6 or a prescription made under paragraph (1)*(b)* may specify the provisions of this Act that shall not apply to an excluded offer or an excluded invitation.

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

(a) any excluded offer or excluded invitation specified in Schedule 6; or

(b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)*(b)*,

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

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

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

Excluded issues

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

(a) the issue is so specified in Schedule 7; or

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

(2) Schedule 7 or a prescription made under paragraph (1)*(b)* may specify the provisions of this Act that shall not apply to an excluded issue.

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

(a) any excluded issue specified in Schedule 7; or

(b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)*(b)*,

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

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

(5) Paragraph 17 of Schedule 7 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.

Exceptions

231. (1) The provisions of this Division as specified in Schedule 6 or 7 or as may be prescribed by the Minister pursuant to paragraph 229(1)*(b)* or 230(1)*(b)* shall not apply to—

(a) an excluded offer;

(b) an excluded invitation; or

(c) an excluded issue.

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

Requirement to register prospectus in relation to securities

232. (1) A person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase securities or in the case of an initial listing of securities, make an application for the quotation of the securities on a stock market of a stock exchange unless—

[Am. Act A1406/2011]

(a) a prospectus in relation to the securities has been registered by the Commission under section 233; and

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

(2) Unless authorised in writing by the Commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 233.

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

(4) The Commission may for public information publish the registrable prospectus submitted to the Commission before the registration of the prospectus under section 233.

(5) The publication under subsection (4) shall not indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the registrable prospectus.

(6) For the purposes of this section, a "registrable prospectus" refers to a prospectus that has been submitted under section 233 and which has yet to be registered by the Commission.

(7) A person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Registration of prospectus

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

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

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

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

(d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates—

(i) requires the approval of the Commission under section 214 and such approval has not been given; or

[*Am. Act A1437/2012*]

(ii) does not comply with any term or condition imposed under section 214;

[*Am. Act A1437/2012*]

(e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or

(f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 1965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.

(2) No prospectus shall be registered unless it is submitted to the Commission together with—

(a) a written application for its registration;

(b) copies of all consents required under subsection 244(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;

(c) copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and

(d) all such information or documents as may be required by the Commission.

(3) An issuer shall cause a copy of—

(a) any consent required under subsection 244(1) in relation to the issue of the prospectus; and

(b) every material contract or document referred to in the prospectus,

to be deposited—

(A) at the registered office of the issuer in Malaysia, and if it has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and

(B) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose,

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

Requirement to lodge prospectus with Registrar

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

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

(b) in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission,

before the date of issue of the prospectus.

Contents of prospectus

235. (1) Without prejudice to section 236, a prospectus—

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

(b) shall state that—

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

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

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

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

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

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

(i) that is included in the prospectus; or

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

unless the requirements of subsection 244(1) are satisfied; and

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

(2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 236, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 232 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.

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

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

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

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

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

(7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus commits 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.

(8) Any person who contravenes any term or condition as may be imposed by the Commission under subsection (4) commits an offence.

General duty of disclosure in prospectus

236. (1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 246(1) or 248(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—

(a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;

(b) the rights attaching to the securities; and

(c) the merits of investing in the securities and the extent of the risk involved in doing so.

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

(a) which is known to all or any of the following persons:

(i) a person who was a director of the issuer at the time of issue of the prospectus;

(ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(iii) a promoter;

(iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

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

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

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

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

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

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

(a) the nature of—

(i) the securities;

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

(iii) the unit trust scheme or prescribed investment scheme;

(b) the persons likely to consider acquiring such securities;

(c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 236(1) may reasonably be expected to consult; and

(d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law or any requirement of the rules of a stock exchange, if applicable, or otherwise.

Abridged prospectus for renounceable rights issues

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

[*Am. Act A1437/2012*]

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

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

Supplementary or replacement prospectus

238. (1) This section applies—

(a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or

(b) in any other case, where a prospectus has been registered but before the issue of securities,

and where the issuer becomes aware that—

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

(i) section 235 or 236;

(ii) any requirement under this Act;

(iii) any guidelines issued by the Commission; or

(iv) any listing requirement of a stock exchange,

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

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

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

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

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

(3) The issuer shall lodge the supplementary or replacement prospectus, as the case may be,—

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

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

(4) Subsection (1) shall apply with respect to matters contained in a supplementary or replacement prospectus, as the case may be, previously registered under this section in respect of the securities in question.

(5) On each page of a supplementary prospectus, there shall be a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the original prospectus, both the original prospectus and the supplementary prospectuses.

(6) At the beginning of the replacement prospectus, there shall be a clear statement in bold type that states the document is a replacement prospectus, and identifies the prospectus which it replaces.

(7) A supplementary prospectus shall be regarded as being part of the prospectus to which it relates and the provisions of this Act and any other law relating to

liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.

(8) A replacement prospectus shall be regarded as replacing the prospectus previously registered under section 233.

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

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

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

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

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

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

(13) Any person who contravenes subsection (2), (3), (5), (6) or (9) commits 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.

(14) Any person who contravenes any term or condition as may be imposed by the Commission under subsection (11) commits an offence.

Consequences of registering a supplementary or replacement prospectus

239. (1) This section applies—

(a) where a person ("the applicant") applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and—

(i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or

(ii) in any other case, before the issue of securities; and

(b) the issuer delivers to the Commission for registration a supplementary or replacement prospectus, as the case may be, that relates to the prospectus.

(2) As soon as practicable after the registration of the supplementary or replacement prospectus, as the case may be, by the Commission, the issuer shall—

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

(i) advising the applicant that a supplementary or replacement prospectus, as the case may be, has been registered by the Commission;

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

(b) ensure that the written notice referred to in paragraph (2)*(a)* is accompanied by a copy of a supplementary or replacement prospectus, as the case may be.

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

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

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

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

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

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

(7) Any person who contravenes subsection (2) or (3) commits 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.

(8) Any person who contravenes any term or condition as may be imposed by the Commission under subsection (5) commits an offence.

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

240. (1) Notwithstanding the provisions of sections 235 and 236, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force—

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

(b) a short form prospectus; or

(c) a profile statement,

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

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

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

(b) a short form prospectus;

(c) a profile statement;

(d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, short form prospectus or profile statement, as the case may be;

(e) the form and content of a prospectus referred to in paragraph *(a), (b)* or *(c);*

(f) the persons or classes of persons to which any prospectus referred to in paragraph *(a), (b)* or *(c)* may apply; or

(g) the securities or classes of securities to which any prospectus referred to in paragraph *(a), (b)* or *(c)* may apply.

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

Restrictions in advertising

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

(a) issues, offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; or

(b) refers, whether directly or indirectly, to—

(i) a prospectus in respect of securities of a corporation;

(ii) in the case of a unit trust scheme or prescribed investment scheme, a prospectus in respect of any unit of the unit trust scheme or prescribed investment scheme, as the case may be;

(iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or

(iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.

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

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

(a) such notices referred to in subsection (4) or (5);

(b) such preliminary prospectuses referred to in subsection (6);

(c) such reports referred to in subsection (7);

(d) such notices or reports as may be specified by the Commission; or

(e) such publication of a registrable prospectus referred to in section 232.

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

(a) with the consent of the Commission and subject to such terms and conditions as it may impose; and

(b) which does not contain any information or matter other than the following:

(i) the name of the issuer of securities;

(ii) in the case of a unit trust scheme or prescribed investment scheme, the name of the unit trust scheme or the prescribed investment scheme, and the names of the trustee and the management company in relation to the unit trust scheme or prescribed investment scheme, as the case may be;

(iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;

(iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors;

(v) the names and addresses of stockbrokers, sharebrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(vi) in the case of debentures, the name and address of the trustee for debenture holders;

(vii) a brief description of the listing status of the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the corporation, unit trust scheme or prescribed investment scheme, as the case may be, will be listed;

(viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is

proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus;

(ix) in the case of a unit trust scheme or prescribed investment scheme, a description of the persons from whom the units are available for purchase or subscription; and

(x) such other information or matters which the Commission may specify in writing.

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

(a) states that a prospectus in relation to any securities has been registered;

(b) specifies the date of the prospectus;

(c) specifies where a copy of the prospectus can be obtained;

(d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and

(e) states such other information or matters which the Commission may specify in writing.

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

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

(b) the preliminary prospectus is issued to any person referred to in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (22), (23), (24), (25), (26) or (27) of Schedule 6 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing;

(c) the preliminary prospectus contains on its front page a conspicuous notice that—

(i) it is not a prospectus;

(ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and

(iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus;

(d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation;

(e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person;

(f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and

(g) where a prospectus which is registered in relation to securities to which the preliminary prospectus relates differs from the preliminary

prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission:

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

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

(a) a report that relates to the affairs of a corporation, unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme, as the case may be;

(b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a prescribed investment scheme where the body corporate, unit trust scheme or prescribed investment scheme is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting;

(c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to—

(i) a prospectus that has been registered or information that is contained in such a prospectus; or

(ii) a report referred to in paragraph *(a)* or *(b)*,

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

(A) the person making the report or comment;

(B) an agent or employee of the person making the report or comment;

(C) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; or

(D) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published.

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

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

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

(a) contravenes subsection (1);

(b) contains a statement or information that is false or misleading;

(c) contains a statement or information from which there is a material omission; or

(d) contains a material misrepresentation,

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

(A) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or

(B) direct the person to take such other action as may be specified in the order.

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

(12) A person who—

(a) issues or publishes a notice in contravention of subsection (1), (4) or (5);

(b) issues a preliminary prospectus in contravention of subsection (6); or

(c) issues or publishes a report in contravention of subsection (7),

commits 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.

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

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

(a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and

(b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers therefor.

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

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

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

(a) an offer of the securities for purchase was made within such period as may be specified by the Commission under paragraph 235(1)*(c)* after the allotment or issue or agreement to allot or issue; or

(b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.

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

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

(a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and

(b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.

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

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

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

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

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

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

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

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

(a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; or

(b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.

(2) Where permission has not been applied for, or has not been granted by the exchange referred to in subsection (1), the issuer shall, subject to subsection (3), forthwith repay without interest all monies received from applicants in pursuance of the prospectus, and if any such money is not repaid within fourteen days after the issuer so becomes liable to repay it, then, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of ten per centum per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

(3) Where in relation to any securities—

(a) permission is not applied for as specified in paragraph (1)*(a);* or

(b) permission is not granted as specified in paragraph (1)*(b)*,

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

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

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

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

(a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and

(b) in relation to a prospectus offering securities for purchase, as if—

(i) a reference to purchase were substituted for a reference to allotment;

(ii) the persons by whom the offer is made, and not the issuer, were liable under subsection (2) to repay monies received from applicants, and references to the issuer's liability under that subsection were construed accordingly; and

(iii) a reference in subsection (7) to the issuer and every officer of the issuer who is in default under subsection (2) were substituted with a reference to any person by or through

whom the issue, offer or invitation is made and who knowingly authorizes or permits the default.

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

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

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

(a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in subsection (1); or

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

(10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under section 287 complies with, or has

been drawn so as to comply with, the requirements of any exchange referred to in subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the stock exchange.

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

(12) A person who contravenes this section commits 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.

Consent from person to issue of prospectus containing statement by him

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

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

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

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

Stop order

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

(a) a prospectus does not comply with or is not prepared in accordance with any provision of this Act;

(b) a prospectus contains a statement or information that is false or misleading;

(c) a prospectus contains a statement or information from which there is a material omission; or

(d) an issuer has contravened any provision of the securities laws or the Companies Act 1965,

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

(2) Subject to subsections (3) and (4), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

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

(4) An interim order under subsection (3) shall, unless sooner revoked, have effect until the end of twenty-one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is the later.

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

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

(7) Without prejudice to the provisions of section 215A, where applications to subscribe for or purchase securities to which the prospectus relates have been made prior to the order made under subsection (1)—

[Am. Act A1437/2012]

(a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period; or

(b) where the securities have been issued to the applicants, the issue of securities shall be deemed to be void and the issuer or such other person shall—

(i) forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the date of service of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period; and

(ii) take necessary steps to effect the order.

(8) Notwithstanding subsections (1) and (2), the Commission shall not serve a stop order if any of the shares or debentures or units of shares or debentures to which the prospectus relates have been listed on a stock market of a stock exchange and trading in them has commenced.

(9) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) commits an offence.

Criminal liability for false statements, etc. in prospectus

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

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

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

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

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

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

(3) A person who contravenes subsection (1) commits 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.

Persons not to be taken to have authorized or caused issue of prospectus

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

(2) For the purpose of section 246, a person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given a consent as required under subsection 244(1).

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

[Am. Act A1499/2015]

248. (1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in any disclosure document or prospectus that is false or misleading, or from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in the following paragraphs:

(a) the issuer and each director of the issuer at the time of the issue of the disclosure document or prospectus;

(b) a person who consented or caused himself to be named and was named in the disclosure document or prospectus given to an investor as a director or as having agreed to become a director either immediately or after an interval of time;

(c) a promoter, for any loss or damage arising from the disclosure document

or prospectus or any relevant portion of the disclosure document or prospectus in respect of which he was a party to the preparation thereof;

(d) a person other than the issuer, who was responsible for preparing the disclosure document or prospectus, or responsible for conducting the due diligence of the information or statement contained in the disclosure document or prospectus, by whatever name called and may include the principal adviser or lead arranger;

(e) a person named in the disclosure document or prospectus with his consent, as having made a statement, that was included in the disclosure document or prospectus or on which a statement made in the disclosure document or prospectus was based, for any loss or damage caused by the inclusion of the statement in the disclosure document or prospectus;

(f) a person named in the disclosure document or prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities and who had made a statement that was included in the disclosure document or prospectus or on which a statement made in the disclosure document or prospectus was based, for any loss or damage caused by the inclusion of the statement in the disclosure document or prospectus; or

(g) a person who authorized or caused the issue of any disclosure document or prospectus in contravention of section 246, for any loss or damage caused by such contravention.

[Subs. Act A1499/2015]

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

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

(4) For the purposes of paragraph (1)*(d)*, where a person who was responsible for preparing the disclosure document or prospectus, or for conducting the due diligence of the information or statement contained in the disclosure document or prospectus is an individual acting on behalf of his principal, the loss or damage may only be recoverable from the principal.

[Ins. Act A1499/2015]

Civil liability for misleading or deceptive acts

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

(a) any prospectus issued;

(b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(c) any notice referred to in subsection 241(4) or (5) or a preliminary prospectus referred to in subsection 241(6), or any report referred to in subsection 241(7) or any notice or report as may be specified by the Commission under paragraph 241(3)*(d*); or

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

(2) A person who contravenes this section shall not be guilty of an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in paragraph (1)*(a),(b),(c)* or (*d)* may recover the amount of the loss or damage under section 357.

Due diligence defence

250. A person shall not be guilty of an offence under section 246 and is not liable under section 248 if he proves that—

(a) he had made all enquiries as were reasonable in the circumstances; and

(b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—

(i) the statement or information was true and not misleading; or

(ii) there was no material omission.

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

251. A person shall not be guilty of an offence under section 246 and is not liable under section 248 if the person (hereinafter referred to as the "first-mentioned person") proves that the false or misleading statement or material omission from a statement in a prospectus—

(a) is or is based on a statement made by a person referred to in subsection 244(1) (hereinafter referred to as the "second-mentioned person"); or

(b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person,

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

(A) the statement accurately represented the statement made by the second-mentioned person, or the copy or the purported copy or

extract was a correct copy of, or extract from, the report or valuation, as the case may be; and

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

(i) was competent to make it;

(ii) had given the consent required by subsection 244(1); and

(iii) had not withdrawn that consent.

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

252. A person is not liable under section 249 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person (hereinafter referred to as the "first-mentioned person") proves that the act consists of a representation made in reliance on—

(a) a statement made by a person referred to in subsection 244(1) (hereinafter referred to as the "second-mentioned person"); or

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

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

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

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

(i) was competent to make it;

(ii) had given the consent required by subsection 244(1); and

(iii) had not withdrawn that consent.

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

253. (1) A person shall not be guilty of an offence under section 246 and is not liable under section 248 if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred as the "defective statement") is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document, and it is proved by the person that—

(a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; or

(b) the defective statement is contained in a copy of or what purports to be a copy of, or extract from, a public official document,

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

(2) A person is not liable under section 249 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official document or statement made by a public officer in the course of his duties and it is proved that—

(a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; or

(b) the representation is contained in a copy of, or an extract from, a public official document,

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

Defence of withdrawal of consent

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

(a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(b) making a statement that is included in the prospectus; or

(c) making a statement on the basis of which a statement is included in a prospectus,

shall not be guilty of an offence under section 246 and is not liable under section 248 if—

(A) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus, and the prospectus was issued despite such withdrawal; or

(B) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.

(2) A person who is named in a prospectus as—

(a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

(b) making a statement that is included in the prospectus; or

(c) making a statement on the basis of which a statement is included in a prospectus,

shall not be guilty of an offence under section 246 and is not liable under section 248 if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

Restriction on offering securities for subscription or purchase

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

(a) an unsolicited invitation to subscribe for or purchase any securities;

(b) an unsolicited offer for subscription or purchase of any securities; or

(c) an unsolicited recommendation of any securities.

(2) Subsection (1) shall not—

(a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations—

(i) in relation to any securities which are listed on a stock market of a stock exchange within Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission; and

(ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:

(A) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Commission, in the twelve months before the making of the invitation or offer or recommendation; or

(B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;

(b) prohibit a management company from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders;

(c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the Commission;

(d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act;

(e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;

(f) apply to an invitation or offer to which the provisions of the Companies Act 1965 apply; or

(g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the *Gazette.*

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

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

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

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

(7) A person who contravenes subsection (1) or (4) commits 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.

Agreements, documents and prospectus to exclude or restrict liability void

256. Any provision, clause or term contained in any agreement, contract, document or prospectus that is given or provided to an investor in relation to or concerning–

(a) an offer for subscription or purchase of securities;

(b) an invitation to subscribe for or purchase securities; or

(c) the making available of securities,

that purports to exclude or restrict the liability of a person for contravention of section 92A, 246, 248 or 249 or for loss or damage under section 357 shall be void.

[Subs. Act A1499/2015]

Division 3A

Application for authorization or recognition

Interpretation

256A. For the purposes of this Division, unless the context otherwise requires—

"unlisted product" means unlisted capital market product including unlisted Islamic securities but excluding units in a unit trust scheme.

[*Ins. Act A1437/2012*]

Application for authorization or recognition

256B. (1) An applicant making an application for authorization or recognition under subsection 212(5) shall submit documents and information to the Commission in the form and manner as the Commission may specify.

(2) The Commission may require an applicant to furnish it with additional information or document as the Commission considers necessary in relation to the application.

(3) Such application shall be submitted together with the prescribed application fee.

[*Ins. Act A1437/2012*]

Grant of authorization or recognition

256C. (1) The Commission may, in relation to an application for authorization or recognition made under subsection 256B(1), grant—

(a) an authorization or recognition; or

(b) an authorization or recognition—

(i) subject to such terms and conditions;

(ii) with such revision; or

(iii) with such revision and subject to such terms and conditions,

as the Commission deems fit or necessary.

(2) The Commission may vary, add to or remove any term and condition imposed under subsection (1) at any time as the Commission considers necessary.

(3) A person who contravenes any term or condition imposed under subsection (1) or (2) commits an offence.

[*Ins. Act A1437/2012*]

Refusal of grant authorization or recognition

256D. The Commission may refuse to grant an authorization or recognition under section 256C if—

(a) the application is not made in accordance with this Division;

(b) the applicant has failed to comply with any requirement of this Act or any guidelines issued by the Commission;

(c) any information or document furnished to the Commission in respect of the application is false or misleading or from which there is a material omission;

(d) the Commission has reason to believe that the authorization or

recognition would be detrimental to the interest of investors; or

(e) the Commission has reason to believe that the authorization or recognition would be contrary to public interest.

[*Ins. Act A1437/2012*]

Withdrawal of authorization or recognition

256E. (1) The Commission may withdraw an authorization or recognition granted under section 256C if the Commission is satisfied that—

(a) an applicant or any of its officers has failed to comply with or has breached—

(i) any term or condition imposed by the Commission;

(ii) any guidelines or direction issued by the Commission; or

(iii) any requirements under this Act;

(b) any information or document furnished to the Commission under this Division is false or misleading or from which there is a material omission; or

(c) it is in the interest of investors or public interest to withdraw the authorization or recognition granted under section 256C.

(2) The Commission may, upon a request in writing made to the Commission by the applicant, withdraw an authorization or recognition granted under 256C.

(3) If a request in writing is made to the Commission under subsection (2), the Commission may refuse to withdraw the authorization or recognition granted under section 256C, if the Commission considers that—

(a) it is in the interest of investors or public interest, that any matter regarding the unlisted product should be investigated before the authorization or recognition is withdrawn under subsection (2); or

(b) the withdrawal of the authorization or recognition would not be in the interest of investors or public interest.

(4) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (1).

[*Ins. Act A1437/2012*]

Effect of withdrawal

256F. Any withdrawal issued under section 256E shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the unlisted product entered into before the withdrawal of the authorization or recognition; or

(b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph *(a)*.

[*Ins. Act A1437/2012*]

Power to issue directions, *etc.*

256G. (1) Without prejudice to sections 125, 354, 355 and 356, if the Commission—

(a) exercises its power to withdraw an authorization or recognition under this Division;

(b) becomes aware that a statement or information provided or submitted to it under this Division is false or misleading or from which there is a material omission; or

(c) is satisfied that the interest of investors or public interest is jeopardized or is likely to be jeopardized,

the Commission may issue a direction in writing to a person on whom an obligation to comply with any requirement imposed under this Division or regulation or any guidelines issued by the Commission to take such steps as may be specified in the direction to—

(A) comply with, observe, enforce or give effect to—

(i) any requirement or provision of this Act or any securities laws;

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

(iii) any term, condition or restriction imposed under or pursuant to this Act; or

(B) take such steps to remedy the breach in respect of which the Commission is exercising its powers to withdraw authorization or recognition under paragraph 256E(1)*(a)* or to mitigate the effect of such breach.

(2) Any person referred to under this Division shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns and the provision of such information relating to its operations or any other information as the Commission or the person acting on behalf of

or with the authority of the Commission may require for the proper administration of securities laws.

(3) A person who fails to comply with any direction issued under subsection (1) or fails to provide assistance under subsection (2) commits an offence.

[*Ins. Act A1437/2012*]

Division 3B

Business Trust

Interpretation and application

256H. (1) Sections 122 and 123 shall not apply to a business trust.

(2) For the purposes of this Division, unless the context otherwise requires—

"deed" means any deed which creates a business trust and provides for the governance of its affairs and the conduct of its business and includes any instrument amending or affecting the deed;

"trustee-manager" means a person who—

(a) holds property or asset on trust for unit holders of the business trust; and

(b) manages and operates such property or asset;

"director" includes a person who is a chief executive officer.

[*Ins. Act A1437/2012*]

Application for registration or recognition

256I. (1) An application for registration of a business trust shall only be made by a trustee-manager and in the case of an application for recognition of a business trust, by any other person as may be specified by the Commission.

(2) An application for registration or recognition of a business trust shall be submitted together with documents and information in the form and manner as the Commission may specify.

(3) The Commission may require additional information or document as the Commission considers necessary in relation to the application.

(4) An application made under subsection (2) shall be submitted together with the prescribed application fee.

[*Ins. Act A1437/2012*]

Registration of disclosure document

256J. Any person who intends to offer or make available units in an unlisted business trust shall register with the Commission a disclosure document containing information and particulars as may be specified by the Commission under section 92A.

[*Ins. Act A1437/2012*]

Registration or recognition of a business trust

256K. (1) The Commission may in relation to an application made under section 256I, register or recognize the business trust.

(2) The Commission may—

(a) register or recognize the business trust under subsection (1); or

(b) register or recognize the business trust under subsection (1)—

(i) subject to such terms and conditions;

(ii) with such revision; or

(iii) with such revision and subject to such terms and conditions,

as the Commission deems fit or necessary.

(3) The Commission may vary, add to or remove any term or condition imposed under subsection (2) at any time as the Commission considers necessary.

(4) A person who contravenes any term or condition imposed under subsection (2) or (3) commits an offence.

(5) No person shall take or use or adopt the name, title or description of the words “business trust” or “business trust scheme” in relation to its business or make any representation to such effect in any manner whatsoever unless the business trust is registered or recognized under this Division.

(6) A person who contravenes subsection (5) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and be liable to a fine not exceeding ten million ringgit.

[*Ins. Act A1437/2012*]

Refusal to register or recognize a business trust

256L. The Commission may refuse an application under section 256I if—

(a) the trustee-manager does not hold a Capital Markets Services Licence to

carry on the business of fund management;

(b) the application is not made in accordance with this Division;

(c) the trustee-manager has failed to comply with any requirement of this Act or any guidelines issued by the Commission;

(d) any information or document furnished to the Commission in respect of the application is false or misleading or from which there is a material omission;

(e) the Commission has reason to believe that the registration or recognition would not be in the interest of investors; or

(f) the Commission has reason to believe that the registration or recognition would be contrary to public interest.

[*Ins. Act A1437/2012*]

Withdrawal of registration or recognition

256M. (1) The Commission may withdraw a registration or recognition granted if the Commission is satisfied that—

(a) the trustee-manager or any of its officers has failed to comply with or has breached—

(i) any terms or conditions imposed by the Commission;

(ii) any guidelines or direction issued by the Commission; or

(iii) any requirements under this Act;

(b) any information or document furnished to the Commission under this Division is false or misleading or from which there is a material omission; or

(c) it is in the interest of unit holders or public interest to withdraw the registration or recognition.

(2) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (1).

[*Ins. Act A1437/2012*]

Effect of withdrawal of registration or recognition

256N. Any withdrawal issued under section 256M shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to the business trust entered into before the withdrawal of the registration or recognition; or

(b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph *(a)*.

[*Ins. Act A1437/2012*]

Trustee-manager

256O. (1) A business trust shall be managed and operated only by the trustee-manager of the business trust.

(2) A trustee-manager of a business trust must be a corporation other than an exempt private company.

(3) A trustee-manager of a business trust shall not carry on any business other than the management and operation of the business trust for which it is the trustee-manager.

(4) Subject to the deed and with the approval of the Commission, a trustee-manager may appoint an agent to carry out or perform any function in connection with the management and operation of the business trust.

(5) Any person who contravenes this section commits 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.

[*Ins. Act A1437/2012*]

Duties and responsibilities of a trustee-manager

256P. (1) A trustee-manager shall in the performance of its duties—

(a) exercise its powers for a proper purpose and in good faith in the best interest of the unit holders as a whole;

(b) exercise reasonable care and diligence;

(c) act in accordance with the requirements of this Act, guidelines issued by the Commission and the deed;

(d) give priority to interest of unit holders as a whole over its own interest if there is a conflict between the interest of unit holders as a whole and its own interest;

(e) ensure that the property or assets of the business trust are valued at regular intervals appropriate to the nature of the property or assets;

(f) ensure that all payments out of the property or assets of the business trust are made in accordance with the deed and any guidelines issued by the Commission; and

(g) carry out any other duties or responsibilities as may be specified by the Commission.

(2) A trustee-manager shall not use any property or asset of the business trust or any information acquired by virtue of its position as the trustee-manager to gain directly or indirectly, an advantage for itself or for any other person to the detriment of the unit holders as a whole.

(3) A trustee-manager who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit.

(4) A trustee-manager shall be liable to all the unit holders as a whole for any profit or financial gain directly or indirectly made by the trustee-manager or any of its related corporation or for any damage suffered by the unit holders as a whole, as a result of the contravention of this section.

[*Ins. Act A1437/2012*]

Duties and responsibilities of officers and agents

256Q. (1) An officer of a trustee-manager shall at all times—

(a) exercise his powers for a proper purpose and in good faith in the best interest of the unit holders as a whole and shall take all reasonable steps to ensure that the trustee-manager discharges its duties under section 256P;

(b) give priority to the interests of the unit holders as a whole over the interests of the trustee-manager if there is a conflict between the interests of the unit holders as a whole and the interests of the

trustee-manager; and

(c) carry out any other duties or responsibilities as may be specified by the Commission.

(2) An officer or an agent of a trustee-manager shall not—

(a) use any property or asset of the business trust;

(b) use any information acquired by virtue of his position as an officer or agent of the trustee-manager;

(c) use his position as an officer or agent of the trustee-manager;

(d) use any opportunity which he became aware of in the performance of his functions as an officer or agent of the trustee-manager; or

(e) engage in any business which is in competition with the business trust,

to make any gain directly or indirectly, or to cause detriment to the unit holders as a whole.

(3) The duties of an officer of the trustee-manager of a business trust under subsection (1) shall prevail over any conflicting duty of such officer under section 132 of the Companies Act 1965.

(4) No civil or criminal proceedings shall be brought or instituted against an officer of the trustee-manager of a business trust for a breach of section 132 of the Companies Act 1965, any fiduciary duty or any other duty under common law in relation to any act or omission to act if such act or omission was required by subsection (1).

(5) An officer or an agent of the trustee-manager of a business trust who contravenes subsection (1) or (2) commits of an offence and shall, on conviction, be

punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

(6) An officer or an agent of the trustee-manager shall be liable to the unit holders as a whole for any profit or financial gain directly or indirectly made by the trustee-manager or any of its related corporation, or for any damage suffered by the unit holder of the business trust as a whole, as a result of the contravention of subsection (1) or (2).

(7) No action or proceedings whatsoever may be brought by or on behalf of all or any of the unit holders of a business trust against an officer of the trustee-manager of that business trust for any breach or alleged breach of the duties imposed by subsections (1) and (2), except as provided for under section 256ZF.

(8) In this section—

"agent" means a banker, an advocate and solicitor or an auditor of the trustee-manager and for the purposes of paragraphs 256Q(2)*(b)*, *(c)* and *(d)*, includes a person who has previously been a banker, an advocate and solicitor or an auditor of the trustee-manager.

[*Ins. Act A1437/2012*]

Acquisition of interest in a business trust

256R. (1) A trustee-manager shall not, whether directly or indirectly, acquire or hold any unit or derivative of any unit in the business trust unless it acquires or holds the unit or derivative—

(a) for not less than the consideration that would be payable if the unit or derivative of the unit were acquired by another person; and

(b) subject to terms and conditions that would not disadvantage other unit holders of the business trust.

(2) A trustee-manager who contravenes this section commits an offence.

[*Ins. Act A1437/2012*]

Disclosure of interest in a transaction

256S. (1) A director of a trustee-manager who is, whether directly or indirectly, interested in a transaction or proposed transaction entered or to be entered into by the trustee-manager for or on behalf of the business trust shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the trustee-manager, in such manner as may be specified by the Commission.

(2) A director of a trustee-manager who holds any office or possess any property where his duties or interests in respect of that office or property may be in conflict with his duties or responsibilities under section 256Q shall declare the nature and extent of the conflict at a meeting of the directors of the trustee-manager.

[*Ins. Act A1437/2012*]

Register of interest

256T. A trustee-manager shall keep a register in the manner and form as may be specified by the Commission showing in respect of each director of the trustee-manager, particulars of—

(a) units or derivatives of units in the business trust, being units or derivatives of units in which the director has an interest and the nature and extent of that interest; and

(b) debentures of the business trust in which the director has an interest and the nature and extent of that interest.

[*Ins. Act A1437/2012*]

Certification by chief executive officer and board of directors of trustee-manager

256U. (1) Subject to subsection (2), the board of directors of a trustee-manager shall make a written statement to be attached to the income statement of the business trust, in accordance with a resolution of the board of directors of the trustee-manager and signed by not less than two directors on behalf of the board of directors, certifying that—

(a) fees or charges paid or payable out of the property or assets of the business trust to the trustee-manager are in accordance with the deed;

(b) related party transactions are not detrimental to the interests of the unit holders of the business trust as a whole based on the circumstances at the time of the transaction; and

(c) the board of directors of the trustee-manager is not aware of any violation of duties of the trustee-manager which would have a materially adverse effect on the business of the business trust or on the interests of the unit holders as a whole.

(2) If the board of directors of the trustee-manager of a business trust is unable to provide a written statement in accordance with subsection (1), for the reason that—

(a) the board of directors is of the opinion that the assertions referred to in subsection (1) are not true; or

(b) there is a divergence of views among the directors of the trustee-manager as to the accuracy of the assertions referred to in subsection (1),

the board of directors shall provide an explanation, including the important factors for the inability to provide such a written statement.

(3) Any person who contravenes subsection (1) or (2) commits an offence.

(4) If the board of directors of the trustee-manager of a business trust makes a written statement referred to in subsection (1) without any reasonable basis for arriving at the conclusions stated in the statement, any director of the trustee-manager who permits or authorizes the statement to be made commits 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.

[*Ins. Act A1437/2012*]

Disclosure of policies and practices

256V. A trustee-manager shall attach a statement of its policies and practices in relation to its management and governance of the business trust containing such information as may be specified by the Commission to the income statement.

[*Ins. Act A1437/2012*]

Removal of trustee-manager

256W. Notwithstanding any provision in this Division or the deed, a trustee-manager shall remain as the trustee-manager unless he is removed by the unit holders of the business trust in the manner as may be specified by the Commission or he resigns in accordance with section 256X.

[*Ins. Act A1437/2012*]

Resignation of trustee-manager

256X. Notwithstanding anything in the deed or in any agreement between the trustee-manager and the unit holders, a trustee-manager may resign only in accordance with the requirements and in the manner as may be specified by the Commission.

[*Ins. Act A1437/2012*]

Replacement of trustee-manager

256Y. (1) Where the trustee-manager has been removed under section 256W or has resigned under section 256X, the unit holders shall appoint a new trustee-manager in the manner specified by the Commission.

(2) Notwithstanding anything in the deed or in any agreement between the trustee-manager and the unit holders, the Commission may remove the trustee-manager and appoint in his place another trustee-manager or a holder of a Capital Market Services Licence who carries on the business of fund management.

[*Ins. Act A1437/2012*]

Requirement for a deed

256Z. (1) A trustee-manager shall ensure that a deed is entered into and is contained in a document that is legally enforceable between the unit holders and the trustee-manager.

(2) The Commission may specify the contents of the deed.

(3) Any provision of a deed that has the effect of providing for the business trust to be wound up if the trustee-manager ceases to be the trustee-manager of the business trust shall be void.

(4) A deed may be amended in the manner and form as may be specified by the Commission.

[*Ins. Act A1437/2012*]

Exemptions and indemnification of a trustee-manager from liability

256ZA. (1) Subject to subsection (2), a provision or covenant contained in a deed or a term of a contract that would have the effect of exempting or indemnifying a trustee-manager, officers and agents of the trustee-manager from liability for—

(a) contravention of any provision of this Act;

(b) breach of trust; or

(c) failure to show the degree of care and diligence required of a trustee-manager,

shall be void.

(2) Subsection (1) shall not apply if the provision, covenant or term—

(a) releases the trustee-manager from liability for anything done or omitted to be done before the release is given; or

(b) enables unit holders in a general meeting, to approve the release of a trustee-manager from liability for anything done or omitted to be done before the release is given and the resolution is passed by not less than seventy five percentum of unit holders present and voting.

[*Ins. Act A1437/2012*]

Annual general meeting

256ZB. A trustee-manager shall call a general meeting of the unit holders of the business trust, to be called “annual general meeting”, within eighteen months of the registration of the business trust and thereafter once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.

[*Ins. Act A1437/2012*]

Duty of a trustee-manager to call for meeting

256ZC.(1) A trustee-manager shall call for a meeting of unit holders if—

(a) not less than fifty unit holders or unit holders holding not less ten percentum of total voting rights of all unit holders of a business trust direct the trustee-manager to do so;

(b) the direction is given to the trustee-manager in writing at its registered office; and

(c) the purpose of the meeting is to consider any matter raised by the unit holders in relation to the business trust or the deed.

(2) If a trustee-manager is required to call a meeting under subsection (1), the trustee-manager shall convene the meeting within twenty-one days after the direction is given to the trustee-manager in writing at its registered office.

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

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

(b) by publishing at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language daily newspaper and in one other newspaper.

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

(a) be chaired by a person who is appointed by the unit holders that are present at the meeting or, if no such appointment is made, by a nominee of the trustee-manager; and

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

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

(6) If a trustee-manager fails to convene a meeting as required under subsection (2), the unit holders or any of them representing more than fifty per centum of the total voting rights of the unit holders under paragraph (1)*(a)*, may themselves convene a meeting but any such meeting so convened shall be held within three months from the date of the direction under subsection (1) to the trustee-manager.

(7) A trustee-manager shall pay to the unit holders any reasonable expenses incurred by the unit holders in convening the meeting by reason of the failure of the trustee-manager to convene the meeting.

[*Ins. Act A1437/2012*]

Power of court to order meeting of unit holders

256ZD. (1) The court may, on the application of any unit holder of a business trust, make an order a general meeting to be held.

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

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

(b) place before the unit holders any proposal to protect the interests of the unit holders that the court directs or the trustee-manager considers appropriate; and

(c) obtain the unit holders' direction concerning the protection of the interest of the unit holders.

(3) The court may, in addition to an order made under subsection (2), make any other order that it considers appropriate to protect the interests of existing or prospective unit holders.

[*Ins. Act A1437/2012*]

Unit holders' rights at meeting

256ZE. (1) Every unit holder shall have a right to attend any general meeting of unit holders and to speak and vote on any resolution at the meeting.

(2) Any provision in the deed that has the effect of excluding the right to demand a poll at the general meeting of unit holders, other than the election of the chairman of the meeting or the adjournment of the meeting, shall be void.

[*Ins. Act A1437/2012*]

Action by unit holders

256ZF. (1) Any unit holder or any holder of a debenture of a business trust may apply to the court for an order under this section on the ground—

(a) that the affairs of the business trust are being conducted by the trustee-manager, or the powers of the directors of the trustee-manager are being exercised, in a manner oppressive to one or more of the unit holders or holders of debentures of the business trust including himself or without regard of his or their interests as unit holders or holders of debentures of the business trust; or

(b) that some act of the trustee-manager, carried out in its capacity as trustee-manager of the business trust, which is threatening or that some resolution of the unit holders or holders of debentures of the business trust or any class of them has been passed or is proposed, unfairly discriminates against or is otherwise prejudicial to one or more of the unit holders or holders of debentures of the business trust.

(2) If on such application, the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may—

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the trustee-manager in relation to the business trust in future;

(c) authorize civil proceedings against the directors of the trustee-manager be brought in the name of or on behalf of all the unit holders of the business trust as a whole by any person and on terms as the court may direct;

(d) provide for the purchase of the units in or debentures of the business trust by other unit holders or holders of debentures of the business trust;

(e) provide that the business trust be wound up; or

(f) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the trust property or asset of the business trust or to be borne and paid in the manner and by any person as the court deems fit.

(3) Where an order under this section makes any alteration in or addition to the deed of any business trust, then, notwithstanding anything in any other provision of this Act, the trustee-manager of the business trust concerned shall not have power, without the leave of the court, to make any further alteration in or addition to the deed that is inconsistent with the provisions of the order.

(4) An applicant shall notify the Commission of the court's order within seven days after the issuance of the order.

(5) For the purposes of this section, a reference to a unit holder includes a person who is not a unit holder of a business trust but to whom units in the business trust have been transmitted by operation of law.

[*Ins. Act A1437/2012*]

Winding up

256ZG. (1) A business trust may be wound up—

(a) under an order of the court—

(i) on the application of the trustee-manager, a unit holder or a creditor of the business trust; or

(ii) on the application of the Commission when the Commission deregister a business trust; or

(b) by the trustee-manager—

(i) upon the passing of a special resolution by the unit holders at a general meeting; or

(ii) pursuant to the deed.

(2) If an application is made to the court under subparagraph (1)*(a)*(i), the court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section make an order compelling the trustee-manager to wind up the business trust if—

(a) the court thinks it is just and equitable to make the order; or

(b) within three months before the making of the application for the order, execution was issued on a judgment, a decree or an order obtained in court, whether in Malaysia or elsewhere, in favour of a creditor of the business trust and the execution has been returned unsatisfied,

and upon such order, the trustee-manager shall wind up the business trust.

(3) On the making of a winding up order by the court under subsection (2), the applicant shall notify the Commission of the court's order within seven days after the issuance of the order.

[*Ins. Act A1437/2012*]

Limitation of liability of unit holders

256ZH. (1) A unit holder shall not be liable to contribute to the business trust or in respect of any debts, liabilities or obligations incurred by the trustee-manager in its capacity as trustee-manager for the business trust, other than any outstanding amount of money which the unit holder has expressly agreed to contribute to the business trust.

(2) The limitation of the liability of a unit holder of a business trust referred to in subsection (1) shall apply notwithstanding—

(a) any provision to the contrary in the deed of the business trust; or

(b) the winding up of the business trust.

[*Ins. Act A1437/2012*]

Creditors of unit holders to have no rights to obtain possession of trust property or asset

256ZI. No creditor of a unit holder of a business trust shall have any right to obtain possession of, or otherwise exercise any legal or equitable remedy with respect to the trust property or asset of the business trust.

[*Ins. Act A1437/2012*]

Voluntary deregistration by a trustee-manager

256ZJ. (1) A trustee-manager may apply to the Commission for deregistration of the business trust if the deregistration is approved by a majority of unit holders holding in the aggregate not less than seventy five per centum of the value of the units held by the unit holders voting at the meeting, who, being entitled to do so, vote in person or, where proxies are allowed, by proxy on a poll at a general meeting of which not less than twenty one days written notice specifying the intention to propose the resolution to deregister the business trust has been duly given.

(2) The Commission may refuse to deregister the business trust if the Commission considers that—

(a) it is in the interest of the unit holders that any matter concerning the business trust should be investigated before the registration is withdrawn under subsection (1); or

(b) the withdrawal of the registration would not be in the interest of the unit holders.

[*Ins. Act A1437/2012*]

Power of Commission to deregister defunct business trust

256ZK.(1) If the Commission has reasons to believe that the trustee-manager is not managing or operating the business of the business trust, the Commission may take the necessary action to deregister or derecognize the business trust.

(2) The Commission shall give the trustee-manager an opportunity to be heard before any power is exercised under subsection (1).

(3) If the Commission exercises its power under subsection (1), it shall publish a notice to that effect and the business trust shall be deregistered or derecognized upon publication of the notice.

(4) Upon deregistration or derecognition under subsection (1) by the Commission, the Commission may apply to the court to appoint a liquidator with respect to the business trust.

[*Ins. Act A1437/2012*]

Reporting to Commission

256ZL.(1) A trustee-manager shall report to the Commission any breach of this Act or guidelines issued by the Commission that relates to the business trust and has had or is likely to have, a material adverse effect on the interests of unit holders of the business trust, as soon as practicable after it becomes aware of the breach.

(2) A trustee-manager who contravenes subsection (1) commits an offence.

[*Ins. Act A1437/2012*]

Powers of Commission to issue directions

256ZM. (1) Without prejudice to sections 125, 354, 355 and 356, where the Commission—

(a) exercises its power to withdraw a registration or recognition under this Division;

(b) becomes aware that a statement or information provided or submitted to it under this Division is false or misleading or from which there is a material omission;

(c) for the effective administration of a business trust;

(d) for ensuring compliance with any conditions or restrictions imposed on the business trust; or

(e) is satisfied that the interest of the unit holders or public interest is likely to be jeopardized, or is jeopardized,

the Commission may issue a direction in writing to a trustee-manager, its officers or any person on whom an obligation to comply with any requirement imposed under this Division, regulation or under any guidelines issued by the Commission to take such steps as may be specified in the direction to—

(A) comply with, observe, enforce or give effect to—

(i) any requirement or provision of this Act or any securities laws;

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

(iii) any term, condition or restriction imposed under or pursuant to this Act; or

(B) take such steps to remedy a breach or to mitigate the effect of such breach.

(2) Any person referred to under this section shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns, and the provision of any other information as the Commission or the person acting on behalf of or with the authority of the Commission may require.

(3) A person who fails to comply with any direction given under this subsection (1) or fails to provide assistance under subsection (2) commits an offence.

[*Ins. Act A1437/2012*]

Power to make regulations

256ZN.(1) The Commission may, with the approval of the Minister, make any regulations relating to—

(a) duties, standards and conduct of persons involved in a business trust; or

(b) all other matters in respect of a business trust.

[*Ins. Act A1437/2012*]

Duty of trustee-manager to lodge returns, *etc.*

256ZO. (1) A trustee-manager–

(a) shall lodge with the Commission the annual report of the business trust within four months after the end of each financial year of the business trust; and

[Subs. Act A1499/2015]

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

(2) Any document required to be lodged with or delivered to the Commission by a trustee-manager under subsection (1) shall be signed by not less than two of the directors of the trustee-manager on behalf of the board of directors.

(3) A trustee-manager shall—

(a) send to every unit holder without charge a copy of the document referred to in paragraph (1)*(a)* within four months after the end of each financial year of the business trust; and

(b) if a unit holder requests for any additional copies of the document referred to in paragraph (1)*(a)*, send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the trustee-manager. *[Subs. Act A1499/2015]*

(4) A trustee-manager shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the business trust shall comply with approved accounting standards.

(5) A trustee-manager who contravenes this section commits an offence.

[*Ins. Act A1437/2012*]

Division 3C

False or misleading statement or information under Divisions 3A and 3B

False or misleading statements or information to the Commission

256ZP. (1) If any statement or information is required to be submitted to the Commission under Divisions 3A and 3B—

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

(b) financial adviser or an expert; or

(c) any other person,

shall not—

(A) submit or cause to be submitted any statement or information that is false or misleading;

(B) submit or cause to be submitted any statement or information from which there is a material omission; or

(C) 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) If—

(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

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

(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 inform the Commission of the facts referred to in subparagraph *(b)*(i) or (ii), where applicable, and shall take such action as the Commission may direct.

(3) For the purposes of paragraph (2)*(b)*, a person who knows or becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.

(3A) 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.

[Ins. Act A1499/2015]

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

[*Ins. Act A1437/2012*]

Division 4

Debentures

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

Application of this Division

257. (1) The provisions of this Subdivision and section 283 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 8.

(2) The provisions of Division as specified in Schedule 9 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 9.

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

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

Requirement for trust deed and trustee

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

(a) enter into a trust deed that meets the requirements of section 259;

(b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 260; and

(c) comply with the requirements and provisions of this Division.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 259 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 260.

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

(4) A person who contravenes subsection (1), (2) or (3) commits 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.

Form and contents of trust deeds

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

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

Persons who can be trustees

260. (1) A trustee shall be—

(a) a company registered as a trust company under the Trust Companies Act 1949 [*Act 100*]; or

(b) a corporation that is a public company under the Companies Act 1965 or under the laws of any other country,

which has been approved by the Commission to act as trustee for the purposes of this Act.

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

(a) is a shareholder who beneficially holds shares in the borrower;

(b) is beneficially entitled to monies owed by the borrower to it;

(c) has entered into a guarantee in respect of the amount secured or payable under the debenture; or

(d) is a related corporation of—

(i) the persons referred to in paragraphs *(a)* to *(c);* or

(ii) the borrower.

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

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

(a) the borrower owes to the trustee or any related corporation of the trustee any monies, so long as such monies are—

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

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

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

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

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

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

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

(7) The Commission may revoke its approval under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.

(8) A trustee who—

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

(b) contravenes a term or condition imposed by the Commission under subsection (5),

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

Existing trustee to continue to act until new trustee takes office

261. Notwithstanding the provisions of section 43 of the Trustee Act 1949 [*Act 208*] or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

262. (1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 260.

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

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—

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

(ii) the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 260;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction,

unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or the securities law.

(3) A borrower who contravenes subsection (1) commits an offence.

Duties of the borrower

263. (1) A borrower shall—

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) provide a copy of the trust deed to—

(i) a debenture holder;

(ii) a trustee; or

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

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

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

(i) the trustee;

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

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

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

(d) comply with any direction issued by the Commission under subsection 280(1).

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

(3) A borrower who contravenes paragraph (1)*(b)* or *(c)* commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(4) A borrower who contravenes paragraph (1)*(d)* commits an offence.

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

(6) A borrower who contravenes a direction of the Commission issued pursuant to subsection (5) commits an offence.

Duty of borrower to replace trustee

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

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 260;

(d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or securities law.

(2) A borrower who contravenes subsection (1) commits an offence.

Duty of borrower to inform trustee about charge, *etc.*

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

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

(b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with a bank, trade creditor or any other person, give the trustee

written details of the amount of each advance within seven days after it is made.

(2) A borrower who contravenes subsection (1) commits an offence.

Duty of borrower to give trustee and Commission quarterly reports

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

(a) deliver to the trustee a quarterly report that sets out the information required by subsections (3), (4), (5) and (7);

(b) lodge a copy of the report with the Registrar; and

(c) deliver a copy of the report to the Commission.

(2) For the purpose of this section—

(a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and

(b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.

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

(a) any breach of any limitations on the amount the borrower may borrow;

(b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter;

(c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:

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

(ii) the debenture to become immediately enforceable; or

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

(d) any circumstance that has occurred during the quarter that would materially prejudice—

(i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; or

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

(e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter;

(f) any of the following events that has happened in the quarter:

(i) the appointment of a guarantor;

(ii) the cessation of liability of a guarantor for the payment of the whole or part of the monies for which it was liable under the guarantee; or

(iii) a change of name of a guarantor;

(g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where—

(i) the total amount to be advanced on the security of the charge is indeterminate; and

(ii) the advances are merged in a current account with a bank, trade creditor or any other person; and

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

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

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

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

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

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

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

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

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

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

(7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which monies received by a person in response to the issue, offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.

(8) The report shall—

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

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

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

(10) A borrower who contravenes this section commits an offence.

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

267. (1) Notwithstanding section 266, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware—

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

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

(ii) the debenture to become immediately enforceable; or

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

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

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

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

(2) A borrower who contravenes subsection (1) commits an offence.

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

268. (1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed relates are to be applied and the borrower intends to

change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall—

(a) notify the Commission; and

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

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

(a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied;

(b) offers to repay such amounts to each debenture holder; and

(c) contains such information and particulars as may be approved by the Commission.

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

(4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under section 214 or authorization or recognition by the Commission under section 256C, the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.

[*Am. Act A1437/2012*]

(5) Where a borrower receives a notice referred to in paragraph 273(2)*(h),* subsection 280(4) or (5), the borrower shall be liable to repay the amount secured or

payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.

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

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

(8) A borrower who contravenes this section commits 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.

Obligations of directors of borrower to deliver financial statements

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

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

(3) Where the borrower is a listed corporation that is required to submit information to the Commission under section 319, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.

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

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

Borrower to issue document evidencing indebtedness, *etc*.

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

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

(a) is the registered holder of a specified number or value of debentures issued by the borrower; and

(b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document,

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

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

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

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

(4) A borrower who contravenes subsection (1) or (3) commits an offence.

Duties of guarantors

271. (1) Where a borrower is required to enter into a trust deed under section 258 in relation to any debenture, a guarantor in respect of such debenture shall—

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) make all of its financial or other records available for inspection by—

(i) the trustee;

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

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

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

(c) furnish the borrower with any information relating to itself which is required under subsection 266(3) to be contained in the quarterly report, within fourteen days from the date the borrower requests for such information by notice in writing or within such other period

which shall not be less than fourteen days as may be specified in the notice; and

(d) where it creates a charge—

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

(ii) give the trustee written details of—

(A) the amount of each advance made within seven days after it is made; or

(B) where the advances are merged in a current account with a bank, trade creditor or any other person, the net amount outstanding on the advances at the end of every three months.

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

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

(4) A guarantor who contravenes paragraph (1)*(c)* or *(d)* commits an offence.

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

(6) A guarantor who contravenes a direction of the Commission issued pursuant to subsection (5) commits an offence.

Obligations of directors of guarantor to deliver financial statements

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

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

(3) Where the guarantor is a listed corporation that is required to submit information to the Commission under section 319, the guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.

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

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

Duties of trustees

273. (1) The trustee of a trust deed that is entered into under section 258—

(a) shall satisfy itself that the provisions of a prospectus an information memorandum or a disclosure document relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;

[Am. Act A1499/2015]

(b) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;

(c) shall take reasonable steps to ensure that the borrower or guarantor remedies a breach of any of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;

(d) shall notify the Commission as soon as practicable if the borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;

(e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions; and

(f) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 260.

(2) Where a proposal relating to a debenture is approved under section 214, authorized or recognized by the Commission under section 256C or lodged with the Commission, the trustee shall—

[Am. *Act A1499/2015]*

(a) exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available,

whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;

(b) notify the Commission as soon as practicable if—

(i) the borrower has contravened section 265 or 266; or

(ii) a guarantor has contravened paragraph 271(1)*(d)*;

(c) where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;

(d) comply with any directions given to it at a debenture holders' meeting referred to in sections 277, 278 and 279 unless—

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

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 282 to set aside or vary that direction;

(e) give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that—

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

(ii) the trustee calls under subsection 278(1);

(f) apply to the Commission for a direction under subsection 280(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;

(g) apply to court for an order under section 282 where—

(i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due; or

(ii) the borrower has failed to comply with a direction made by the Commission under subsection 280(1); and

(h) where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amount are to be applied and—

(i) it appears to the trustee that the purpose or project has not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; or

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

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

(A) that the purpose or project has been substantially achieved or completed; or

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

(3) For the purposes of paragraphs 2*(f)* and *(g)*, a trustee in making any application to the Commission or to the court —

(a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and

(b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.

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

Exemptions and indemnification of trustee from liability

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

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

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

unless the term, provision or covenant—

(A) releases the trustee from liability for anything done or omitted to be done before the release is given; or

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

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

(a) a release is approved if the debenture holders who vote for the resolution hold seventy-five per centum of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and

(b) a debenture holder attends the meeting and votes on the resolution if—

(i) such debenture holder attends the meeting in person and votes on the resolution; or

(ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Indemnity of trustee

275. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 277, 278 or 279.

(2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 273(2)*(e)*.

Duty of auditor to trustee for debenture holders

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

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

(a) by this Act; or

(b) under the trust deed,

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

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

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

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

the auditor shall immediately report the matter to the Commission.

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

(5) An auditor who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(6) An auditor who contravenes subsection (3) commits an offence.

Duty of borrower to call a meeting

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

(a) debenture holders who together hold ten per cent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so;

(b) the direction is given to the borrower in writing at its registered office; and

(c) the purpose of the meeting is to—

(i) consider the financial statements or annual audited accounts that were last delivered to the trustee under section 269 or 272;

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

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

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

(a) the trustee;

(b) the borrower's auditor; and

(c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,

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

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

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

(a) personally;

(b) by sending it by post to the address of the debenture holder in the register of debenture holders; or

(c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.

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

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

(7) A borrower who contravenes subsection (1) or (2) commits an offence.

Power of trustee to call a meeting

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

(a) call a meeting of debenture holders;

(b) inform the debenture holders of the failure at the meeting;

(c) submit proposals for the protection of debenture holders' interests to the meeting; and

(d) ask for directions from the debenture holders in relation to the matter.

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

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

Court may order a meeting of debenture holders

279. (1) Without limiting the effect of section 281 or 282, the court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.

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

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

(b) place before the debenture holders any proposal to protect the interests of the debenture holders that the court directs or the trustee considers appropriate; and

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

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

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

Powers of Commission to protect interests of debenture holders

280. (1) The Commission may, on the application of a trustee under paragraph 273(2)*(f)* or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.

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

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

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

(a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time;

(b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and

(c) the trustee in relation to the debenture has failed or refused to act under paragraph 273(2)*(h),*

the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the

borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:

(A) that the purpose or project has been substantially achieved or completed; or

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

(5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under subsection 268(1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

Duty to inform Commission, *etc*.

280A (1) This section applies–

(a) where an information memorandum or a disclosure document has been lodged with the Commission or issued in relation to –

(i) an offer for subscription or purchase of debentures;

(ii) an invitation to subscribe for or purchase debentures; or

(iii) making available debentures; and

(b) where any person knows or becomes aware that –

(i) there has been significant change affecting a matter disclosed in the information memorandum or a disclosure document;

(ii) the information memorandum or a disclosure document may contain a material statement or information that is false or misleading; or

(iii) the information memorandum or a disclosure document may contain a statement or information from which there is a material omission.

(2) Where the person knows or becomes aware of the matter referred to in subsection (1), he shall immediately notify the person who is responsible for the distribution of the debentures, of that matter.

(3) The person who is responsible for the distribution of the debentures, shall upon being notified under subsection (2) inform –

(a) the Commission; and

(b) any person who has been provided with the information memorandum or disclosure document,

of the matter referred to in subsection (1).

(4) The Commission may, upon being informed under subsection (3), direct any person to rectify the matter, information or statement in the information memorandum or disclosure document, or take any other remedial measure, as the Commission considers necessary.

(5) Any person who contravenes this section commits an offence.

(6) For the purposes of this section, a disclosure document does not include prospectus.

[Ins. Act A1499/2015]

General power of court to give directions and determine questions

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

Specific power of the court

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

(a) an order staying an action or other civil proceedings before a court by or against a borrower or a guarantor;

(b) an order restraining a borrower from paying any monies to the debenture holders or holders of any other class of debentures;

(c) an order that any security for the debentures be enforceable immediately or at the time the court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency;

(d) an order appointing a receiver of any property constituting security for the debentures;

(e) an order restricting advertising by a borrower for deposits or loans;

(f) an order restricting borrowing by a borrower;

(g) an order varying or rescinding any order made by the court under this Act; or

(h) any other order that the court considers appropriate to protect the interests of existing or prospective debenture holders.

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

Subdivision 2 — General

Register of debenture holders

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

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

(3) The register shall contain particulars of—

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

(b) the amount of debentures held by them.

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

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

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

(i) the constituent documents of the borrower;

(ii) the debentures or debenture stock certificates;

(iii) the trust deed; or

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

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

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

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

(8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and

every officer of the borrower who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

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

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

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

Specific performance

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

Perpetual debentures

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

(a) irredeemable;

(b) redeemable only on the happening of a contingency, however remote; or

(c) redeemable on the expiration of a period, however long.

Reissue of redeemed debentures

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

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

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

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

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

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

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

Division 5

Unit Trust Schemes and Prescribed Investment Schemes

Interpretation

287. In this Division, unless the context otherwise requires, “deed” means a document having the effect of a deed and, where applicable, includes a supplementary deed.

Requirement for trustee and deed

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

(a) ensure that a trustee who has been approved by the Commission under section 289 and who is eligible to be appointed or to act as trustee under section 290 has been appointed;

(b) enter into a deed that has been registered under section 293 and that meets with the requirements of section 294 or ensure that there is in force a deed that has been registered under section 293 and that meets with the requirements of section 294; and

(c) comply with the requirements and provisions of this Act.

(2) No person except a management company approved by the Commission under section 289 or a person authorized to act on behalf of a management company that has been approved by the Commission under section 289 shall—

(a) issue;

(b) offer for subscription or purchase; or

(c) invite any person to subscribe for or purchase,

any unit.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Approval of trustee and management company

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

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

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

(b) a person who is eligible to be appointed or to act as trustee under section 290, to act as trustee of a unit trust scheme or a prescribed investment scheme.

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

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

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

(6) A trustee or a management company who contravenes subsection (1) commits an offence.

Persons who can be trustees

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

(a) is a shareholder who beneficially holds shares in the management company;

(b) is beneficially entitled to monies owed by the management company to it; or

(c) is a related corporation of—

(i) the persons referred to in paragraphs *(a)* and *(b);* or

(ii) the management company.

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

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

(a) the monies that the management company owes to the trustee or any related corporation of the trustee are monies to which the

trustee or any related corporation of the trustee is entitled to as trustee, in accordance with the provisions or covenants of the deed; or

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

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

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

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

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

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

(7) A trustee who—

(a) contravenes subsection (1);

(b) contravenes a term or condition imposed by the Commission under subsection (4),

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

Existing trustee to continue to act until new trustee takes office

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

Replacement of trustee

292. (1) Where no provision has been made in the deed for the appointment of a successor to a retiring trustee, the management company shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who has been approved by the Commission under section 289 and who is a person eligible to be appointed or to act as trustee under section 290.

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

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 290 if a trustee has not been validly appointed or the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 290 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 290;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

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

(4) A management company who contravenes subsection (1) commits an offence.

Registration of deed

293. (1) The management company shall submit the deed referred to in paragraph 288(1)*(b)* to the Commission for registration and such deed shall not have effect unless so registered.

(2) The Commission may, on an application for registration of a deed—

(a) register the deed;

(b) register the deed with such revisions or subject to such terms and conditions as it thinks fit; or

(c) refuse to register the deed.

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

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

(a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission;

(b) the unit trust scheme to which the deed relates has not been approved under section 214 or authorized or recognized by the Commission under section 256C; or

[*Subs. Act A1437/2012*]

(c) the trustee referred to in paragraph 288(1)*(a)* has not been appointed for the purposes of the deed.

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

Contents of deed

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

Modification of deed through supplementary deed

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

(2) The Commission may, on an application for registration of a supplementary deed—

(a) register the supplementary deed;

(b) register the supplementary deed with such revisions or subject to such terms and conditions as it thinks fit; or

(c) refuse to register the supplementary deed.

(3) The Commission shall refuse to register a supplementary deed under paragraph (2)*(c)* if it appears to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.

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

(a) a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held according to the provisions and covenants of the deed sanctioning the proposed modification to the deed; or

(b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unit holders

and does not operate to release the trustee or the management company from any responsibility to the unit holders.

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

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

(a) would increase the maximum service charge or annual management fee payable to the management company, whether payment is made out of the property or assets of the unit trust scheme or prescribed investment scheme or otherwise; or

(b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or prescribed investment scheme to the trustee by way of remuneration for the trustee's services,

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

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

(8) A person who contravenes subsection (1) commits an offence.

Deed to be lodged with Commission

296. The management company shall lodge a deed with the Commission within seven days after the deed has been registered under section 293 or 295.

Duties of a management company

297. (1) A management company who is required to enter into a deed under section 288—

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

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

(c) shall provide a copy of the deed to a unit holder or a trustee upon request for a copy of the deed and on payment of such reasonable sum as may be imposed by the management company;

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

(i) a trustee;

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

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

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

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

(2) Except as may be prescribed by way of regulations made under section 378, a management company shall not act as principal in the sale and purchase of securities, property and assets to and from the unit trust scheme or prescribed investment scheme.

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

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

(5) A management company who contravenes paragraph (1)*(a)* shall not be guilty of an offence.

(6) A management company who contravenes paragraph (1)*(c), (d)* or *(e)* commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(7) A management company who contravenes paragraph (1)*(b)* or subsection (2), (3) or (4) commits an offence.

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

(9) A management company who contravenes a direction of the Commission issued pursuant to subsection (8) commits an offence.

Duty of management company to lodge returns, *etc.*

298. (1) A management company—

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

[Sub. Act A1499/2015]

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

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

(3) A management company shall—

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

[Am. Act A1499/2015]

(b) where a unit holder requests for any additional copies of the document referred to in paragraph (1)*(a)*, send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the management company.

[Am. Act A1499/2015]

(4) A management company shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit

holder relating to the unit trust scheme or prescribed investment scheme shall comply with approved accounting standards.

(5) A management company who contravenes subsection (1), (2), (3) or (4) commits an offence.

Duty of management company to replace trustee

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

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 290;

(d) the trustee has failed or refused to act as trustee in accordance with the provisions or covenants of the deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A management company who contravenes subsection (1) commits an offence.

Duties of trustee

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

(2) A trustee of a deed entered into under section 288 shall—

(a) satisfy itself that the provisions of a prospectus relating to any unit trust scheme or prescribed investment scheme do not contain any matter which is inconsistent with the provisions and covenants of the deed;

(b) exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions or covenants of the deed or has contravened any of the provisions of this Act;

(c) do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach will not materially prejudice the unit holders' interests;

(d) notify the Commission as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of the provisions of this Act or any inconsistency between the provisions of the prospectus and the provisions or covenants of the

deed as referred to in paragraph *(a)* which, in the trustee's opinion, may indicate that the interests of the unit holders are not being served;

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

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

(ii) the trustee may call under section 306; and

(f) comply with any direction given to the trustee at a unit holders' meeting referred to in section 305, 306 or 307, unless—

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

(ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 314 to set aside or vary that direction.

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

Duty of trustee to wind up scheme

301. (1) Where a management company is in liquidation or where, in the opinion of the trustee, a management company has ceased to carry on business or has, to the prejudice of the unit holders, failed to comply with any provision or covenant of the deed

or contravened any of the provisions of this Act, the trustee shall call a meeting of the unit holders—

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

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

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

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

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

Duties of management company and trustee under general law

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

Exemptions and indemnification of trustee from liability

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

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

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

(2) Subsection (1) shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision, covenant or term enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths of the holders of units voting at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Indemnity of trustee

304. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the unit holders at any meeting called under section 305, 306 or 307.

(2) A trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from a management company, all reasonable costs incurred in explaining the effect of any proposal that the management company submits to the unit holders in the circumstances set out in paragraph 300(2)*(e).*

Duty of management company to call meeting of unit holders

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

(a) not less than fifty unit holders or one-tenth of all unit holders direct the management company to do so;

(b) the direction is given to the management company in writing at its registered office; and

(c) the purpose of the meeting is—

(i) to consider the most recent financial statements of the unit trust scheme or prescribed investment scheme;

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

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

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

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

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

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

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

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

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

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

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

(6) A management company who contravenes subsection (1), (2) or (3) commits an offence.

Power of trustee to call a meeting

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

(a) call a meeting of unit holders;

(b) inform the unit holders of the failure at the meeting;

(c) submit proposals for the protection of interests of unit holders; and

(d) ask for directions from unit holders in relation to the matter.

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

Court may order a meeting of unit holders

307. (1) Without limiting the effect of section 314, the court may make an order for a meeting of all or any of the unit holders to be held to give directions to the trustee.

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

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

(b) place before the unit holders any proposal to protect the interests of the unit holders that the court directs or the trustee considers appropriate; and

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

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

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

Register of unit holders

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

(a) in the case of a unit holder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959 [*Act 78*], if any, of that individual; or

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

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

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

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

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

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

for a period of seven years.

(3) Notwithstanding anything in subsections (1) and (2), a management company may keep the names and particulars relating to persons who have ceased to be unit holders of the unit trust scheme or prescribed investment scheme in a separate register.

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

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

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

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

Where register is to be kept

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

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

Closure and inspection of register

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

(2) Any unit holder may request the management company to furnish him with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units, and the management company shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the management company.

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

Power of court to rectify register

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

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

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

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

Branch register

312. (1) Notwithstanding the provisions of section 308, a management company may cause to be kept in any place outside Malaysia a branch register of unit holders of a unit trust scheme or prescribed investment scheme which shall be deemed to be part of the register of unit holders.

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

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

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

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

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

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

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

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

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

Power of Court to make orders

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

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

Non-application of Division 5 of Part VI

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

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

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

Division 6

Islamic capital market products, Islamic securities, *etc*,

Subdivision 1 – General

Interpretation

316. (1) In this Division, unless the context otherwise requires –

"Islamic derivatives" means derivatives structured in compliance with Shariah principles;

"Islamic structured product" means a structured product structured in compliance with Shariah principles;

"structured product" has the same meaning as provided in the Commission's guidelines in respect of structured products;

"Islamic capital market product" means–

(a) Islamic securities;

(b) a unit trust scheme structured in compliance with Shariah principles;

(c) Islamic derivatives;

(d) a private retirement scheme structured in compliance with Shariah principles;

(e) any product or arrangement which is based on securities or derivatives, or any combination thereof structured in compliance with Shariah principles; or

(f) any other product which the Minister may prescribe under section 5 as an Islamic capital market product;

"Islamic securities" means –

(a) shares in a body corporate or an unincoporated body, which are classified as Shariah-compliant by the Shariah Advisory Council;

(b) units in a unit trust scheme or prescribed investments structured in compliance with Shariah principles;

(c) an Islamic structured product; or

(d) sukuk structured in compliance with Shariah principles,

and includes any right, option or interest in respect thereof which is in compliance with Shariah principles;

"sukuk" has the same meaning as provided in the Commission's guidelines in respect of the Islamic securities.

(2) Subject to subsection (1), Islamic securities do not include any Islamic Negotiable Instruments that fulfill the following conditions:

(a) the issuance of the Islamic Negotiable Instrument is by an eligible licensed institution or Islamic bank that is in compliance with any standard issued by Bank Negara under the Islamic Financial Services Act 2013 [*Act 759*] which is applicable to Islamic Negotiable Instruments; and

(b) the maximum tenure of the Islamic Negotiable Instrument does not exceed five years.

[Subs. Act A1499/2015]

Subdivision 2 – Islamic capital market products

Islamic capital market products

316A. (1) An Islamic capital market product is a capital market product for the purposes of securities laws.

(2) The Commission may specify in the guidelines made under section 377 on the following:

(a) any model agreement or documentation relating to a transaction or arrangement in respect of Islamic capital market products;

(b) the duties and responsibilities of the different parties involved in a transaction or arrangement in respect of Islamic capital market products; and

(c) any other matter as may be deemed appropriate,

in giving full effect to the principles of Shariah in relation to a transaction in respect of Islamic capital market products.

[Subs. Act A1499/2015]

Subdivision 3 – Islamic Securities

Islamic securities

316B. (1) Islamic securities are securities for the purposes of securities laws.

(2) Any proposal, scheme, transaction, arrangement, activity, product or

matter relating to Islamic securities shall comply with the relevant requirements under securities laws and guidelines issued by the Commission.

[Subs. Act A1499/2015]

Prescription by Minister in respect of Islamic securities, Islamic derivatives or Islamic capital market product, *etc*.

316C. Where the Minister has made a prescription under section 5 in respect of Islamic securities, Islamic derivatives or Islamic capital market products, the Minister may make such modifications in the prescription on the usage of expressions in the securities laws as may be necessary to give full effect to the principles of Shariah in respect of such Islamic securities, Islamic derivatives or Islamic capital market products.

[Subs. Act A1499/2015]

Application of Division 4 of Part VI of this Act

316D. Any reference to the "borrower" in Division 4 of Part VI of this Act shall be construed as a reference to an "issuer of sukuk" or "issuer of an Islamic structured product" for the purposes of the application of those provisions to sukuk or Islamic structured product.

[Subs. Act A1499/2015]

PART VII

PROVISIONS APPLICABLE TO LISTED CORPORATIONS

Duty of chief executive and directors of listed corporation to disclose interests in securities

317. (1) Unless exempted by the Commission in writing, a person who is a chief executive or director of a listed corporation who has an interest in the securities of such listed corporation or any of its associated corporation shall notify the listed corporation in writing—

(a) of the subsistence of his interests at that time; and

(b) the extent of his interests in the listed corporation or associated corporation of the listed corporation at that time.

(2) A chief executive or director of a listed corporation shall notify the listed corporation immediately in writing of the occurrence, while he is a chief executive or director of the listed corporation, of any of the following events:

(a) any event in consequence of which he becomes, or ceases to be, interested in securities in the listed corporation or any associated corporation of the listed corporation;

(b) the entering into by him of a contract to purchase or sell any securities in the listed corporation or any associated corporation of the listed corporation in which he has an interest;

(c) the assignment by him to any other person of a right granted to him by the listed corporation to subscribe for securities in the listed corporation;

(d) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for securities in that associated corporation, the exercise of such a right granted to him and the assignment by him to any other person of such a right so granted; and

(e) any event in consequence of which a corporation becomes an associated corporation of the listed corporation where immediately after the event he has an interest in the securities of the corporation.

(3) Subsection (2) does not require the notification by a person of the occurrence of an event which comes to his knowledge after he had ceased to be a chief executive or director.

(4) Where the Commission deems it necessary for the administration of securities laws, the Commission may require the listed corporation to provide the Commission such information that is notified under subsection (1) or (2).

(5) For the purpose of this section—

(a) "chief executive" and "director" include a spouse, child or parent of the chief executive or director; and

(b) an exemption granted to a chief executive or director under subsection (1) shall not exempt the chief executive or director concerned from having to comply with section 135 of the Companies Act 1965.

Prohibited conduct of director or officer of a listed corporation

317A. (1) A director or an officer of a listed corporation or any of its related corporations shall not do or cause anyone to do anything with the intention of causing

wrongful loss to the listed corporation or any of its related corporations irrespective of whether the conduct causes actual wrongful loss.

(2) This section is in addition to and not in derogation of any law relating to the duties or liabilities of directors or officers of a listed corporation.

(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but not exceeding ten years and be liable to a fine not exceeding ten million ringgit.

[Am. Act A1406/2011]

(4) For the purpose of this section—

"director" includes a person who is a director, chief executive officer, chief operating officer, chief financial controller or any other person primarily responsible for the operations or financial management of a company, by whatever name called;

"property" has the same meaning as in section 138;

"wrongful loss" means loss of property by unlawful means to which the person losing is legally entitled.

[Ins. Act A1370/2010]

Disqualification of chief executive or director of listed corporations

318. (1) A person—

(a) to whom subsection 130(1) of the Companies Act 1965 applies; and

(b) who intends to apply for leave of the court to be a director or promoter of a listed corporation, or to be directly or indirectly

concerned, or to take part, or engage, in the management of a listed corporation,

shall give to the Commission not less than ten days' notice of his intention to apply, and the Commission shall be made a party to the proceedings.

(2) On the hearing of any application referred to in subsection (1), the Commission may—

(a) oppose the granting of an application; or

(b) apply to the court to disallow the person to be a director or promoter of a listed corporation, or to be directly or indirectly concerned, or to take part, or engage, in the management of the listed corporation, for such longer period exceeding five years as the court thinks appropriate.

(3) Notwithstanding subsection 130(1) of the Companies Act 1965, where it appears to the Commission that by reason of any chief executive or director of a listed corporation—

(a) having been convicted of an offence under a securities law;

(b) having had an action taken against him under section 199, 200, 210, 211, 354, 355 or 356 or subsection 201(5) or (6) or section 360; or

(c) having been compounded for an offence under section 373,

the chief executive or the director is unfit, to be directly or indirectly concerned, or to take part, engage, in the management of the listed corporation, the Commission may apply to the court to remove from office such chief executive or director of the listed corporation or bar such person from becoming a director or chief executive of any public company for such period of time as may be determined by the court.

(4) The Commission may require a chief executive or director concerned in an application under subsection (3) or the listed corporation in which the chief executive or director holds office—

(a) to furnish the Commission with such information with respect to the affairs of the listed corporation; and

(b) to produce and permit inspection of such books or documents of or relevant to the listed corporation,

as the Commission may require for the purpose of determining whether or not to make an application under subsection (3); and if the chief executive or director concerned contravenes any requirement under this section, the court may, on the application of the Commission, make an order requiring the chief executive or director to comply with the requirement within such time as may be specified by the court.

(5) Where on an application under subsection (3), the court is satisfied—

(a) that a chief executive or director of the listed corporation—

(i) has been convicted under a securities law;

(ii) has had an action taken against him under section 199, 200, 210, 211, 354, 355 or 356 or subsection 201(5) or (6) or section 360; or

(iii) has been compounded for an offence under section 373; and

(b) that his conduct as chief executive or director of the listed corporation renders him unfit to be directly or indirectly concerned, or to take part, or engage, in the management of the listed corporation,

the court may make an order that the chief executive or director concerned be removed from office with effect from such date as may be set out in the order, notwithstanding anything in any other written law or any limitations contained in the memorandum and articles of association of the listed corporation, and, in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors in that listed corporation.

(6) A chief executive or director removed from office under subsection (5) shall cease to hold office from the date set out in the order, and shall not thereafter hold any other office in that listed corporation or in any manner, whether directly or indirectly, be concerned with, or take part, or engage, in any activity, affairs or business of or in relation to that listed corporation.

Submission of information

319. (1) A listed corporation shall cause to be submitted to the Commission—

(a) a copy of its audited annual accounts; and

(b) its interim and periodic financial reports,

at the same time such documents are submitted, announced or made available to the exchange.

[Subs. Act A1499/2015]

(2) A listed corporation shall notify the Commission in writing—

(a) of any change in the registered or business address of the listed corporation;

(b) if the chief executive or any of the directors of the listed corporation ceases to hold office as a chief executive or director; and

(c) of the names and particulars of any new chief executive or director of the listed corporation,

within two weeks of the occurrence of such a change or event.

(3) A listed corporation and its directors shall cause to be kept such accounting records and other records as will sufficiently explain the transactions and financial position of the listed corporation and its related corporation and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(4) A listed corporation shall ensure that the corporation shall retain the records referred to in subsection (3) for seven years after the completion of the transaction or operation to which they respectively relate.

[Am. Act A1370/2010]

(5) A person who contravenes this section commits an offence.

Duties of auditor of listed corporations

320. (1) If an auditor, in the course of the performance of his duties as an auditor of a listed corporation, is of the professional opinion that there has been a breach or non-performance of any requirement or provision of the securities laws, a breach of any of the rules of the stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation, the auditor shall immediately submit a written report on the matter—

(a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;

(b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange and the Commission; or

(c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange and the Commission.

(2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this section.

(3) The Commission may, at any time during or after an audit, require an auditor of a listed corporation to—

(a) submit such additional information in relation to his audit as the Commission may specify;

(b) enlarge or extend the scope of his audit of the business and affairs of the listed corporation in such manner or to such extent as the Commission may specify;

(c) carry out any specific examination or establish any procedure in any particular case;

(d) submit a report on any matter referred to in paragraphs *(a)* to *(c)*; or

(e) submit an interim report on any matter referred to in paragraphs *(a)* to *(d)*,

and the Commission may specify the time within which any of such requirements shall be complied with by the auditor and may specify the remuneration which the listed corporation shall pay to the auditor in respect thereof.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the listed corporation shall remunerate the auditor in respect of the discharge by him of all or any of the additional duties under this section.

(5) Where the listed corporation has failed to remunerate the auditor as required under subsection (4), the auditor may sue for and recover the remuneration as a debt due to the auditor.

(6) The listed corporation shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this section.

(7) For the purposes of this section, "auditor" has the same meaning as defined under section 31A of the Securities Commission Malaysia Act 1993.

[Ins. Act A1406/2011]

False or misleading financial statements of a listed corporation

320A. (1) A person shall not influence, coerce, mislead or authorize any person engaged in—

(a) the preparation of the financial statements of a listed corporation or any of its related corporations; or

(b) the performance of an audit of the financial statements of a listed corporation or any of its related corporations,

to do anything which he knows or ought reasonably to have known may cause the financial statements or audited financial statements to be false or misleading in a material particular.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but not exceeding ten years and be liable to a fine not exceeding ten million ringgit.

[Am. Act A1406/2011]

Protection for persons against retaliation for reporting to authorities in specific circumstances

321. (1) Where a chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation by whatever name described, has in the course of the performance of his duties reasonable belief of any matter which may or will constitute a breach or non-performance of any requirement or provision of the securities laws or a breach of any of the rules of a stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation and any of the aforementioned persons submits a report on the matter—

(a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;

(b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange or the Commission; or

(c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange or the Commission,

the listed corporation shall not remove, discriminate, demote, suspend or interfere with the lawful employment or livelihood of, the chief executive, any officer responsible for preparing or approving financial statements or financial information, internal auditor or secretary, of the

listed corporation because of the report submitted by any of such persons.

(2) No chief executive, officer responsible for preparing or approving financial statements or financial information, internal auditor or a secretary of a listed corporation shall be liable to be sued in any court for any report submitted by such person in good faith and in the intended performance of his duties.

(3) For the purposes of this section, "secretary" means a person who is referred to in section 139 of the Companies Act 1965.

PART VIII

SELF-REGULATORY ORGANIZATIONS

Interpretation

322. For the purposes of this Part, "chief executive", "director" and "officer" includes any person occupying the position or performing the functions of chief executive, director and officer by whatever name called and "chief executive", "director" and "officer" shall have the same meaning as in subsection 2(1).

Recognition of a self-regulatory organization

323. (1) The Commission may, with the concurrence of the Minister, where it thinks appropriate in the public interest or for the protection of investors by notice published in the *Gazette*, declare a person to be a recognized self-regulatory organization, subject to such terms and conditions as the Commission thinks fit, if it is satisfied that—

(a) the person in discharging its obligation under section 324 will not act contrary to the public interest and in particular the interest of investors;

(b) the person shall be able to take appropriate action against its members and any person to whom the rules apply to;

(c) the person has sufficient financial, human and other resources to carry out its functions;

(d) the person is fit and proper and satisfies the criteria or standards referred to in section 64, or any rules of the stock exchange or derivatives exchange, as the case may be;

(e) the person is managed by officers who are fit and proper and who satisfy the criteria or standards referred to in section 65, or any rules of the stock exchange or derivatives exchange or any applicable guidelines, as the case may be;

[Am. Act A1406/2011]

(f) the person has competent personnel for the carrying out of its functions; and

(g) the rules of the person make satisfactory provision—

(i) to promote investor protection;

(ii) to promote fair treatment of its members and any person who applies for membership;

(iii) to exclude a person who is not fit and proper from being its member or being appointed as its chief executive, director or officer;

(iv) to promote proper regulation and supervision of its members;

(v) to promote appropriate standards of conduct of its members;

(vi) to manage any conflict of interest that may arise between its interest and the interest referred to in subsection 324(1);

(vii) to ensure that there is a fair representation of members in its governing body;

(viii) to ensure that its members and officers duly comply with the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, derivatives exchange, approved clearing house or central depository;

[Am. Act A1406/2011]

(ix) to prevent the usage of any information by its members or officers that may result in such member or officer making an unfair gain;

(x) for the expulsion, suspension, disciplining or sanctioning of a member in the event a member contravenes the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, derivatives exchange, approved clearing house or central depository; and

[Am. Act A1406/2011]

(xi) to allow an aggrieved member to appeal against any decision of the recognized self-regulatory organization.

(2) The Commission may, in declaring a person to be a recognized self-regulatory organization, require such person to provide any information to the Commission as the Commission considers necessary.

(3) A person who—

(a) with intent to deceive, makes or furnishes; or

(b) knowingly authorizes or permits the making or furnishing of,

any false or misleading statement or report with respect to the information submitted to the Commission referred to in subsection (2) commits 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.

Duties of a recognized self-regulatory organization

324. (1) A recognized self-regulatory organization shall ensure that in exercising any of its powers or in carrying out any of its functions, such power or function shall be exercised or carried out in the public interest having particular regard to the need for the protection of investors.

(2) A recognized self-regulatory organization shall immediately notify the Commission if it becomes aware of—

(a) any matter which adversely affects or is likely to adversely affect the interests of investors; and

(b) any contravention by its members of any securities laws.

(3) Without prejudice to subsection (2), when a recognized self-regulatory organization expels, or suspends any member, or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:

(a) the name of the member;

(b) the reason for and the nature of the action taken;

(c) the amount of the fine;

(d) the period of suspension, if any; and

(e) any other disciplinary action taken.

(4) A recognized self-regulatory organization shall not make a decision under its rules that adversely affects the rights of a person unless the recognized self-regulatory organization has given the affected person an opportunity to make representations to the recognized self-regulatory organization about the matter.

(5) Notwithstanding the provisions of subsection (4), where the recognized self-regulatory organization considers that any delay in making the decision is likely to prejudice public interest or necessary for the protection of investors, the recognized self-regulatory organization may make a decision without giving an opportunity to be heard.

Rules of a recognized self-regulatory organization

325. (1) Any proposed rules or any proposed amendments to the existing rules of a recognized self-regulatory organization shall not have effect unless it has been approved by the Commission under subsection (3).

[Subs. Act A1499/2015]

(2) Where a recognized self-regulatory organization proposes to make any amendment to its rules, the recognized self-regulatory organization shall submit to the Commission—

(a) the text of the proposed amendment; and

(b) an explanation of the purpose of the proposed amendment.

(3) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (2), give notice in writing to the recognized self-regulatory organization that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

(4) The Commission may, by notice in writing, declare any class of rules of a recognized self-regulatory organization to be a class of rules whose amendments do not require the approval of the Commission under subsection (3), and accordingly, any amendment to the rules of the recognized self-regulatory organization that belongs to that class shall, subject to subsections (5) and (6), have effect notwithstanding that they have not been so approved under subsection (3).

(5) Where the Commission is of the opinion that any amendment to the rules of a recognized self-regulatory organization made under subsection (4) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the recognized self-regulatory organization, require the recognized self-regulatory organization to submit such amendment for its approval under subsection (3).

(6) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the recognized self-regulatory organization, by written notice require the recognized self-regulatory organization to amend or supplement any of its rules in such manner and within such period as may be specified in the notice.

(7) A recognized self-regulatory organization which contravenes subsection (2) or which contravenes a requirement made under subsection (5) or a written notice made under subsection (6) commits an offence.

Appointment of directors of a recognized self-regulatory organization

326. (1) No appointment, election or nomination of a director or chief executive of a recognized self-regulatory organization can be made without the prior approval of the Commission.

(2) The recognized self-regulatory organization shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

Powers to issue directions to a recognized self-regulatory organization

327. (1) Where the Commission is satisfied that—

(a) a conflict exists or may come into existence between the interest of a recognized self-regulatory organization or its members and the interest of the proper performance of the functions or duties conferred by this Act, its rules or any guidelines issued by the Commission pursuant to section 377;

(b) such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated; or

(c) the recognized self-regulatory organization has failed to carry out its functions or discharge its duties under subsection 324(1) or its rules or any guidelines issued by the Commission pursuant to section 377,

the Commission may serve a written notice on the recognized self-regulatory organization stating the reasons in support of the ground for the notice and direct the recognized self-regulatory organization to forthwith take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of managing the conflict of interest or the matters occasioning the conflict of interest and the satisfactory carrying out of its functions and satisfactory discharge of its duties.

(2) A notice served under subsection (1) shall take effect immediately.

(3) A recognized self-regulatory organization that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.

(4) A recognized self-regulatory organization that has been served with a notice under subsection (1) may appeal against the notice to the Commission not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.

(5) Without limiting the generality of subsection (1), the Commission may issue any other direction to a recognized self-regulatory organization where the Commission thinks necessary in the public interest or for the protection of investors.

Withdrawal of recognition

328. (1) The Commission may, with the concurrence of the Minister, withdraw a recognition given under subsection 323(1) where—

(a) the recognized self-regulatory organization has failed to commence operations within six months from the date published in the *Gazette* under subsection 323(1);

(b) the Commission is not satisfied that the recognized self-regulatory organization is properly performing or is able to perform the functions or duties under its rules or any guidelines issued by the Commission pursuant to section 377;

(c) the recognized self-regulatory organization has breached any term and condition imposed under subsection 323(1);

(d) the recognized self-regulatory organization is in breach of any provisions of the securities laws or any guidelines issued pursuant to section 377 or has failed to comply with any direction by the Commission and where relevant, the rules of the stock exchange, derivatives exchange, approved clearing house or central depository;

[Am. Act A1406/2011]

(e) the recognized self-regulatory organization is being wound up or otherwise dissolved;

(f) a judgement debt against the recognized self-regulatory organization has not been satisfied in whole or in part;

(g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to or any property of the recognized self-regulatory organization;

(h) the recognized self-regulatory organization—

(i) on its own accord has applied to the Commission to cease operating as a recognized self-regulatory organization; or

(ii) has been determined by the Commission to have ceased operating as a recognized self-regulatory organization;

(i) any information provided for the purposes of section 323 was false or misleading in a material particular; or

(j) the recognized self-regulatory organization has contravened any direction of the Commission issued under section 327.

(2) A recognition given under subsection 323(1) shall not be withdrawn unless the Commission has notified the recognized self-regulatory organization of its intention and the reasons for the Commission's action, and give the recognized self-regulatory organization an opportunity to make representations to the Commission.

Protection for a recognized self-regulatory organization

329. A recognized self-regulatory organization, an officer or employee of a recognized self-regulatory organization or a member of a committee of a recognized self-regulatory organization shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions of the recognized self-regulatory organization.

Accounts and reports in respect of a recognized self-regulatory organization

330. (1) The provisions of Subdivision 6 of Division 4 of Part III shall apply to the appointment, removal and resignation of an auditor and the audit of a recognized self-regulatory organization's accounts.

(2) Within three months after the end of each financial year, a recognized self-regulatory organization shall submit to the Commission a report on the extent to which it

has complied with the terms and conditions imposed under subsection 323(1), the requirements imposed on it under this Part and its rules or any guidelines issued by the Commission pursuant to section 377.

(3) The Commission shall forthwith send a copy of the report referred to under subsection (2) to the Minister.

(4) Upon receipt of the report under subsection (2), the Commission may at any time if it deems it necessary to do so—

(a) conduct an audit on the recognized self-regulatory organization;

(b) appoint any independent person to assist the Commission in an audit; and

(c) charge the costs of carrying out such audit to the recognized self-regulatory organization.

(5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the audit conducted by the Commission under subsection (4).

Provision of assistance to Commission

331. (1) A recognized self-regulatory organization shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires, including the furnishing of such returns, and the provision of such information relating to the operations of the recognized self-regulatory organization or any other information as the Commission or such person may require for the proper administration of the securities laws.

(2) A person who refuses or fails, without lawful excuse, to assist the Commission or a person acting on behalf of, or authorized by, the Commission, in accordance with subsection (1) commits an offence and shall, on conviction, be liable to

a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART IX

CAPITAL MARKET DEVELOPMENT FUND

Establishment of Capital Market Development Fund

332. (1) There shall be established a fund to be called the Capital Market Development Fund, referred to in this Part as "the Fund".

(2) The Fund shall be administered by the Capital Market Development Fund Board, referred to in this Part as the "Board", who shall act as trustees for the Fund.

(3) The Commission shall be responsible to assist the Board in the day-to-day administration and management of the affairs of the Fund.

Assets constituting Fund

333. The Fund shall consist of—

(a) such shares as are approved for the Fund under paragraph 4(1)*(d)* of the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [*Act 632*];

(b) proceeds raised in connection with the sale of the shares that are referred to in paragraph *(a)*;

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

(d) all donations and gifts accepted by the Board for the Fund;

(e) all interest, dividend and other income derived from the investment of the monies of the Fund; and

(f) all other sums or property which may in any manner become payable to or vested in the Fund.

Objects of the Fund, *etc.*

334. (1) The objects for which monies of the Fund may be applied are as follows:

(a) the promotion of the capital market within Malaysia to be an efficient, innovative and internationally competitive market;

(b) the development and upgrading of skills and expertise required by the capital market in Malaysia;

(c) the development of self regulation by professional associations and market bodies in the securities and derivatives industries; and

(d) the development and support of high quality research and development programmes and projects relating to the capital market in Malaysia.

(2) The Fund shall be expended for the purposes of—

(a) meeting all payments required to be made by the Fund consistent with its objects;

(b) paying any expenses lawfully incurred by the Fund including fees and costs, and the remuneration of persons employed or engaged by the Board, including the granting of loans, superannuation allowances or gratuities;

(c) paying any other expenses, costs or expenditure properly incurred or accepted by the Board, for purposes of its powers and carrying out of its duties; and

(d) generally paying any expenses for carrying into effect the provisions of this Part and in connection with the administration of the Fund.

(3) The Minister may approve the payment out of the Fund of any cost, expense or other payment for purposes other than those specified in subsection (2) that are consistent with the objects of the Fund.

Membership of the Board

335. (1) The members of the Board shall be appointed by the Minister and the Board shall consist of—

(a) the Chairman of the Commission, as an *ex-officio* member, who shall be the Chairman;

(b) the Deputy Chief Executive of the Commission, as an *ex-officio* member;

(c) a senior representative of an exchange holding company; and

(d) four other members who possess knowledge and experience in finance, business, law or other relevant experience.

(2) If the Chairman of the Board is absent or unable to act due to illness or any other cause, the Deputy Chief Executive of the Commission shall act in his place as the Chairman of the Board.

(3) Members of the Board shall not be entitled to any remuneration but may be paid such honorarium and travelling and subsistence allowances as the Minister may determine.

(4) The Board shall have such powers and shall perform such duties as are given or imposed by this Act or as may be prescribed from time to time by the Minister and may by instrument in writing delegate to any person all or any of such powers and duties.

Tenure of office

336. (1) Subject to subsection (2), a member of the Board, other than the *ex-officio* members referred to in subsection 335(1), shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(2) In the case of the Chairman of the Commission and the Deputy Chief Executive of the Commission, who are *ex-officio* members of the Board, their tenure of office as members of the Board shall be the tenure of their appointments as Chairman of the Commission and Deputy Chief Executive of the Commission respectively under the Securities Commission Malaysia Act 1993.

Resignation and revocation of appointment

337. (1) A member of the Board may, at any time resign his office by a written notice addressed to the Minister.

(2) The Minister may at any time revoke the appointment of a member of the Board if he thinks fit.

Vacation of office

338. The office of a member of the Board shall be vacated if—

(a) he dies;

(b) he has been convicted of any offence involving fraud or dishonesty;

(c) he becomes bankrupt;

(d) he is of unsound mind or is otherwise incapable of discharging his duties;

(e) he is absent from three consecutive meetings of the Board except on leave granted by the Minister; or

(f) he is guilty of serious misconduct in relation to his duties under this Act.

Quorum and procedures of meetings

339. (1) The Board shall meet as often as may be necessary for the performance of its functions or duties under this Part.

(2) Four members of the Board shall constitute a quorum at any meeting of the Board.

(3) Subject to this Part, the Board shall determine its own procedures.

(4) The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

(5) Subject to section 340, if on any question to be determined, there is an equality of votes, the Chairman of the Board shall have the casting vote in addition to his original vote.

Disclosure of interest

340. (1) A member of the Board who directly or indirectly has by himself, his spouse or children, any interest in any matter under discussion by the Board shall disclose to the Board the existence of such interest and nature thereof.

(2) A disclosure made under subsection (1) shall be recorded in the minutes of the Board, and after the disclosure—

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

(b) the member shall be disregarded for the purpose of constituting a quorum of the Board relating to the matter; and

(c) no act or proceedings of the Board shall be invalidated on the ground that any member of the Board has contravened the provisions of this section.

Conservation of the Fund

341. (1) It shall be the duty of the Board to conserve the Fund consistent with the provisions of this Part or any regulations made under this Part.

(2) The Board may invest the monies of the Fund available for investment in such manner as the Board may, by any regulations prescribed by the Minister, be authorized to invest.

(3) Without affecting the generality of section 335, the Board may by written instrument delegate all or any of its powers and functions under subsection (2) to any employee or person as it may appoint.

(4) The Board may pay to any person appointed under subsection (3) a fee for any service rendered in exercise of any power and function delegated to that person under that subsection.

Financial year

342. For the purposes of this Part, the financial year of the Fund shall commence on first January and end on thirty-first December of each year.

Accounts and audit

343. (1) The Board shall keep or cause to be kept proper accounts and other records in respect of the operation of the Fund and shall prepare statements of accounts in respect of each financial year.

(2) The Board shall, not later than three months after the end of each financial year, cause the accounts of the Fund to be audited by auditors appointed by the Board.

(3) At the end of each financial year and as soon as the accounts of the Fund have been audited, the Board shall cause a copy of the statement of accounts to be submitted to the Minister, together with a report dealing with the investments of the Fund the preceding financial year and containing such information relating to the proceedings and policies of the Board as the Minister may from time to time direct.

Power of Minister in relation to the Board

344. The Minister may give the Board such directions of a general nature that are consistent with the provisions of this Part that relate to the exercise and performance of its functions and the Board shall give effect to such directions.

Dissolution of the Fund

345. (1) Where the Minister is satisfied that there are insufficient funds standing to the credit of the Fund to adequately fulfil the objects referred to in section 334, he may, by notification in the *Gazette,* dissolve the Fund and transfer such assets and monies as may remain to the credit of the Fund to such other fund that has similar objects to the Fund.

(2) In the event the Fund is dissolved under subsection (1) and there is no other fund that satisfies the provisions of subsection (1) with regards to its objects, the assets and funds that remain to the credit of the Fund shall be transferred to the Federal Consolidated Fund.

Power to make regulations

346. The Minister may make such regulations for the better carrying out of the provisions of this Part or as may be necessary or expedient for—

(a) giving full effect to the provisions of this Part;

(b) carrying out or achieving the objects and purposes of this Part; or

(c) the further, better or more convenient implementation of the provisions of this Part.

PART IXA

MANAGEMENT OF SYSTEMIC RISK IN THE CAPITAL MARKET

Interpretation

346A. [Deleted] *[Del. Act A1499/2015]*

Information for purpose of systemic risk

346B. [Deleted] *[Del. Act A1499/2015]*

Power of Commission to issue directive for systemic risk

346C. [Deleted] *[Del. Act A1499/2015]*

Arrangements with other supervisory authorities

346D. [Deleted] *[Del. Act A1499/2015]*

PART X

DISCLOSURE OF INFORMATION

Division 1

Application

Application of this Part

347. (1) This Part shall not apply to a licensed institution and an Islamic bank other than a licensed institution that holds a Capital Markets Services Licence.

(2) Except as may be provided under subsection (3), this Part does not authorize any investigation into the affairs of a customer of a licensed institution or Islamic bank other than a licensed institution that holds a Capital Markets Services Licence.

(3) The Commission shall seek the assistance of Bank Negara where it appears to the Commission that it is necessary to examine the books of a licensed institution or Islamic bank other than a licensed institution that holds a Capital Markets Services Licence, relating to the affairs of a customer of the licensed institution or Islamic bank for the purpose of investigating the affairs of the customer.

Division 2

Disclosure of information

Power of Commission to require production of books

348. (1) The Commission may, at any time, if it considers there is sufficient reason to do so, by writing—

(a) give a direction to—

(i) an exchange holding company, a stock exchange or a derivatives exchange;

(ii) a member of the board of an exchange holding company, a stock exchange or derivatives exchange;

(iii) a person who is or has been either alone or together with another person or other persons, a holder of a Capital Markets Services License;

(iv) a nominee controlled by a person referred to in subparagraph (iii) or jointly controlled by two or more persons at least one of whom is a person referred to in that subparagraph; or

(v) a person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor or other person acting in any capacity for or on behalf of, an exchange holding company, a stock exchange, a derivatives exchange or a person referred to in subparagraph (ii), (iii) or (iv),

requiring the production, to the Commission, of such books as are so specified, being books relating to—

(A) the business or affairs of an exchange holding company, a stock exchange or of a derivatives exchange, as the case may be;

(B) any dealing in securities or dealing in derivatives;

(C) any advice concerning any securities or derivatives or the issuing or publication of a report or analysis concerning any securities or derivatives;

(D) the character or financial position of, or any business carried on by, a person referred to in subparagraph (iii) or (iv); or

(E) an audit of, or any report of an auditor concerning, a dealing in securities or any accounts or records of the holder of a Capital Markets Services License; or

(b) give a direction to any person requiring the production, to the Commission, of any books relating to matters mentioned in subparagraph *(a)*(A), (B), (C), (D) or (E) that are in the custody or under the control of that person:

Provided that the books shall not be required to be produced at such times and at such places as shall interfere with the proper conduct of the normal daily business of that person.

(2) A reference in subsection (1) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as trustee or to a business carried on by a person as a trustee, as the case may be.

(3) Where the Commission requires the production of any books under this section and a person has a lien on the books, the production of the books does not prejudice the lien.

(4) Where the Commission exercises a power under this section to require another person to produce books—

(a) if the books are produced, the Commission—

(i) may take possession of the books and make copies of, or take extracts from, the books;

(ii) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books;

(iii) may retain possession of the books for as long as the Commission may consider necessary; and

(iv) shall permit the other person, upon giving a reasonable notice and specifications of the books, to have access to such books which are in the possession of the Commission; or

(b) if the books are not produced, the Commission may require the other person—

(i) to state, to the best of his knowledge and belief, where the books may be found; and

(ii) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up, or was a body corporate, being a body corporate that has been dissolved, to making that requirement of any person who is or has been an officer of the body corporate.

(6) If it appears to a Magistrate, upon written information on oath and after any enquiry he considers necessary, that there are reasonable cause to believe that there are

books on particular premises, the production of which has been required by virtue of this section, and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorizing the Commission or any person named in the warrant, with or without assistance—

(a) to search the premises, to break open and search any cupboard, drawer, chest, box, package or other receptacle, whether a fixture or not, in the premises; and

(b) to take possession of, or secure against interference, any books that appear to be books, the production of which was required.

(7) The powers conferred under subsection (6) are in addition to, and not in derogation of, any other powers conferred by law.

(8) In this section, "premises" includes any structure, building, aircraft, vehicle, vessel or place.

Offences

349. (1) A person who contravenes a requirement made under section 348 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) A person who furnishes information or makes a statement pursuant to section 348 that is false or misleading in a material particular commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) A person who obstructs or hinders the Commission or other person in the exercise of any power under section 348 commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power to specify form and manner of submission

350. (1) Where under any provision of this Act—

(a) any person is required to; or

(b) power is given to the Commission to require any person to,

submit to the Commission any information, returns or documents, the Commission, may specify that such information, returns or documents be submitted in such form or manner and within such period or at such intervals as the Commission may specify.

(2) The information, returns or documents referred to in subsection (1) may be submitted—

(a) in writing;

(b) by means of a visual recording (whether stills or moving images);

(c) by means of sound recordings; or

(d) by means of any electronic, magnetic, mechanical or other recording whatsoever,

on any substance, material, thing or article.

Privileges

351. (1) Where—

(a) the Commission makes a requirement under section 348 of an advocate and solicitor in respect of a book; and

(b) the book contains a privileged communication made by or on behalf of or to the advocate and solicitor in his capacity as an advocate and solicitor,

the advocate and solicitor is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound up, the receiver or the liquidator, as the case may be, agrees to the advocate and solicitor complying with the requirement, but the advocate and solicitor refuses to comply with the requirement, the advocate and solicitor shall forthwith furnish in writing to the Commission the name and address of the person to whom or by whom the communication was made.

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

Disclosure to Commission

352. (1) The Commission may require a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to disclose to the Commission in relation to any acquisition or disposal of securities, any information including the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of, and the nature of the instructions given to such holder in respect of the acquisition or disposal.

(2) The Commission may require a holder of a Capital Markets Services License who carries on the business of dealing in derivatives to disclose to the Commission in relation to any derivatives, any information including the name of the person from or through whom or on whose behalf the derivative was traded, and the nature of the instructions given to such holder.

(3) The Commission may require a person who has acquired or disposed of securities or derivatives to disclose to the Commission, whether he acquired or disposed of those securities or derivatives, as the case may be, as trustee for, or for or on behalf of, another person and, if he acquired or disposed of those securities or derivatives as trustee for, or for or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the first-mentioned person in respect of the acquisition or disposal.

(4) The Commission may require—

(a) a stock exchange to disclose to the Commission, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the participating organizations who acted in the acquisition or disposal; or

(b) a derivatives exchange to disclose to the Commission, in relation to dealing in a derivatives on the derivatives exchange, the names of the affiliates who carried out the trading.

(5) A person who contravenes a requirement of the Commission under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Disclosure of information relating to dealing in securities or dealing in derivatives

353. (1) The Commission may require a person to disclose to the Commission, in relation to any dealing in securities or dealing in derivatives whether or not the dealing or trading was carried out on another person's behalf—

[Am. Act A1406/2011]

(a) the name of, and particulars sufficient to identify the person from whom, through whom or on whose behalf the securities or derivatives were dealt with, as the case may be;

(b) the nature of the instructions given to that person in relation to the dealing in securities or dealing in derivatives;

(c) the particulars of the dealing in securities, including—

(i) particulars of the securities that were dealt with; and

(ii) particulars of consideration given or received for the dealing in securities or any other transaction related to the dealing in securities; and

(d) the particulars of the dealing in derivatives, including—

(i) particulars of the derivatives that were dealt with; and

(ii) particulars of consideration given or received for the dealing in derivatives or any other transaction related to the dealing in derivatives; and

[Am. Act A1406/2011]

(e) any other information in the possession of the person as the Commission may specify as it thinks expedient for the due administration of this Act.

(2) A person who contravenes a requirement of the Commission under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

PART XI

ADMINISTRATIVE AND CIVIL ACTIONS

Powers of Commission to take action

354. (1) Where a person—

(a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or

(b) fails to comply with, observe, enforce or give effect to—

(i) the rules of a stock exchange, approved clearing house or central depository;

(ii) any written notice, direction, guideline or practice note issued or condition imposed, by the Commission; or

[Am. Act A1499/2015]

(iii) any rule of a recognized self-regulatory organization,

in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, direction, guideline, practice note, or conditions,

[Am. Act A1499/2015]

that person has committed a breach.

(2) Without limiting the generality of paragraph (1)*(b)*, the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange, approved clearing house, central depository or

recognized self-regulatory organization, to the extent to which such rules purport to apply in relation to those persons:

(a) an exchange holding company;

(b) a stock exchange;

(c) a central depository;

(d) an approved clearing house;

(e) a participant;

(f) a participating organization;

(g) a depository participant;

(h) a corporation that has submitted a proposal under Part VI or who has been admitted to the official list of a stock exchange and has not been removed from that official list and a person associated with such corporation;

(i) a recognized self-regulatory organization

(j) a person to whom the rules of a stock exchange, an approved clearing house, a central depository or a recognized self-regulatory organization, as the case may be, apply;

(k) the directors or officers of the persons referred to in paragraphs *(a)* to *(i)*;

(l) the advisers of a corporation referred to in paragraph *(h)* in relation to any corporate proposal or transaction;

(m) the issuer and each director of the issuer at the time of the issue of the prospectus;

(n) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(o) a promoter in respect to the preparation of a prospectus;

(p) a person named in the prospectus with his consent, as having made a statement that is included in the prospectus;

(q) a person named in the prospectus with his consent, as a stockbroker, sharebroker or underwriter;

(r) a trustee approved by the Commission under section 260;

(s) a trustee approved by the Commission under section 289;

(t) a management company approved by the Commission under section 289; or

(u) any other person on whom an obligation under any guideline issued by the Commission has been imposed.

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, direction, practice note, condition or guideline;

[Am. Act A1499/2015]

(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million ringgit;

[Am. Act A1499/2015]

(c) reprimand the person in breach;

(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;

(e) in the case of a breach of Part VI or guidelines issued pursuant to Part VI, refuse to accept or consider any submission under Part VI;

(f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs *(a)* to *(e)* above, the following actions may be taken by the Commission:

(i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fit by the promoter or director or any persons connected with the promoter or director; or

(ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.

(4) The Commission shall not take any action under subsection (3) without giving the person in breach an opportunity to be heard.

(5) For the purposes of paragraph (3)*(d)*, in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(6) [Deleted] *[Del. Act A1406/2011]*

(7) Nothing in this section shall preclude—

(a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and

(b) the exchange holding company, stock exchange, approved clearing house or central depository, as the case may be, from taking any action under the relevant rules.

(8) Where a person has failed to pay a penalty imposed by the Commission under paragraph (3)*(b)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(9) Without prejudice to any other remedy, where a direction under paragraph (3)*(d)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(10) To the extent that any of the amount obtained under paragraph (3)*(d)* or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission, with the approval of the Minister, may determine.

[*Subs. Act A1437/2012*]

Power of Commission to take action against derivatives exchange, approved clearing house, *etc.* for failure to comply with rules, regulations, *etc.*

355. (1) Where a person—

(a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or

(b) fails to comply with, observe, enforce or give effect to—

(i) the rules of a derivatives exchange or approved clearing house;

(ii) any written notice, direction, guideline or practice note issued or condition imposed, by the Commission; or

[Am. Act A1499/2015]

(iii) any rule of a recognized self-regulatory organization,

in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, direction, guideline, practice note or conditions,

[Am. Act A1499/2015]

that person has committed a breach.

(2) Without limiting the generality of paragraph (1)*(b)*, the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a derivatives exchange, approved clearing house or recognized self-regulatory organization to the extent to which such rules purport to apply in relation to those persons:

(a) an exchange holding company;

(b) a derivatives exchange;

(c) an approved clearing house;

(d) an affiliate;

(e) a recognized self-regulatory organization;

(f) a person to whom the rules of a derivatives exchange, approved clearing house or recognized self-regulatory organization, as the case may be, apply;

(g) the directors or officers of the persons referred to in paragraphs *(a)* to *(d)*; or

(h) any other person on whom an obligation under any guideline issued by the Commission has been imposed in respect of dealing, investment advise or fund management in respect of derivatives contracts.

[Am. Act A1406/2011]

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

(a) direct the exchange holding company or derivatives exchange, as the case may be—

(i) to suspend trading on the derivatives market in a particular class of derivatives;

(ii) to limit transactions on the derivatives market to the closing out of derivatives ;

(iii) to defer for a stated period the completion date for all derivatives or for a particular class of derivatives entered into on the derivatives market;

(iv) to cause a particular derivative entered into on the derivatives market or each derivative included in a particular class of derivatives so entered into, to be—

(A) closed out immediately as the result of the matching up of the derivative with a derivative of the same kind whose price or value is equal to a price or value determined by the derivatives exchange; or

(B) invoiced back to a stated date at a price or value determined by the derivatives exchange;

(v) to require a derivative entered into on the derivatives market or each derivative included in a particular class of derivatives so entered into, to be discharged by—

(A) the tendering of a merchantable lot of an instrument determined by the derivatives exchange, that is of a quality or standard determined by the derivatives exchange, that is different from the quality or standard of the instrument stated in the derivative; and

(B) the tendering of a price adjusted by an amount determined by the derivatives exchange that is appropriate having regard to the quality or standard of the instrument referred to in subsubparagraph (A);

(vi) to require any affiliates of the derivatives exchange to act in a particular manner in relation to trading in derivatives on the derivatives market of that derivatives exchange or in relation to trading in a particular class of derivatives;

(b) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, direction, practice note, condition or guideline;

[Am. Act A1499/2015]

(c) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million ringgit;

[Am. Act A1499/2015]

(d) reprimand the person in breach;

(e) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

[Am. Act A1406/2011]

(4) The Commission shall not take any action under subsection (3) without giving the person in breach an opportunity to be heard.

(5) For the purpose of paragraph (3)*(e)*, in determining whether or not restitution is to be made by an exchange holding company, derivatives exchange, approved clearing house, director, officer or affiliate concerned, or any other person concerned, the Commission shall have regard to—

(a) the profits that have accrued to such exchange holding company, derivatives exchange, approved clearing house, director, officer or affiliate concerned or any other person concerned; or

[Am. Act A1406/2011]

(b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.

(6) [Deleted] *[Del. Act A1406/2011]*

(7) Nothing in this section shall preclude—

(a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and

(b) the exchange holding company, derivatives exchange and approved clearing house, as the case may be, from taking any action under its rules.

[Am. Act A1406/2011]

(8) Where a person has failed to pay a penalty imposed by the Commission under paragraph (3)*(c)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(9) Without prejudice to any other remedy, where a direction under paragraph (3)*(e)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(10) To the extent that any of the amount obtained under paragraph (3)*(e)* or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be —

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission, with the approval of the Minister, may determine.

[*Subs. Act A1437/2012*]

Powers concerning compliance with conditions of licence, ***etc.*** **by licensed persons**

356. (1) Where any licensed person—

(a) contravenes or fails to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, written notice, direction, guideline, practice note, any condition of, or restriction on, a licence granted under or pursuant to this Act; or

[Am. Act A1499/2015]

(b) performs or omits to perform any act in respect of any business carried on by the licensed person pursuant to a licence granted under or pursuant to this Act, that is likely to—

(i) jeopardise the interests of the clients of the licensed person; or

(ii) be prejudicial to the public interest, that

licensed person has committed a breach.

(2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, written notice, direction, guideline, practice note, any condition of, or restriction on, a licence granted under or pursuant to this Act, as the case may be;

[Am. Act A1499/2015]

(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed one million ringgit;

[Am. Act A1499/2015]

(c) reprimand the person in breach;

(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

(3) The Commission shall not take any action under subsection (2) without giving the person in breach an opportunity to be heard.

(4) For the purposes of paragraph (2)*(d)*, in the determination of whether restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.

(5) [Deleted] *[Del. Act A1406/2011]*

(6) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach.

(7) Where a person has failed to pay a penalty imposed by the Commission under paragraph (2)*(b)*, the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.

(8) Without prejudice to any other remedy, where a direction under paragraph (2)*(d)* had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(9) To the extent that any of the amount obtained under paragraph (2)*(d)* or subsection (8) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission, with the approval of the Minister, may determine.

[*Subs. Act A1437/2012*]

Civil liability of person in contravention of the securities laws

357. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in subsection (1) became aware of the contravention, whichever is the later.

Commission may recover loss or damage

358. (1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act, the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.

(3) Any loss or damage recovered by the Commission under subsection (1) shall be applied—

(a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and

(b) secondly, to compensate persons who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act.

(4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)*(b)*, in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (3)*(b)*.

(5) To the extent that any of the amount recovered or obtained in a civil action under subsection (1) has not been distributed pursuant to subsection (3), it shall—

(a) be paid to the Capital Market Development Fund maintained under Part IX; or

(b) be retained by the Commission to defray the costs of regulating market trading, as the Commission, with the approval of the Minister, may determine.

(6) Any right of action that is conferred under this section is in addition to any right that such person has under any other law.

Reference to conduct

359. (1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.

(2) Where, in a proceeding under Part VI in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of an issuer—

(a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or

agent of the issuer, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed to have been engaged in by the issuer.

(4) Where, in a proceeding under Part VI in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(5) Conduct engaged in on behalf of a person other than an issuer—

(a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of a person other than the issuer (the first-mentioned person), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed to have been engaged in also by the first-mentioned person.

Power of court to make certain orders

360. (1) Where—

(a) on an application by the Commission, it appears to the court that—

(i) there is reasonable likelihood that any person will contravene a relevant requirement;

(ii) any person has contravened a relevant requirement; or

(iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,

whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;

(b) on an application by the Commission, it appears to the court that any person has failed or is failing to comply with any direction issued by the Commission under section 354, 355 or 356;

(c) on an application by an exchange holding company, a stock exchange, a derivatives exchange or an approved clearing house as the case may be, it appears to the court that—

(i) any person has contravened a relevant requirement; or

(ii) any person has contravened a relevant requirement and that there are steps which could be taken for remedying the contravention or mitigating the effect of such contravention; or

(d) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the court that—

(i) the other person has contravened the relevant requirement; and

(ii) the applicant is aggrieved by the contravention,

the court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:

(A) an order restraining or requiring the cessation of the contravention;

(B) an order restraining a person from dealing in securities or dealing in derivatives in respect of any class of securities or derivatives mentioned in the order;

(C) an order declaring a derivative to be void or voidable;

(D) an order restraining the person from acquiring, disposing of or otherwise dealing with, assets which the court is satisfied such person is reasonably likely to dispose of or otherwise deal with;

(E) an order directing a person to dispose of any securities that are specified in the order;

(F) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;

(G) an order restraining a person from making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, or allotting any securities that are specified in the order;

(H) an order appointing a receiver of the property of a holder of a Capital Markets Services Licence or the property that is held by such holder for or on behalf of another person whether on trust or otherwise;

(I) an order vesting securities or such other property that is specified in the order in the Commission or a trustee appointed by the court;

(J) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under a relevant requirement, an order requiring such person to do such act or thing;

(K) in a case of a contravention by a person of the rules of a stock exchange, a directives exchange, an approved clearing house, an order giving directions concerning compliance with or enforcement of those rules to—

(i) the person; and

(ii) if the person is a body corporate, the directors of the body corporate;

(L) in a case where the person is a chief executive or director, an order removing him from office or that he be barred from becoming a chief executive, director or be involved in the management directly or indirectly, of any other public company for such period of time as may be determined by the court;

(M) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;

(N) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(O) where a person has refused or failed or is refusing or failing to comply with any direction issued by the Commission under section 354, 355 or 356, an order directing such person to comply with such direction that is issued by the Commission; and

(P) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) If an application is made to a court for an order under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

(3) The court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) Where an application is made to the court for an order under paragraph (1)(J), the court may grant the order—

(a) where the court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or

(b) where it appears to the court that in the event that such an order is not granted, it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(5) Where an application for an order under subsection (1) is made by the Commission or any person duly authorized by the Commission or a stock exchange, a derivatives exchange or an approved clearing house, the court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission, stock exchange, derivatives exchange or an approved clearing house.

(6) A person appointed by order of the court under subsection (1) as a receiver of the property of a holder of a Capital Markets Services Licence—

(a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

(c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the court specifies in the order.

(7) In paragraph (1)(H) and subsection (6), “property”, in relation to a holder of a Capital Markets Services Licence includes monies, securities, or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the holder of a Capital Markets Services Licence or another person in the course of or in connection with the business of the holder.

(8) The Commission or a trustee appointed by an order of the court under paragraph (1)(I)—

(a) may require any person to deliver to the Commission or trustee any securities or such other property specified in the order or to give to the Commission or trustee all information concerning the securities or derivatives that may reasonably be required;

(b) may acquire and take possession of the securities or such other property;

(c) may deal with the securities or such other property in any manner as it thinks fit; and

(d) shall have such other powers in respect of the securities or such other property as may be specified by the court in the order.

(9) The proceeds of the dealing in or disposal of securities or derivatives under paragraph (1)(l) shall be paid into the court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the court, apply to the court for payment out of the proceeds to him.

(10) A person who contravenes—

(a) an order under subsection (1) that is applicable to him;

(b) a requirement of a receiver appointed by order of the court under subsection (1); or

(c) a requirement of the Commission or trustee appointed by order of the court under paragraph (1)(l),

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(11) Subsection (10) does not affect the powers of the court in relation to the punishment of contempt of court.

(12) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(13) For the purposes of this section, “relevant requirement”—

(a) in relation to an application by the Commission under this section, means a requirement—

(i) which is imposed by or under this Act or any securities laws;

(ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws;

(iii) which is imposed by or under the rules of a stock exchange, a derivatives exchange or an approved clearing house; or

(iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has the power to prosecute with the consent in writing of the Public Prosecutor;

(b) in relation to an application by the exchange holding company, a stock exchange, a derivatives exchange or an approved clearing house, means a requirement which is imposed by or under the rules of the stock exchange, the derivatives exchange or approved clearing house, as the case may be; and

(c) in relation to an application by the aggrieved person, means a requirement—

(i) which is imposed by or under this Act;

(ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; or

(iii) which is imposed by or under the rules of a stock exchange, a derivatives exchange or an approved clearing house.

(14) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, stock exchange, derivatives exchange, approved clearing house or aggrieved person, as the case may be, under any securities laws or any other law or rules.

Application for winding up

361. (1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection 360(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the court on the petition of the Commission, a stock exchange, derivatives exchange or an approved clearing house, in accordance with the provisions of the Companies Act 1965.

(2) The Court may order the winding up on a petition made under subsection (1) if the person referred to in subsection 360(1)—

(a) has held a licence under this Act, and that licence has been revoked or surrendered; or

(b) has contravened any rules of the stock exchange, the derivatives exchange or the approved clearing house or has contravened a provision of a securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in a prosecution.

PART XII

GENERAL

Prohibition of use of certain titles

362. (1) A person who is not a participating organization or an affiliate shall not take or use or by inference adopt the name, title or description of “participating organization” or “affiliate”, or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a participating organization or an affiliate.

(2) Unless the Commission otherwise permits, a person who is not an exchange holding company, a stock exchange or a derivatives exchange shall not take or use or by inference adopt the name, title or description of “exchange holding company”, “stock exchange”, “derivatives exchange”, “stock market”, “derivatives market”, “securities trading market” or “derivatives trading market”, or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is an exchange holding company, stock exchange or derivatives exchange.

(3) A person who is not a holder of a Capital Markets Services Licence or a Capital Markets Services Representative’s Licence shall not take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is licensed to carry on a business or performs any function in relation to any regulated activity as specified in Schedule 2.

Derivatives not gaming or wagering contract

362A. Notwithstanding any written law, a derivative shall not be taken to be a gaming or wagering contract.

[Ins. Act A1406/2011]

Copy of book as *prima facie* evidence

363. (1) A copy of the books kept or maintained by a stock exchange, derivatives exchange, approved clearing house, central depository or holder of a Capital Markets Services Licence shall in all legal proceedings be received as *prima facie* evidence of such books and of the matters, transactions and accounts recorded in such books.

(2) A copy of the books referred to under subsection (1) shall not be received in evidence under this Act unless it is first proved that the said matters, transactions and accounts are recorded in the books in the ordinary course of business and are in the custody or control of the stock exchange, derivatives exchange, approved clearing house, central depository or holder of Capital Markets Services Licence.

(3) Such proof as required under subsection (2) may be given orally or by an affidavit by a person who either before or after such matters, transactions and accounts are recorded in the books, is responsible for the management, custody or control of the books.

(4) The affidavit under subsection (3) shall be sworn before any Magistrate or person authorized to take affidavit.

(5) A copy of the books referred to in subsection (1) shall not be received in evidence under this Act unless it is proved that the person referred to in subsection (3) has examined the copy with the original books.

(6) Such proof as required under subsection (5) shall be given by a person who has examined the copy with the original books and may be given either orally or by an affidavit sworn before any Magistrate or person authorized to take affidavit.

(7) Notwithstanding the provisions of subsections (5) and (6), where the original books cannot be found or are lost, it shall be sufficient for the person referred to in subsection (3) to state orally or in an affidavit given under this section that he had made reasonable efforts to locate the original books and thereafter the copy of the books shall be admissible as *prima facie* evidence of such matters, transactions and accounts recorded in the books, in any legal proceedings.

Application by aggrieved person for review

364. The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

Time for application for review

365. An application to the Commission to review its own decision shall be made within thirty days after the aggrieved person is notified of such decision.

Decision of Minister to be final

366. Except as otherwise provided in this Act, any decision made by the Minister under this Act, whether an original decision by him or a decision on appeal to him from a decision of the Commission, shall be final.

Offences by bodies of persons and by employees and agents

367. (1) Where an offence against this Act or any regulation made there under has been committed by a body corporate, any person who at the time of the commission of the offence was a director, a chief executive, an officer or a representative of the body corporate or was purporting to act in such capacity, is deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where a person who is an employee of another person contravenes any provision of this Act, the person for or on behalf of whom the employee is acting shall be deemed to have contravened such provision.

(3) Without prejudice to the generality of subsection (2), where any representative of the holder of a Capital Markets Services Licence contravenes any provision of this Act, such holder shall be deemed to have contravened such provision.

(4) For the purposes of this section, a director of a corporation includes—

(a) a person occupying or acting in the position of director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position;

(b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and

(c) if the corporation is incorporated outside Malaysia—

(i) a member of the corporation's board;

(ii) a person occupying or acting in the position of director of the corporation's board, by whatever name called, and whether

or not validly appointed to occupy or duly authorized to act in the position; and

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

Falsification of records

368. (1) A person shall not, in any books in relation to the business of a stock exchange, derivatives exchange, an approved clearing house a holder of a Capital Markets Services Licence or a listed corporation or any of its related corporations whether or not kept under this Act or the regulations made under this Act—

[Am. Act A1406/2011]

(a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular;

(b) in any manner falsify or cause to be falsified, any matter that—

(i) is entered, recorded or stored;

(ii) has been prepared for the purpose of being entered, recorded or stored; or

(iii) has been prepared for use in compiling other matters to be entered, recorded or stored; or

(c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter.

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

[Am. Act A1406/2011]

False or misleading statement to Commission, exchange or approved clearing house, *etc*.

369. A person who—

(a) with intent to deceive, makes furnishes or lodges; or

(b) knowingly causes, authorizes or permits the making, furnishing or lodging of,

any statement, information or document that is false or misleading, to the Commission, a stock exchange, a derivatives exchange or an approved clearing house relating to—

(A) dealings in securities or derivatives;

(B) the affairs of a listed corporation;

(C) any matter or thing required by the Commission for the due administration of this Act;

(D) any requirement imposed by the Commission under any guideline, practice note, written notice or term and condition; or

(E) any requirement under the rules of a stock exchange, derivatives exchange, or approved clearing house,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

[Subs. Act A1499/2015]

Attempts, abetments, conspiracies

370. A person who—

(a) attempts to commit any offence under this Act;

(b) does any act in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act, whether or not the offence is committed in consequence thereof,

commits such offence and shall, on conviction, be punished with or be liable to the penalty provided for such offence.

Destruction, concealment, mutilation and alteration of records

371. [Deleted] *[Del. Act A1499/2015]*

General penalty

372. (1) A person who contravenes any requirement or provision of this Act, commits an offence under this Act and, where no penalty is expressly provided, 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.

(2) In the case of a continuing offence the offender, in addition to the penalties under subsection (1), shall, on conviction, be liable to a fine not exceeding five thousand ringgit for every day or part of a day during which the offence continues after conviction.

Compounding of offences

373. (1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under Part II, III, VI, VII, X or XII or any regulations made thereunder, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any books or any other thing, such books or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.

(3) All amounts received by the Commission under this section shall be paid into and form part of the Federal Consolidated Fund.

Convicted persons liable to pay compensation

374. A person who is convicted of an offence under Part V or VI is liable to pay such compensation as may be determined by the court to any person who has suffered loss or damage as a result of the offence committed by the convicted person.

Conduct of prosecution

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

(2) Any officer authorized in writing by the Public Prosecutor, may prosecute any case in respect of any offence committed under this Act.

(3) For the purpose of subsection (2), "officer" has the meaning assigned to it in section 2 of the Securities Commission Malaysia Act 1993.

Indemnity

376. No civil liability shall be incurred by—

(a) a stock exchange, a derivatives exchange, an exchange holding company, an approved clearing house or a central depository; and

(b) any person acting on behalf of a stock exchange, a derivatives exchange, an exchange holding company, an approved clearing house or a central depository, including—

(i) any member of the board of a stock exchange, a derivatives exchange, an exchange holding company, an approved clearing house or a central depository or any member of any committee established by any such board;

(ii) any officer of a stock exchange, a derivatives exchange, an exchange holding company, an approved clearing house or a central depository; and

(iii) any agent of, or any person acting under the direction of a stock exchange, a derivatives exchange, an exchange holding company, an approved clearing house or a central depository,

for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or

purported discharge or performance of any duties under the securities laws or the rules of a stock exchange, a derivatives exchange, an exchange holding company, an approved clearing house or a central depository or in the exercise or intended exercise of any power under the securities laws or such rules, where such act, statement or omission was done in good faith.

Guidelines and practice notes of Commission

377. (1) The Commission may, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes as the Commission considers desirable.

(2) The Commission may revoke, vary, revise or amend the whole or any part of any, guidelines and practice notes issued under this section.

(3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guideline or practice note referred to in subsection (1) apply, shall give effect to such guideline or practice note within such period as may be specified by the Commission.

(4) Where a person referred to in subsection (3) contravenes or fails to give effect to any guideline or practice note issued by the Commission, the Commission may take any one or more of the actions set out in section 354, 355 or 356 as it thinks fit.

Power to make regulations

378. (1) The Commission may, with the approval of the Minister, make such regulations as may be necessary or expedient for—

(a) giving full effect to the provisions of this Act;

(b) carrying out or achieving the objects and purposes of this Act; or

(c) the further, better or convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for–

(a) forms for the purposes of this Act;

(b) fees to be paid for the purposes of this Act;

(c) the regulation of the purchase and sales of capital market products;

(d) the standards with respect to the qualification, experience and training of licensed person and directors of public listed corporations;

(e) the conduct of business on a stock exchange, derivatives exchange or approved clearing house; or

(f) the exemption of any specified person or any person who is a member of a specified class of persons from any of the provisions of this Act, subject to terms and conditions.

[Subs. Act A1406/2011]

Power to enter into arrangements

378A. The Commission shall enter into arrangements with the relevant authority referred to in subsection 76(11) to co-ordinate the regulation of markets for over-the-counter derivatives and financial instruments in the money market.

[Ins. Act A1406/2011]

Settlement of disputes

379. (1) The Commission may approve a body corporate to be an approved body corporate for the settlement of disputes in connection with capital market services or products.

(2) An application for approval under subsection (1) shall be made to the Commission in such form and manner as may be specified by the Commission.

(3) Notwithstanding any other written law, the approved body corporate shall put in place rules relating to—

(a) the proper administration of the body corporate as a dispute resolution body; and

(b) the scope, application, operations and procedures of the dispute resolution.

(4) The body corporate shall, as soon as practicable, submit or cause to be submitted to the Commission for its approval any proposed rules or any proposed amendments to existing rules.

(5) The Commission may issue regulations under section 378 in relation to an approved body corporate or make provisions for the settlement of disputes in connection with capital market services or products.

[Subs. Act A1499/2015]

Power to amend Schedules

380. (1) The Minister may, on the recommendation of the Commission, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend any of the Schedules in this Act and upon such publication, such Schedule as varied, deleted, added to, substituted for or otherwise amended, shall come into full force

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

(2) The Minister in varying, deleting or substituting any of the schedules referred to in subsection (1) may impose such terms and conditions as he thinks necessary.

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

PART XIII

REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal of Securities Industry Act 1983 and Futures Industry Act 1993 and savings and transitional in respect thereof

381. (1) For the purpose of this Part—

"effective date" means the relevant date or dates, as the case may be, notified by the Minister under section 1;

"repealed Acts" means the Securities Industry Act 1983 and the Futures Industry Act 1993 so repealed under this Part.

(2) The Securities Industry Act 1983 and the Futures Industry Act 1993 are repealed with effect from the effective date.

(3) Notwithstanding subsection (2)—

(a) (i) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called; and

(ii) all approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called,

made, given, or done under, or in accordance with, or by virtue of, the repealed Acts shall be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with, or by virtue of, the corresponding provisions of this Act;

(b) every direction, notice, guideline, circular, guidance note or practice note issued by the Commission or the Minister under the repealed Acts before the effective date and in force immediately before the effective date, shall be deemed to have been lawfully issued under this Act in relation to the particular provision of this Act corresponding to the matter dealt with in the direction, notice, guideline, circular, guidance note or practice note and shall remain in full force and effect until it is amended, rescinded or repealed under this Act;

(c) any application for an approval or consent, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission under either of the repealed Acts before the effective date or dates, and pending immediately before the effective date or dates, shall, if there is a corresponding provision in this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Act, such application or appeal shall lapse on the effective date or dates; and

(d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with any of the repealed Acts by a person who was licensed under the respective repealed Acts and who is licensed or deemed to be licensed in respect of a corresponding business under this Act, with any customer or other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and, accordingly, any right or liability under such transaction, dealing or business existing, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Act.

Approved exchange holding companies, exchanges and approved clearing house deemed to have been approved

382. (1) Without prejudice to the generality of section 381, the following entities that were approved or recognized under the repealed Acts immediately before the effective date shall each be deemed to have been approved under the corresponding provisions of this Act:

(a) the exchange holding company and stock exchange;

(b) the exchange company and the approved clearing house for the futures market under subsection 6B(1) of the repealed Futures Industry Act 1993 that are deemed to be approved as a futures exchange and approved clearing house under the corresponding provision of this Act; and

(c) a recognized clearing house which was recognized under the repealed Securities Industry Act 1983 immediately before the effective date shall be deemed to be an approved clearing house under the corresponding provision of this Act.

(2) Any condition or restriction imposed by the Minister or the Commission, as the case may be, on any of the entities referred to in subsection (1) as an exchange holding company, stock exchange, futures exchange, approved clearing house or recognized clearing house, as the case may be, and in force immediately before the effective date shall be deemed to be a condition or restriction to which its approval or recognition under this Act is subject.

Electronic facility deemed registered

383. (1) The electronic broking system which was exempted under the Securities Industry (Declaration of Exempt Stock Market) Order 2005 [*P.U.(A) 496/2005*] in force immediately before the effective date shall be deemed to have been registered under subsection 34(1).

(2) Any condition or restriction imposed under the Securities Industry (Declaration of Exempt Stock Market) Order 2005 and any other applicable guidelines in force immediately before the effective date shall be deemed to be a condition or restriction to its registration under subsection 34(1).

Savings in respect of the licenses issued under the repealed Acts

384. (1) Without prejudice to the generality of section 381 and subject to the provisions of this Act—

(a) a person who holds any of the following licences immediately before the effective date shall, from that date, be deemed to hold a Capital Markets Services Licence or Capital Markets Services Representative's Licence, as the case may be, in respect of the regulated activity which that person was carrying on under the first-mentioned licence:

(i) a futures broker's licence granted under the repealed Futures Industry Act 1993;

(ii) a futures fund manager's licence granted under the repealed Futures Industry Act 1993;

(iii) a futures trading adviser's licence granted under the repealed Futures Industry Act 1993;

(iv) a dealer's licence granted under the repealed Securities Industry Act 1983;

(v) a fund manager's licence granted under the repealed Securities Industry Act 1983;

(vi) an investment adviser's licence granted under the repealed Securities Industry Act 1983;

(vii) a futures broker's representative's licence granted under the repealed Futures Industry Act 1993;

(viii) a futures fund manager's representative's licence granted under the repealed Futures Industry Act 1993;

(ix) a futures trading adviser's representative's licence granted under the repealed Futures Industry Act 1993;

(x) a dealer's representative's licence granted under the repealed Securities Industry Act 1983;

(xi) a fund manager's representative's licence granted under the repealed Securities Industry Act 1983; or

(xii) an investment representative's licence granted under the repealed Securities Industry Act 1983; and

(b) any condition or restriction to which any licence referred to in paragraph (1)*(a)* was subject immediately before the effective date, to the extent that it is consistent with the provisions of this Act, shall be deemed to be a condition or restriction to which the corresponding licence referred to in paragraph (1)*(a)* is subject.

(2) For the purposes of subsection (1), where a person holds an investment adviser's license granted under the repealed Securities Industry Act 1983 immediately before the effective date and who is authorized to carry on the business of—

(a) advising others concerning securities other than advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Licence in respect of the regulated activity of investment advice;

(b) advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Licence in respect of the regulated activity of advising on corporate finance; or

(c) analysing the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, the person shall be deemed to hold a Capital Markets Services Licence in respect of the regulated activity of financial planning,

respectively under the corresponding provisions of this Act.

(3) For the purposes of subsection (1), where a person holds an investment adviser's representative's license granted under the repealed Securities Industry Act 1983 immediately before the effective date and who is authorized to carry on the business of—

(a) advising others concerning securities other than advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Representative's Licence in respect of the regulated activity of investment advice;

(b) advising on corporate finance, the person shall be deemed to hold a Capital Markets Services Representative's Licence in respect of the regulated activity of advising on corporate finance; or

(c) analysing the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, the person shall be deemed to hold a Capital Markets Services Representative's Licence in respect of the regulated activity of financial planning,

respectively under the corresponding provisions of this Act.

(4) For the purposes of subsection (1), where a person holds a futures fund managers' licence under the repealed Futures Industry Act 1993 immediately before the effective date, the person shall be deemed to hold a Capital Markets Services Licence for a regulated activity of fund management in respect of futures contracts.

(5) For the purposes of subsection (1), where a person holds a futures fund managers' representative licence under the repealed Futures Industry Act 1993 immediately before the effective date, the person shall be deemed to hold a Capital Markets Services Representative Licence for a regulated activity of fund management in respect of futures contracts.

(6) The Commission may, by notice in writing to a person who holds any of the licences referred to in subsection (1) specify—

(a) notwithstanding section 68, the date of expiry of the Capital Markets Services Licence or Capital Markets Services Representative's Licence which he is deemed to hold by virtue of subsection (1);

(b) the regulated activity or activities to which the Capital Markets Services Licence or Capital Markets Services Representative's Licence relates; and

(c) any additional condition or restriction to which the Capital Markets Services Licence or Capital Markets Services Representative's Licence is subject, provided where such conditions or restrictions proposed to be imposed are likely to prejudice the interests of the licensed person, the Commission shall give such licensed person an opportunity to be heard.

(7) Where the Commission gives notice to a person of the date of expiry of a licence referred to in paragraph (6)*(a)*, that licence shall expire on that date.

(8) Subject to subsection (7)—

(a) in the case of a person who holds one of the licences referred to in subsection (1) immediately before the effective date, the Capital Markets Services Licence or Capital Markets Services Representative's Licence which he is deemed to hold by virtue of subsection (1) shall expire on the date of the expiry of the first-mentioned licence; or

(b) in the case of a person who holds more than one of the licences referred to in subsection (1) immediately before the effective date the dates of expiry of which are different, the deemed licence shall expire on the last of those dates.

Pending applications for licences

385. Unless otherwise notified in writing by the Commission, an application for a licence under the repealed Acts that is pending immediately before the effective date shall—

(a) be deemed to be an application for a licence which corresponds to the first-mentioned licence under section 58 or 59, as the case may be, and which is accompanied by the appropriate application fee under this Act; or

(b) where the applicant is deemed under this Part to hold a licence, be deemed to be an application to vary that licence by adding the regulated activity or activities to which the corresponding licence relates, and which is accompanied by the appropriate application fee under this Act.

Transitional and savings in respect of corporate proposals

386. (1) Without prejudice to the generality of section 381, all actions, rules, regulations, orders, directions, notifications, approvals, decisions and other executive acts howsoever called, made, given or done under, or in accordance with, or by virtue of section 2B and Part IV of the Securities Commission Malaysia Act 1993 before the effective date shall, insofar as it is consistent with the provisions of this Act, be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in force and have effect in relation to the persons, activities or transactions to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions this Act.

(2) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the Securities Commission Malaysia Act 1993 before the effective date or any proceedings brought or sentence imposed before the effective date in respect of such offence.

(3) Nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the Securities Commission Malaysia Act 1993 before the effective date and any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings,

remedy or investigation may be instituted, continued or enforced as if this Act had not been enacted.

(4) Nothing in this Act shall—

(a) affect the validity of any securities or the operation of any trust deed or deed issued or executed before the effective date;

(b) apply in relation to an issuer, borrower, guarantor or trustee or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the effective date; or

(c) require the appointment or replacement of any trustee or the execution of any trust deed in respect of any debenture issued before the effective date, where there was no such requirement before the effective date.

(5) Where, upon the effective date, securities may be issued, offered for subscription or purchase or where an invitation to subscribe for or purchase securities has been made on the basis of any prospectus issued before the effective date, the issuer shall, unless the written approval of the Commission granting an exemption is obtained, issue such supplementary or replacement prospectus and take such other action to ensure that the issue, offer or invitation complies with the requirements of this Act.

(6) The Commission may, by a direction in writing given to any issuer referred to in subsection (5) determine what action is to be taken by that issuer and how any difficulty arising in respect of the provisions introduced or amended by this Act may be overcome.

(7) Nothing in this Act shall—

(a) affect the validity or operation of any interest or deed, to which Division 5 of Part IV of the Securities Commission Malaysia Act 1993 applies, issued or executed before the effective date; or

(b) apply in relation to the management company by or on whose behalf any interest to which Division 5 of Part IV of the Securities Commission Malaysia Act 1993 applies and which have been issued before the effective date or in relation to the trustee for the holders of any such interest.

Transitional provisions in relation to certain registered persons

387. (1) The Securities Industry (Dealing in Securities) Declaration 1996 [*P.U.(B) 22/1996*] and Securities Industry (Exempt Dealer) Order 1996 [*P.U.(A) 20/1996*] are revoked.

(2) All persons to whom the Order referred to in subsection (1) shall be deemed to have been registered under paragraph 76(1)*(a)* from the effective date.

(3) The registered persons to whom paragraph 76(6)*(a)* applies shall be given a period of one year to comply with the provisions referred to in paragraph 76(6)*(c)*.

Revocation of subsidiary legislation

388. The subsidiary legislation as set out in Schedule 11 are revoked.

Modifications to construction of other written laws

389. Where in any written law, any reference is made to—

(a) any of the repealed Acts, it shall be construed as a reference to this Act;

(b) any specific provision of any of the repealed Acts, it shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision; and

(c) a dealer or futures broker shall be construed as a reference to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts respectively.

Continuance of other rights, liabilities, *etc.* under the repealed Acts

390. (1) Nothing in the repealed Acts or this Act shall affect any person's liability to be prosecuted or punished for offences or breaches committed under the repealed Acts before the commencement of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(2) Any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

Prevention of anomalies

391. Where any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in any one or more of those provisions as may appear to him to be necessary to give full effect to the provisions of this Act or to prevent anomalies.

Persons dealing in securities in relation to unit trust scheme

392. (1) A body that is approved by the Commission under subsection 2(1) of the repealed Securities Industry Act 1983 to regulate its members whose dealing in securities is in relation to the arranging or offering for the sale or purchase of any interest in a unit trust scheme shall, subject to such terms and conditions as may be specified by the Commission, be a body that is approved by the Commission under paragraph 76(1)*(d)* for the purposes of this Act for a period of two years from the date of coming into force of this Act.

(2) A unit trust agent who is registered with the body referred to in subsection (1) shall for the purposes of paragraph 76(1)*(d)* be a registered person.

(3) The Commission may exercise any power under this Act with respect to a licensed person against the body as well as the unit trust agents who are registered with the body referred to in subsection (1).

(4) For the purposes of this section, "unit trust agent" means an individual who is registered with the body referred to in subsection (1).

Transitional provisions for unlicensed unit trust management companies

393. (1) Any management company who—

(a) is registered with a body that is approved by the Commission;

(b) is not a holder of a fund manager's licence as provided for in section 15A of the repealed Securities Industry Act 1983 or a holder of a Capital Markets Services Licence who carries on the business of fund management; and

(c) whose dealing in securities is in relation to the activities of arranging or offering for the sale or purchase of any interest in a unit trust scheme,

is allowed to continue such activities without holding a Capital Markets Services Licence for a period of one year from the date of coming into force of this Act subject to such terms and conditions as may be specified by the Commission.

(2) The Commission may exercise any power under this Act with respect to a licensed person against the management company referred to in subsection (1).

Transitional provision for corporate finance executives and research analysts

394. (1) A corporate finance executive—

(a) who is employed by a stock broking company and who is registered with the Commission pursuant to the Commission's Guidelines for Dealers and Dealer's Representatives' under the repealed Securities Industry Act 1983; or

(b) who is employed by a licensed merchant bank that holds a dealer's licence under the repealed Securities Industry Act 1983,

immediately before the effective date shall, from the effective date, be deemed to hold a Capital Markets Services Representative's Licence to carry on the regulated activity of advising on corporate finance.

(2) A research analyst—

(a) who is employed by a stock broking company and who is registered with the Commission pursuant to the Commission's Guidelines for

Dealers and Dealer's Representatives under the repealed Securities Industry Act 1983; or

(b) who is employed by a licensed merchant bank that holds a dealer's licence under the repealed Securities Industry Act 1983 immediately before the effective date shall, from the effective date, be deemed to hold a Capital Markets Services Representative's Licence to carry on the regulated activity of investment advice.

(3) The licences referred to in subsection (1) or (2), shall be valid for one year from the effective date and subject to such terms and conditions as may be specified by the Commission.

SCHEDULE 1

[Subsection 7(4)]

Exempt stock market or exempt derivatives market

[Am. P.U. (A)336/2011]

1. Such system which facilitates the transferring, clearing and settlement of funds and unlisted debt securities.

2. Such system which facilitates dealing in securities, including the auction of or direct buying, selling, issuance, borrowing, lending and exchange of unlisted debt securities.

3. Such system which provides information to any person relating to the money market or to the tender, issue, trading and offer or bid prices of debt securities or any other related information relating to unlisted debt securities.

4. Such system for the central handling of debt securities deposited with Bank Negara by means of entries in debt securities accounts without physical delivery of certificates.

5. Such system for the carrying out of any other activity related to any of the systems in paragraphs 1 to 4.

6. Such system for the dissemination of information relating to paragraphs 1 to 5.

SCHEDULE 2

[Subsections 2(1) and 58(1)]

Regulated activities

Part 1 — Types of regulated activities

1. Dealing in securities.

2. Dealing in derivatives. *[Subs. P.U.(A)336/2011]*

3. Fund management.

4. Advising on corporate finance.

5. Investment advice.

6. Financial planning.

7. Dealing in private retirement schemes.

[Ins. P.U.(A)336/2011]

8. Clearing for securities or derivatives.

[Ins. P.U.(A)133/2017]

Part 2 — Interpretation of regulated activities

1. "Dealing in securities" means, whether as principal or agent—

(a) acquiring, disposing of, subscribing for or underwriting securities; or

(b) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—

(i) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) any agreement, other than a derivatives, the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.

[1(b)(ii) Am. P.U.(A)336/2011]

2. "Dealing in derivatives" means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise—

(a) entering into or taking an assignment of the derivative, whether or not on another person's behalf;

(b) taking or causes to be taken action that closes out the derivative, whether or not on another person's behalf;

(c) in relation to an option—

(i) exercising any right under the option; or

(ii) allowing any right under the option to lapse,

whether or not on another person's behalf; or

(d) initiating, originating, or issuing over-the-counter derivatives.

[Subs. P.U.(A)336/2011]

3. "Fund management" means undertaking on behalf of any other person the management of —

(a) a portfolio of securities or derivatives or a combination of both, by a portfolio fund manager, whether on a discretionary authority or otherwise; or

(b) an asset or a class of asset in a unit trust scheme by an asset fund manager.

[Subs. P.U.(A) 475/2012]

4. "Advising on corporate finance" means giving advice concerning—

(a) compliance with or in respect of Part VI, any regulation made under section 378 and any guidelines issued under section 377 relating to any matter provided under Part VI, or relating to the raising of funds by any corporation;

(b) compliance with the listing requirements of the stock exchange in relation to the raising of funds or related party transactions;

(c) arrangement or restructuring of a listed corporation or a subsidiary of the listed corporation of its assets or liabilities.

5. "Investment advice" means carrying on a business of advising others concerning securities or derivatives or as part of a business, issues or promulgates analyses or reports concerning securities or derivatives.

[Am. P.U.(A)336/2011]

6. “Financial planning” means analysing the financial circumstances of another person and providing a plan to meet that other person’s financial needs and objectives, including any investment plan in securities, whether or not a fee is charged in relation thereto.

7. “Dealing in private retirement schemes” means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, to enter into or to offer to enter into any agreement for or with a view to—

(a) acquiring, or disposing of beneficial interest under a private retirement scheme; or

(b) making contributions to a private retirement scheme.

[Ins. P.U.(A) 336/2011]

8. “Clearing for securities or derivatives” means, whether as principal or agent, carrying on the business of assuming obligations for the delivery and payment of a person’s transaction relating to listed securities or standardized derivatives as set out in the rules of the approved clearing house.

[Ins. P.U.(A) 133/2017]

SCHEDULE 3

[Subsection 58(2)]

Specified persons

1. Any company registered under the Trust Companies Act 1949 who carries on any regulated activity, as may be determined by the Commission.

[Am. P.U.(A) 473/2025]

2. Any advocate and solicitor as defined under the Legal Profession Act 1976 [*Act 166*] in practice whose carrying on of the regulated activity of advising on corporate finance or financial planning is solely incidental to the practice of his profession.

3. Any accountant who is a member of the institute established under the Accountants Act 1967 [*Act 94*] in practice whose carrying on of the regulated activity of advising on corporate finance or financial planning is solely incidental to the practice of his profession.

4. A valuer as defined under the Valuers, Appraisers and Estate Agents Act 1981 [*Act 242*] whose valuation in respect of assets for the purposes of advising on corporate finance is solely incidental to his practice as a valuer.

5. Any person who is a proprietor of a newspaper and a holder of a permit issued under the Printing Presses and Publications Act 1984 [*Act 301*] whose carrying on the regulated activity of investment advice through the newspaper where—

(a) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the newspaper for value;

(b) the advice is given or the analyses or reports are issued or promulgated

only through that newspaper;

(c) that person receives no commission or other consideration for issuing or promulgating the analyses or reports; and

(d) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor.

6. Any person who is carrying on the regulated activity of investment advice through the provision of information service where—

(a) insofar as the information service is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the information service for value;

(b) the advice is given or the analyses or reports are issued or promulgated only through that information service;

(c) that person receives no commission or other consideration for issuing or promulgating the analyses or reports; and

(d) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a information service proprietor.

7. Any corporation whose carrying on of the regulated activity of fund management is solely for the benefit of its related corporation.

8. Any corporation whose carrying on of the regulated activity of investment advice is solely for the benefit of its related corporation.

9. Any corporation whose carrying on the regulated activity of advising on corporate finance solely for the benefit of any of its related corporation and where the related

corporation is a listed corporation, such advice is not circulated to the shareholders of the related corporation or otherwise made known to the public.

10. Any person who carries on the regulated activity of dealing in securities for—

(a) his own account or for his related corporation through a person licensed, registered, approved, recognized or otherwise authorized by the Commission;

[Am. P.U.(A) 473/2025]

(b) his own account or for his customer's account through a licensed bank for the purposes of lending of securities under any guidelines issued by the Commission under subsection 377(1); or;

[Subs. P.U.(A) 336/2011]

(c) his own account or for his related corporation, where the securities are not listed on a stock exchange.

[Subs. P.U.(A) 336/2011]

11. Any person who deals in derivatives—

(a) on the person's own account or for his related corporation; or

(b) where such person is a non-resident acting as principal or agent through the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives.

[Subs. P.U.(A) 336/2011]

12. *[Deleted. P.U.(A) 336/2011]*

13. A holder of a Capital Markets Services Licence who carries on the business of

dealing in derivatives whose dealing in securities—

(a) is the direct consequence of dealing in a derivative;

(b) is in connection with the delivery of a security within a class of securities which is the subject of a class of derivatives; or

(c) is in connection with the transfer of securities as collateral or security, or in realization of any collateral or security, for obligation under a derivative.

[Subs. P.U.(A) 336/2011]

14. Any public statutory corporation constituted under any written law who carries on the regulated activity of dealing in securities or fund management.

15. Any stock exchange or exchange holding company where its dealing in securities is solely incidental to it operating a stock market of a stock exchange.

16. A derivatives exchange or exchange holding company where the dealing in derivatives is solely incidental to it operating a derivatives market of a derivatives exchange.

[Am. P.U.(A) 336/2011]

17. An approved clearing house or exchange holding company whose carrying on of any regulated activity is solely incidental to it operating clearing facilities.

[Am. P.U.(A) 336/2011] [Subs. P.U.(A) 133/2017]

18. A licensed offshore bank as defined under the Offshore Banking Act 1990 [*Act 443*], an offshore company or a foreign offshore company as defined under the Offshore Companies Act 1990 [*Act 441*], whose carrying on of the regulated activity of investment advice to a person who is a non-resident of Malaysia is solely incidental to their offshore businesses.

19. A receiver, receiver and manager, or liquidator or any other person appointed by a court whose carrying on a regulated activity is solely incidental to his duties as a receiver, receiver and manager, liquidator or any court appointed person, as the case may be.

20. A trustee or other person whose carrying on a regulated activity is solely incidental to its administering a compromise or arrangement between a body corporate and any other person or persons.

21. An insurance company licensed under the Insurance Act 1996 or a takaful operator registered under the Takaful Act 1984 whose carrying on of the regulated activity of fund management is solely incidental to the management and administration of its insurance or takaful business, as the case may be.

22. Any recognized market operator where its regulated activities are solely incidental to it operating a recognized market.

[Ins. P.U.(A) 212/2015]

23. Any person who carries on the regulated activity of clearing for securities or derivatives, for his own account or for his related corporation.

[Ins. P.U.(A) 133/2017]

SCHEDULE 4

[Paragraph 76(1)*(a)*]

Registered persons

Part 1

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
1.	Dealing in securities	
(a)	Quoting two way prices for and dealing in— (i) debenture, stocks or bonds of the Federal Government, any State Government or statutory body; or (ii) corporate debentures or other instruments which are not listed for trading in any stock exchange.	Islamic banks and all licensed institutions.
(b)	Arranging for the sale or purchase of securities issued by, belonging to or on behalf of customers through the holders of a Capital Markets Services Licence who carries on the business of dealing in securities.	Islamic banks, licensed banks, KAF Investment Bank Berhad and licensed finance companies.
(c)	Arranging for the sale or purchase of securities that are not listed on a stock market of a stock	Islamic banks, licensed banks, KAF Investment Bank Berhad, licensed

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
	exchange issued by, belonging to or on behalf of customers.	discount houses and licensed finance companies.
(d)	(i) Underwriting of securities and placement out of such underwritten securities whether through the holder of a Capital Markets Services Licence who carries on dealing in securities or otherwise. (ii) Underwriting of securities and placement out of such underwritten securities, whether through the holder of a Capital Markets Services Licence who carries on dealing in securities or otherwise, in relation to proposals for infrastructure project companies as may be specified by the Commission.	Islamic banks, licensed banks and KAF Investment Bank Berhad. Bank Pembangunan Malaysia Berhad
(e)	Underwriting of bond issues that is solely incidental to the management and administration of its insurance or takaful business.	Insurance companies licensed under the Insurance Act 1996 *[Act 553]* and takaful operators registered under the Takaful Act 1984 *[Act 312].*
(f)	Private placement of primary issues of securities on behalf of customers.	KAF Investment Bank Berhad and Islamic banks.

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
(g)	Arranging or offering for the sale or purchase as agents for any person any interests in unit trust schemes.	Islamic banks, licensed banks and licensed finance companies, Bank Kerjasama Rakyat Malaysia Berhad and Bank Simpanan Nasional Berhad
(h)	Acting or offering to act as agent for any issuing house in relation to the issue or listing of any securities.	Islamic banks, licensed banks, KAF Investment Bank Berhad and licensed finance companies.
(i)	Lending or borrowing of unlisted debt securities for their own account or for their customers' accounts under the Guidelines on Securities Borrowing and Lending Programme under RENTAS or such other equivalent guidelines issued by Bank Negara.	Islamic banks, licensed banks, licensed finance companies and KAF Investment Bank Berhad.
(j)	Lending or facilitating the lending of securities for their own account or for their customers' accounts under any guidelines issued by the Commission under subsection 377(1).	Licensed banks.
(k)	Arranging or offering as principal or agent for any person, the sale or purchase of structured warrants, options or any other product as may be determined by the Commission. *[Am. P.U.(A) 473/2025]*	Licensed banks, KAF Investment Bank Berhad and Islamic banks.

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
2.	Advising on corporate finance	
(a)	Debentures that are not capable of being converted into equity.	Licensed banks, KAF Investment Bank Berhad and licensed discount houses.
(b)	Islamic securities as specified in the Commission's guidelines in respect of Islamic securities.	Licensed banks, KAF Investment Bank Berhad, Islamic banks and licensed discount houses.
(c)	Structured products as defined under any guidelines issued by the Commission under subsection 377(1).	Licensed banks, KAF Investment Bank Berhad and Islamic banks
(d)	Structured warrants as defined under any guidelines issued by the Commission under subsection 377(1).	Licensed banks, KAF Investment Bank Berhad and Islamic banks
(e)	Issues of securities for cash or other consideration	KAF Investment Bank Berhad and Islamic banks.
(f)	Takeovers and mergers under Malaysia Code on Takeovers and Mergers	KAF Investment Bank Berhad and Islamic banks.
(g)	Proposals for infrastructure project companies as may be specified by the Commission whether for the purpose of listing such companies or otherwise.	Bank Pembangunan Malaysia Berhad

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
3.	Investment advice	
	(a) carrying on a business of advising others concerning securities or as part of a business, issues or promulgates analyses or reports concerning securities; or *(b)* carrying on a business of advising others concerning derivatives or as part of a business, issues or promulgates derivatives reports.	Islamic banks and licensed institutions.
4.	Fund Management	
	Acting or offering to act as portfolio managers for customers or as investment or co-investment manager of country funds, trust funds, venture capital funds, unit trust funds or other funds including— *(a)* the provision of investment advice; and *(b)* the acquisition or disposal of securities or derivatives, incidental to the fund management activity.	KAF Investment Bank Berhad and Islamic banks

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
5.	Dealing in derivatives	
	(a) Dealing in derivatives in the money market	Licensed institutions, Islamic banks, insurance companies licensed under the Insurance Act 1996 *[Act 553]* and takaful operators registered under the Takaful Act 1984 *[Act 312].*
	(b) Dealing in over-the-counter derivatives	Licensed institutions, Islamic banks, insurance companies licensed under the Insurance Act 1996 *[Act 553]*, takaful operators registered under the Takaful Act 1984 *[Act 312]* and prescribed institutions under the Development Financial Institutions Act 2002 *[Act 618].*
6.	Dealing in private retirement schemes	
	Arranging or offering for the sale or purchase as agents for any person, any interests in private retirement schemes.	Islamic banks, licensed banks, licensed finance companies, Bank Kerjasama Rakyat Malaysia Berhad and Bank

First Column	Second Column	Third Column
Items	Activities	Categories of Registered Persons
		Simpanan Nasional Berhad.

Part 2

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
1.	*(a)* Dealing in securities in relation to the investment made by the venture capital corporation and venture capital management corporation; and *(b)* acting or offering to act as investment managers or co-investment manager of venture capital funds, including the provision of investment advice incidental to its fund management activity.	Any venture capital corporation and venture capital management corporation that is registered under the Commission's Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations.
2.	Investment advice in relation to the provision of ratings for debentures.	A credit rating agency that is registered under the Commission's Guidelines on Registration of Credit Rating Agencies.

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
3.	Investment advice in relation to the pricing of debentures.	A bond pricing agency that is registered under the Commission's Guidelines on the Registration of Bond Pricing Agencies.
4.	Dealing in securities in relation to the administration of the duties of Pengurusan Danaharta Nasional Berhad.	Pengurusan Danaharta Nasional Berhad and all its subsidiaries prescribed under subsection 60(2) of the Pengurusan Danaharta Nasional Berhad Act 1998 *[Act 587].*

[Subs. P.U.(A) 336/2011]

SCHEDULE 5

[Subsection 212(8)]

Proposals not requiring approval, authorization or recognition

Categories of transactions not subject to the requirements of subsections 212(2), (3) and (4), paragraph 212(5)*(a)* and subsection 212(6).

Part 1
Proposal under Lodge and Launch Framework

1. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, unlisted capital market products as may be determined by the Commission to—

(a) sophisticated investors as determined by the Commission in any guidelines issued under section 377;

[Subs. P.U.(A) 41/2024]

(b) a person who acquires the unlisted capital market product where the consideration is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;

(c) in the case of debentures or sukuk, exclusively to a person in Labuan or outside Malaysia; or

(d) any other person as may be determined by the Commission,

provided that the making available of, offering for subscription or purchase of, or issuance of an invitation to subscribe for or purchase, such unlisted capital market products complies with the requirements of the guidelines issued by the Commission in relation to the Lodge and Launch Framework.

Part 2

A. Securities

(i) General

2. Any proposal, scheme, transaction, arrangement or activity, or issuance of securities, or offer for subscription or purchase of securities, or issuance of an invitation to subscribe for or purchase securities, in relation to—

(a) the listing or quotation of securities issued or guaranteed by the Federal Government or Bank Negara on a stock market of a stock exchange;

(b) the listing or quotation of securities issued or guaranteed by the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011 [*Act 721*];

(c) the listing and quotation of structured warrants on a stock market of a stock exchange, provided that the issuer of the structured warrants complies with eligibility requirements determined by the Commission;

(d) an acquisition or disposal of asset which results in a significant change in the business direction or policy of a corporation whose shares are listed on the alternative market of a stock exchange except where such acquisition or disposal is carried out in relation to paragraph 212(2)*(b)*;

(e) a disposal of asset which results in a significant change in the business direction or policy of a corporation whose shares are listed on the main market of a stock exchange that is not part of any other proposal that requires approval from the Commission; or

(f) the listing and quotation of securities of a corporation on a stock market of a stock exchange as a result of a restructuring exercise involving a transfer of the listing status of a corporation to the first-mentioned corporation except where it forms part of a proposal involving an acquisition of asset under paragraph 212(2)*(d)* or a proposal under subsection 212(3).

3. Any proposal, scheme, transaction, arrangement or activity, or issuance of securities, or offer for subscription or purchase of securities, or issuance of an invitation to subscribe for or purchase of securities, where a corporation whose shares are listed on a stock market of a stock exchange distributes securities that it holds in another corporation or a unit trust scheme to its own members.

4. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) securities issued or guaranteed by the Federal Government or Bank Negara;

(b) securities issued or guaranteed by any State Government;

(c) securities issued or guaranteed by the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011;

(d) securities of a company to existing members of the company within the meaning of section 457 of the Companies Act 2016 [*Act 777*]; or

(e) securities of any entity established or registered under the laws applicable in Labuan—

(i) exclusively to persons in Labuan or outside Malaysia; or

(ii) to another entity established or registered under the laws applicable in Labuan.

5. Invitation or offering to underwrite or subunderwrite securities pursuant to an underwriting agreement in relation to the listing and quotation of securities on a stock market of a stock exchange.

6. Issuance or allotment of securities to an underwriter or subunderwriter pursuant to an underwriting agreement in relation to the listing and quotation of securities on a stock market of a stock exchange.

7. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, securities of a venture capital or private equity fund provided that the corporation managing the venture capital or private equity fund is licensed by or registered with the Commission.

[Am. P.U.(A) 473/2025]

7A. Any small offer of securities of a private company, other than shares, provided that such offer complies with the requirements as may be determined by the Commission.

[Ins. P.U.(A) 473/2025]

(ii) Shares

Shares of unlisted company

8. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) shares of a private company; or

(b) the following types of unlisted public company shares:

(i) equity shares;

(ii) shares pursuant to an employee share or employee share option scheme;

(iii) shares offered to any of its directors; or

(iv) shares of an unlisted public company that is licensed, registered, approved, recognized or otherwise authorized by the Commission or Bank Negara,

provided that the making available of, offering for subscription or purchase of, or issuance of an invitation to subscribe for or purchase, such shares complies with the requirements as may be determined by the Commission.

[Subs. P.U.(A) 473/2025]

Shares of public company or listed corporation

9. In relation to subsection 212(4), any proposal to make available, offer for subscription or purchase of, or issue an invitation to subscribe for or purchase, in Labuan or outside Malaysia, shares of a public company or a listed corporation, or to list such shares on a securities exchange in Labuan or outside Malaysia.

10. In respect of a corporation whose shares are listed on the main market of a stock exchange, making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, shares pursuant to—

(a) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;

(b) an entitlement in respect of a warrant, option or right without consideration;

(c) a subdivision or consolidation of shares;

(d) an employee share or employee share option scheme;

(e) a bonus issue;

(f) a rights issue;

(g) a private placement exercise;

(h) a distribution in lieu of dividends;

(i) an acquisition of asset that does not result in a significant change in the business direction or policy of that corporation; or

(j) any other corporate exercise under the rules of the stock exchange as may be determined by the Commission,

except where it forms part of a proposal involving an acquisition of asset under paragraph 212(2)*(d)* or a proposal under subsection 212(3).

Shares of corporation listed or to be listed on alternative market of stock exchange

11. Any proposal, scheme, transaction, arrangement or activity, or issuance of shares, or offer for subscription or purchase of shares, or issuance of an invitation to subscribe for or purchase, shares, in relation to the listing and quotation of shares of a corporation on an alternative market of a stock exchange.

12. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, shares of a corporation whose shares are listed on the alternative market of a stock exchange other than a proposal falling under paragraph 212(2)*(b)*.

Shares relating to foreign corporation

13. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) shares of a corporation whose shares are listed on a securities exchange in Labuan or outside Malaysia pursuant to—

(i) an employee share or employee share option scheme;

(ii) a bonus issue;

(iii) a rights issue;

(iv) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;

(v) an entitlement in respect of a warrant, option or right without consideration;

(vi) a subdivision or consolidation of shares; or

(vii) any other corporate exercise as may be determined by the Commission;

(b) shares of a corporation whose shares are not listed on a stock market of a stock exchange or a securities exchange in Labuan or outside Malaysia—

(i) pursuant to—

(A) an employee share or employee share option scheme;

(B) a bonus issue; or

(C) a non-renounceable rights issue; or

(ii) to their existing shareholders or any other person as may be determined by the Commission in any guideline issued under section 377; or

(c) shares pursuant to a take-over offer of a foreign corporation.

14. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, shares, except shares in a closed-end fund, that are listed or approved for listing and quotation on a securities exchange in Labuan or outside Malaysia to—

(a) sophisticated investors as determined by the Commission in any guidelines issued under section 377;

[Subs. P.U.(A) 41/2024]

(b) a person who acquires shares pursuant to a private placement, where the consideration is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise; or

(c) any other person as may be determined by the Commission,

provided that, in the case of a securities exchange in Labuan or outside Malaysia, such exchange is determined by the Commission and the distribution of such shares is made by a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.

Distribution of shares in lieu of dividends

15. Any distribution of shares in lieu of dividends to existing shareholders.

(iii) Unit trust schemes, private retirement schemes and prescribed investment schemes

16. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, units in a unit trust scheme, private retirement scheme or prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.

17. Any proposal, scheme, transaction, arrangement or activity, issuance of, offer for subscription or purchase of, or issuance of an invitation to subscribe for or purchase, units in a unit trust scheme or prescribed investment scheme in relation to—

(a) an acquisition of asset which results in a significant change in the business direction or policy of a unit trust scheme or prescribed investment scheme that is listed on the main market of a stock exchange other than a business trust; or

(b) a disposal of asset which results in a significant change in the business direction or policy of a unit trust scheme or prescribed investment scheme that is listed on the main market of a stock exchange except in the case of a business trust where the disposal of asset by the business trust forms part of any other proposal that requires approval from the Commission.

18. In respect of a unit trust scheme or prescribed investment scheme that is listed on the main market of a stock exchange, making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, units pursuant to—

(a) a subdivision of units;

(b) a bonus issue;

(c) a rights issue;

(d) a private placement exercise;

(e) a distribution of income in units in lieu of cash;

(f) an acquisition of asset that does not result in a significant change in the business direction or policy of that unit trust scheme or prescribed investment scheme; or

(g) any other corporate exercise under the rules of the stock exchange as may be determined by the Commission,

except in the case of a business trust where it forms part of a proposal involving an acquisition of asset under paragraph 212(2)*(d).*

19. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) units of a unit trust scheme or prescribed investment scheme that is listed on a securities exchange in Labuan or outside Malaysia pursuant to—

(i) a subdivision of units;

(ii) a bonus issue;

(iii) a rights issue;

(iv) a distribution of income in unit in lieu of cash; or

(v) any other corporate exercise as may be determined by the

Commission;

(b) units held by a foreign unit trust scheme or foreign prescribed investment scheme that is listed on a securities exchange in Labuan or outside Malaysia pursuant to a distribution of income in units in lieu of cash;

(c) units pursuant to a take-over offer of a foreign unit trust scheme or foreign prescribed investment scheme; or

(d) units of a foreign unit trust scheme or foreign prescribed investment scheme that is not listed on a stock market of a stock exchange or a securities exchange in Labuan or outside Malaysia pursuant to—

(i) a bonus issue;

(ii) a distribution of income in units in lieu of cash; or

(iii) a non-renounceable rights issue.

(iv) Debentures, sukuk and structured products

20. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, debentures or sukuk by a corporation to its related corporation where such debentures or sukuk include a term that prohibits the transfer of such debentures or sukuk, as the case may be, to any other person.

21. In the case of a public company where its debentures or sukuk have been approved by the Commission, a proposal for the listing of the debenture or sukuk on a securities exchange in Labuan or outside Malaysia.

22. Any proposal, scheme, transaction, arrangement or activity, issuance of shares, offer for subscription or purchase of shares, or issuance of an invitation to subscribe for or purchase shares, in relation to an acquisition

or disposal of asset which results in a significant change in the business direction or policy of a corporation where only its debentures or sukuk are listed on a stock market of a stock exchange.

23. All secondary transactions of debentures, sukuk or structured products.

24. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, structured product or Islamic structured product exclusively to persons in Labuan or outside Malaysia.

B. Digital Currency and Digital Token

25. (1) Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, digital currency or digital token to any person through a recognized market and in compliance with the requirements as may be determined by the Commission.

(2) For the purposes of subparagraph (1)—

(a) "digital currency" means digital currency that is prescribed as securities under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 [*P.U. (A) 12/2019*]; and

(b) "digital token" means digital token that is prescribed as securities under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019.

C. Derivatives

26. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase—

(a) derivatives issued or guaranteed by the Federal Government or Bank Negara;

(b) derivatives issued or guaranteed by any State Government;

(c) derivatives issued or guaranteed by the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011; or

(d) derivatives of any entity established or registered under the laws applicable in Labuan—

(i) exclusively to persons in Labuan or outside Malaysia; or

(ii) to another entity established or registered under the laws applicable in Labuan.

27. Making available, offering for subscription or purchase of, or issuing an invitation to subscribe for or purchase, or dealing in, over-the-counter derivatives where—

(a) the over-the-counter derivative is proposed to be made available, offered for subscription or purchase to;

(b) an invitation to subscribe for or purchase the over-the-counter derivative is made to; or

(c) the dealing in the over-the-counter derivative involves,

sophisticated investors as determined by the Commission in any guidelines issued under section 377.

[Subs. P.U.(A) 41/2024]

SCHEDULE 6

[Section 229]

Excluded offers or excluded invitations

For the purposes of paragraph 229(1)*(a)*, an excluded offer or excluded invitation shall be—

(a) an offer or invitation to a sophisticated investor as determined by the Commission in any guidelines issued under section 377; and

(b) any other type of offer or invitation as specified in Part II and Part III.

Part I

Other types of excluded offers or excluded invitations

1. An offer or invitation made in respect of any sale of units in a unit trust scheme, private retirement scheme or prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.

2. All secondary trades in securities effected on a stock market of a stock exchange or such other securities exchange in Labuan or outside Malaysia as may be determined by the Commission.

3. An offer or invitation of securities made or guaranteed by the Federal Government, any State Government or Bank Negara.

4. An offer or invitation made pursuant to a take-over offer which complies with the relevant law applicable to such offers.

5. (1) Subject to subparagraph (2), all secondary trades in debentures or sukuk.

(2) In the case of secondary trade in debentures or sukuk involving retail investors, subparagraph (1) shall only apply if—

(a) a prospectus has been issued at the primary issuance; or

(b) the debenture or sukuk complies with the requirements of the guidelines issued by the Commission in relation to the Seasoned Bond Framework.

6. An offer or invitation in respect of debentures or sukuk that complies with the requirements of the guidelines issued by the Commission in relation to the Qualified Issuer Framework.

7. An offer or invitation made to employees or directors of a corporation or its related corporation pursuant to an employee share scheme or employee share option scheme.

8. An offer or invitation made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under the Companies Act 2016 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.

9. An offer or invitation made exclusively to persons in Labuan or outside Malaysia.

10. An offer or invitation to enter into an underwriting or subunderwriting agreement or an offer or invitation made to an underwriter under such agreement.

11. An offer or invitation made to a person who acquires securities pursuant to a private placement where the consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

12. An offer or invitation made by or to the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011.

13. An offer or invitation made by or to Danamodal Nasional Berhad.

14. An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning under section 457 of the Companies Act 2016.

15. An offer or invitation in respect of securities of a corporation or unit trust scheme having gained admission on a securities exchange in Labuan or outside Malaysia as determined by the Commission, made to existing securities holders of such corporation or unit trust scheme by means of a rights issue, provided that, in the case of a renounceable rights issue, such offer or invitation has been accompanied by a prospectus or disclosure document approved or registered by or lodged with the authority in Labuan or outside Malaysia, as the case may be, which exercises functions corresponding to the functions of the Commission.

16. An offer or invitation in respect of securities of a corporation made to existing securities holders of the corporation by means of a non-renounceable rights issue or a rights issue which is renounceable in favour of the existing members or securities holders only.

17. An offer or invitation in respect of shares of a private company.

18. An offer or invitation where no consideration, whether in cash or otherwise, is or will be given for the offer or invitation.

Part II

Alternative market

19. An offer or invitation in respect of shares of a corporation that are listed or approved for listing and quotation on the alternative market of a stock exchange, provided that—

(a) the offer or invitation is accompanied with a prospectus which is registered by the stock exchange, and the prospectus shall not be considered as an information memorandum for purposes of this Act; and

(b) the offer or invitation complies with any other requirements as may be specified in the listing requirements.

20. An initial listing of shares of a corporation on the alternative market of a stock exchange, provided that—

(a) the initial listing is accompanied with a prospectus which is registered by the stock exchange, and the prospectus shall not be considered as an information memorandum for the purposes of this Act; and

(b) the initial listing complies with any other requirements as may be specified in the listing requirements.

[Subs. P.U.(A) 41/2024]

SCHEDULE 7

[Section 230]

Excluded issues

For the purposes of paragraph 230(1)*(a)*, an excluded issue shall be—

(a) an issue to a sophisticated investor as determined by the Commission in any guidelines issued under section 377; and

(b) any other type of issue as specified in Part I and Part II.

Part I

Other types of excluded issue

1. An issue made in respect of any sale of units in a unit trust scheme, private retirement scheme or prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.

2. All secondary trades in securities effected on a stock market of a stock exchange or such other securities exchange in Labuan or outside Malaysia as may be determined by the Commission.

3. An issue of securities made or guaranteed by the Federal Government, any State Government or Bank Negara.

An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.

4. (1) Subject to subparagraph (2), all secondary trades in debentures or sukuk.

(2) In the case of secondary trade in debentures or sukuk involving retail investors, subparagraph (1) shall only apply if—

(a) a prospectus has been issued at the primary issuance; or

(b) the debenture or sukuk complies with the requirements of the guidelines issued by the Commission in relation to the Seasoned Bond Framework.

5. An issue of debentures or sukuk that complies with the requirements of the guidelines issued by the Commission in relation to the Qualified Issuer Framework.

6. An issue in respect of securities which are acquired by employees or directors of a corporation or its related corporation pursuant to an employee share scheme or employee share option scheme.

7. An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under the Companies Act 2016 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.

8. An issue made exclusively to persons in Labuan or outside Malaysia.

9. An issue made to an underwriter under an underwriting or subunderwriting agreement.

10. An issue made to a person who acquires securities pursuant to a private placement where the consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

11. An issue made by or to the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011.

12. An issue made by or to Danamodal Nasional Berhad.

13. An issue of securities of a corporation made to existing members of a company within the meaning of section 457 of the Companies Act 2016.

14. An issue in respect of securities of a corporation or unit trust scheme having gained admission on a securities exchange in Labuan or outside Malaysia as may be determined by the Commission, made to existing securities holders of such corporation or unit trust scheme by means of a rights issue, provided that, in the case of a renounceable rights issue, such issue has been accompanied by a prospectus or disclosure document approved or registered by or lodged with the authority in Labuan or outside Malaysia, as the case may be, which exercises functions corresponding to the functions of the Commission.

15. An issue in respect of securities of a corporation made to existing securities holders of the corporation by means of a non-renounceable rights issue or a rights issue which is renounceable in favour of the existing securities holders only.

16. An issue in respect of shares of a private company.

17. An issue of securities where no consideration, whether in cash or otherwise, is or will be given for the issue of such securities.

18. An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.

19. An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act or in respect of which the shares to which the note converts into are listed shares.

20. An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme, whether inside or outside Malaysia, which are issued in satisfaction of dividends or distributions payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.

21. A bonus issue of securities made by a corporation, unit trust scheme or prescribed investment scheme.

Part II

Alternative market

22. An issue in respect of shares of a corporation that are listed or approved for listing and quotation on the alternative market of a stock exchange, provided that—

(a) the issue is accompanied with a prospectus which is registered by the stock exchange, and the prospectus shall not be considered as an information memorandum for the purposes of this Act; and

(b) the issue complies with any other requirements as may be specified in the listing requirements.

23. An initial listing of shares of a corporation on the alternative market of a stock exchange, provided that—

(a) the initial listing is accompanied with a prospectus which is registered by the stock exchange, and the prospectus shall not be considered as an information memorandum for the purposes of this Act; and

(b) the initial listing complies with any other requirements as may be specified in the listing requirements.

Part III

Non-application

24. Sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 shall not apply to an excluded issue to a sophisticated investor as determined by the Commission in any guidelines issued under section 377 and an excluded issue under Part I of this Schedule.

25. Sections 232, 233, 234, 235, 237, 238, 239, 240, 241 and 244 shall not apply to an excluded issue under Part II of this Schedule.

[Subs. P.U.(A) 41/2024]

SCHEDULE 8

[Subsection 257(1)]

Debentures issues

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Subdivision 1 of Division 4 of Part VI and section 283 of Subdivision 2 of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal Government or any State Government or any statutory body.

2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or Bank Negara.

3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.

4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.

5. All secondary transactions in debentures.

[Am. P.U.(A) 119/2015]

6. Deleted [*P.U.A 473/2012*]

7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise

under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.

8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.

9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.

10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.

11. An issue, offer or invitation made in relation to a foreign currency denominated debenture to—

(a) an underwriter under an underwriting or initial purchase agreement

(b) a unit trust scheme or prescribed investment scheme;

(c) a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;

(d) a closed end fund approved by the Commission;

(e) a holder of a Capital Markets Services Licence who carries on the business of fund management;

(f) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;

(g) a licensed offshore bank as defined under the Offshore Banking Act 1990;

(h) an offshore insurer as defined under the Offshore Insurance Act 1990; or

(i) a high net worth individual.

[Ins. P.U.(A) 473/2025]

12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by any person or corporation formed or incorporated within or outside Malaysia, other than a special purpose vehicle which has no full recourse to another entity, where a credit rating agency has assigned the debentures with a local rating AAA or an international rating of BBB and above, except where the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, of the debentures may be made to a retail investor as specified by the Commission.

[Am. P.U.(A) 473/2025]

13. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by any person or corporation formed or incorporated outside Malaysia as may be specified by the Commission.

[Subs. P.U.(A) 473/2012]

14. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debenture made by or to the Corporation as defined in the International Islamic Liquidity Management Corporation Act 2011.

[Ins. P.U.(A) 119/2015]

SCHEDULE 9

[Subsection 257(2)]

Debentures issues

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sections 263, 266, 268, 269, 271, 272, 275, 278, subsections 280(4) and 280(5) of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.

2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a unit trust scheme or prescribed investment scheme.

3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.

4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a closed end fund approved by the Commission.

5. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a holder of a Capital Markets Services Licence who carries on the business of fund management.

6. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two

hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.

8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.

9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed offshore bank as defined under the Offshore Banking Act 1990.

10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an offshore insurer as defined under the Offshore Insurance Act 1990.

11. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures of a private company.

12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic Bank as defined in the Islamic Banking Act 1983.

13. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an insurance company registered under the Insurance Act 1996.

14. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

SCHEDULE 10

[Deleted. Act A1406/2011]

SCHEDULE 11

[Section 388]

List of subsidiary legislation revoked

1. Securities Industry Regulations 1987 [*P.U.(A) 314/1987*].

2. Securities Industry (Exemption) Order 1992 [*P.U.(A) 126/1992*].

3. Futures Industry Regulations 1995 [*P.U. (A) 413/1995*].

4. Securities Industry (Exempt Dealer) (No. 2) Order 1996 [*P.U.(A) 21/1996*].

5. Securities Industry (Dealing in Securities) Declaration (No. 2) 1996 [*P.U.(B) 23/1996*].

6. Securities Industry (Licensing of Fund Manager and Fund Managers Representatives) Regulations 1996 [*P.U.(A) 117/1996*].

7. Securities Industry (Deposit) Regulations 1997 [*P.U.(A) 34/1997*].

8. Securities Industry (Compensation Fund) Regulations 1997 [*P.U.(A) 35/1997*].

9. Securities Industry (Dealers Contract Notes) Regulations 1997 [*P.U.(A) 37/1997*].

10. Securities Industry (Dealing in Securities) Declaration 1997 [*P.U.(B) 338/1997*].

11. Securities Industry (Exempt Dealer) Order 1997 [*P.U.(A) 339/1997*].

12. Futures Industry (Variation of Board Composition) Order 1998 [*P.U.(A) 139/1998*].

13. Securities Industry (Exempt Dealer) Order 1998 [*P.U.(A) 324/1998*].

14. Futures Industry (Licensing Exemption) Order 1998 [*P.U.(A) 393/1998*].

15. Securities Industry (Non-Application of Provision relating to Insider) Regulations 1999 [*P.U.(A) 180/1999*].

16. Securities Industry (Exempt Dealer) Order 2000 [*P.U.(A) 160/2000*].

17. Futures Industry (Licensing Exemption) Order 2001 [*P.U.(A) 209/2001*].

18. Securities Industry (Exempt Dealer) Order 2002 [*P.U.(A) 17/2002*].

19. Securities Industry (Exempt Dealer) (No. 2) Order 2002 [*P.U.(A) 314/2002*].

20. Securities Industry (Declaration of Exempt Stock Market) Order 2005 [*P.U.(A) 496/2005*].

21. Securities Industry (Bond Pricing Agency) Regulations 2006 [*P.U.(A) 22/2006*].

NOTES :

Capital Market and Services (Amendment) Act 2011 (Act 1406)

Savings and transitions in respect of futures contracts

68. In respect of futures contracts—

(a) (i) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation; and

(ii) all approvals, directions, decisions, notifications, exemptions and other executive acts,

made, given, or done shall be deemed to have been made, given, or done in respect of derivatives as amended under this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with, or by virtue of, the principal Act;

(b) all directions, notices, guidelines, circulars, guidance notes or practice notes issued by the Commission or the Minister before the date of coming into operation of this Act (referred to in this section as the "effective date") and in force immediately before the effective date, shall be deemed to be done in respect of derivatives as amended under this Act and shall remain in full force and effect until it is amended, rescinded or repealed under the principal Act;

(c) any application for an approval or consent, or for any other purpose, or any appeal, made by any person to the Minister or to the Commission before the effective date and pending immediately before the effective date, shall be deemed to be done in respect of derivatives as amended under this Act; and

(d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, by a person holding a Capital Markets Services Licence or a Capital Markets Services Representative's Licence shall be deemed to have been lawfully and validly executed, entered into, or done, and accordingly, any right or liability under such transaction, dealing or business existing immediately before the effective date shall be deemed to continue to be lawful and valid.

[Ins. Act A1406/2011]

Deemed approved exchanges and approved clearing house

69. (1) Without prejudice to the generality of section 68, a futures exchange and an approved clearing house for the futures market under the principal Act are deemed to be approved as a derivatives exchange and approved clearing house for the derivatives market respectively.

(2) Any condition or restriction imposed by the Minister or the Commission on any of the entities referred to in subsection (1) and in force immediately before the date of coming into operation of this Act shall be deemed to continue to be lawful and valid.

[Ins. Act A1406/2011]

Savings in respect of the licenses issued in relation to futures contracts

70. (1) Without prejudice to the generality of section 68, a person who holds a Capital Markets Services Licence or Capital Markets Services Representative's Licence, immediately before the date of coming into operation of this Act (referred to in this section as the "effective date") shall, in relation to—

(a) trading in futures contract, be deemed to hold such licence for the regulated activity of dealing in derivatives;

(b) fund management in respect of futures contract, be deemed to hold such licence for the regulated activity of fund management in respect of derivatives; and

(c) investment advice in respect of futures contract, be deemed to hold such licence for the regulated activity of investment advice in respect of derivatives.

(2) Any condition or restriction to which any licence referred to in subsection (1) was subject immediately before the effective date, shall be deemed to continue to be lawful and valid.

[Ins. Act A1406/2011]

Pending applications for licences

71. Unless otherwise notified in writing by the Commission, an application for a new licence or to vary an existing licence in relation to futures contract that is pending immediately before the date of coming into operation of this Act shall be deemed to be an application for a new licence or to vary an existing licence in relation to derivatives.

[Ins. Act A1406/2011]

Modifications to construction of other written laws

72. Where in any written law, any reference is made to—

(a) "futures exchange", such reference shall be construed as a reference to "derivatives exchange";

(b) "futures market", such reference shall be construed as a reference to "derivatives market";

(c) "futures contracts", such reference shall be construed as a reference to "derivatives"; and

(d) "trading in futures contract", such reference shall be construed as a reference to "trading in derivatives" or "dealing in derivatives" as the context may require.

[Ins. Act A1406/2011]

Continuance of other rights or liabilities in relation to futures contract

73. (1) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences or breaches committed in relation to futures contracts before the date of coming into operation of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(2) Any right, privilege, obligation or liability acquired, accrued or incurred before the date of coming into operation of this Act or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been made.

[Ins. Act A1406/2011]

Transitional provision for Part IIIA

74. (1) Subject to such terms and conditions as may be specified by the Commission, any person who carries out the functions of an employer trustee before or at the date of coming into operation of this Act is allowed to continue to carry out the functions of an employer trustee without being approved by the Commission for a period of three years from the date of coming into operation of this Act.

(2) Any person who uses the words "private retirement scheme" or "retirement scheme" in contravention of subsection 139P(2) before the date of coming into operation of this Act shall within one year from the date of coming into operation of this Act comply with subsection 139P(2).

[Ins. Act A1406/2011]

Prevention of anomalies

75. (1) Where any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in any one or more of those provisions as may appear to him to be necessary to give full effect to the provisions of this Act or to prevent anomalies.

(2) The Minister shall not exercise the power conferred under subsection (1) after the expiration of two years from the effective date.

(3) In this section—

"effective date" means the relevant date or dates on which this Act or any of its provisions comes into operation; and

"modifications" means amendments, additions, deletions and substitutions of any provision of this Act.

[Ins. Act A1406/2011]

Capital Market and Services (Amendment) Act 2012 (Act A1437)

Savings and transitional

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

"Capital Market Compensation Fund" means the Capital Market Compensation Fund established under this Act;

"Corporation" means the Capital Market Compensation Fund Corporation established under this Act;

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

"relevant deposits" means any deposit or payment made under sections 70 and 106 of the principal Act before the effective date;

"relevant funds" means the compensation fund and the fidelity fund established and maintained under the substituted Part;

"relevant person" means a holder of Capital Markets Services Licence who carries on the business of—

(a) dealing in securities;

(b) dealing in derivatives and who is an affiliate of the relevant derivatives exchange; or

(c) fund management;

"substituted Part" means Part IV of the principal Act before the effective date.

(2) The relevant stock exchange and the relevant derivatives exchange shall, within three months from the effective date, transfer to the Corporation all monies constituting the relevant funds and the sums transferred to the Corporation shall be part of the Capital Market Compensation Fund.

(3) Any—

(a) deposit which has been lodged or paid to the Commission pursuant to section 70 of the principal Act before the effective date; or

(b) payment which has been made to the Commission pursuant to section 106 of the principal Act before the effective date,

shall, within three months from the effective date, be paid over to the Corporation and shall be deemed to be a contribution to the Capital Market Compensation Fund.

(4) Unless the contrary intention appears in this Act, in respect of claims made against relevant funds or relevant deposits—

(a) any decision made by the relevant stock exchange, relevant derivatives exchange or the Commission before the effective date in relation to any claim made against the relevant funds or the relevant deposits shall continue to be valid after the effective date as if it is made by the Corporation;

(b) any claims made against the relevant funds or the relevant deposits prior to the effective date but has not been decided by the relevant stock exchange, relevant derivatives exchange or the Commission, by the effective date, shall continue to be considered and decided by the relevant stock exchange, relevant derivatives exchange or the Commission;

(c) any appeal to the Commission against the decision made by the relevant stock exchange or relevant derivatives exchange prior to the effective date shall continue to remain valid;

(d) any payment from a successful claim—

(i) decided by the relevant stock exchange, relevant derivatives exchange or the Commission under paragraph *(a)* or *(b)*; or

(ii) pursuant to the Commission's decision on an appeal under paragraph *(c)*,

shall be made from the Capital Market Compensation Fund by the Corporation;

(e) a person aggrieved by a decision of the relevant stock exchange or relevant derivatives exchange in paragraph *(a)* or *(b)* may appeal to the Commission and the decision of the Commission shall be final; and

(f) if the Corporation makes a payment under paragraph *(d)*—

(i) the Corporation is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and

(ii) the claimant shall not have any claim or right under bankruptcy or legal proceeding or otherwise—

(A) to any sum out of the assets of the relevant person concerned in respect of the loss; or

(B) to any sum in respect of the loss caused by an act or omission of a director, officer, representative or employee of a relevant person,

until the Corporation has been reimbursed the full amount of the payment made by it out of the Capital Market Compensation Fund, including any interest paid.

(5) In respect of the continuance of other rights and liabilities—

(a) nothing in this Act shall affect any person's liability to be prosecuted or punished for any offence or breach committed under the principal Act before the effective date or any proceeding brought, sentence imposed or action taken before the effective date in respect of such offence or breach; and

(b) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

(6) In respect of corporate proposals—

(a) any action, rules, regulation, order, direction, notification, approvals, decision and other executive act howsoever called, made, given or done under, or in accordance with, or by virtue of Division 1 of Part VI of the principal Act before the effective date, shall in so far as it is consistent with the provisions of this Act, be deemed to have been made, given or done under or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in force and have effect in relation to the persons, activities or transactions to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of this Act; and

(b) any application for an approval, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission by virtue of Division 1 of Part VI of the principal Act before the effective date, and pending immediately before the effective date, shall be deemed to be made under the corresponding provision in this Act.

[Ins. Act A1437/2012]

Prevention of anomalies

28. (1) If any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the Gazette, make such modifications in any one or more of those provisions as may appear to him to be necessary to give full effect to the provisions of this Act or to prevent anomalies.

(2) The Minister shall not exercise the power conferred under subsection (1) after the expiration of two years from the effective date.

[Ins. Act A1437/2012]

Revocation of subsidiary legislation

46. (1) For the purposes of this section and sections 47, 48 and 49—

"effective date" means the relevant date of coming into operation of this Act or the respective provisions of this Act.

(2) The Capital Markets and Services (Prescription of Islamic Securities) Oder 2012 [*P.U. (A) 478/2012*] and the Capital Markets and Services (Prescription of Capital Market Product)(Islamic Capital Market Product) Order 2012 [*P.U.(A) 479/2012*] are revoked with effect from the effective date.

[Ins. Act A1499/2015]

Saving and transitional

47. (1) In respect of the continuance of rights and liabilities—

(a) nothing in this Act shall affect any person's liability to be prosecuted or punished for any offence or breach committed under the principal Act before the effective date or any proceeding brought, sentence imposed or action taken before the effective date in respect of such offence or breach; and

(b) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

(2) In respect of Islamic securities, Islamic derivatives or Islamic capital market products prescribed under the Capital Markets and Services (Prescription of Islamic

Securities) Order 2012 and the Capital Markets and Services (Prescription of Capital Market Product) (Islamic Capital Market Product) Order 2012—

(a) the Islamic securities, Islamic derivatives or Islamic capital market products shall be deemed to be Islamic securities, Islamic derivatives or Islamic capital market products under the corresponding provisions of the principal Act as amended by this Act with effect from the effective date;

(b) any action, rule, regulation, order, direction, notification, approval, decision and other executive act howsoever called, made, given or done under, or in accordance with, or by virtue of Division 1 of Part VI of the principal Act before the effective date, shall in so far as it is consistent with the provisions of this Act, be deemed to have been made, given or done under or in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act, and shall continue to remain in force and have effect in relation to the persons, activities or transactions to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act; and

(c) any application for an approval, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission by virtue of Division 1 of Part VI of the principal Act before the effective date, and pending immediately before the effective date, shall be deemed to be made under the corresponding provisions of the principal Act as amended by this Act.

[Ins. Act A1499/2015]

Approved bodies corporate for settlement of disputes in capital market deemed to have been approved

48. (1) Any body corporate approved by the Commission under the Capital Markets and Services (Dispute Resolution) Regulations 2010 [*P.U. (A) 437/2010*] before the effective date shall be deemed to be an approved body corporate under section 379 as introduced by this Act.

(2) In respect of the continuance of other rights and liabilities—

(a) nothing in this Act shall affect any person's liability to be prosecuted or punished for any offence or breach committed under the principal Act before the effective date or any proceeding brought, sentence imposed or action taken before the effective date in respect of such offence or breach; and

(b) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been made.

[Ins. Act A1499/2015]

Registered electronic facility deemed to be recognized market

49. (1) An electronic facility registered under subsection 34(1) of the principal Act before the effective date shall, from that date, be deemed to be a recognized market under this Act.

(2) Any condition or restriction imposed on such electronic facility shall be deemed to be a condition or restriction to its registration under subsection 34(1) as introduced by this Act.

(3) Unless otherwise notified in writing by the Commission, an application for registration as an electronic facility that is pending immediately before the effective date shall be deemed to be an application for a registration as a recognized market operator.

[Ins. Act A1499/2015]