

LAWS OF MALAYSIA
SECURITIES COMMISSION ACT, 1993
(Amendments 1998)
ACT 498

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SECURITIES COMMISSION ACT, 1993

(Act 498)

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

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

PART I

PRELIMINARY

1. Short title and commencement.

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

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

2. Interpretation.

In this Act, unless the context otherwise requires --

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

“associate” has the same meaning as in the Securities Industry Act 1983;

“central depository” means a company approved by the Minister under section 5 of the Securities Industry (Central Depositories) Act 1991-

(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(1)(a);

“clearing house” means a clearing house, by whatever name or designation, established or arranged to be established by an exchange for the registration of dealing in securities, or a clearing house approved under subsection 6B(1) of the Futures Industry Act 1993;

“Commission” means the Securities Commission established under section 3;

“committee” means any committee appointed by the Commission under section 18;

“company” means a company incorporated pursuant to the Companies Act 1965 or pursuant to any corresponding previous enactment;

“corporation” means any body corporate formed or incorporated or existing within Malaysia 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 the 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;

“Court” means –

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

(b) a Sessions Court or a Magistrate’s Court established under section 3 of the Subordinate Courts Act 1948 or a Sessions Court Judge or a Magistrate;

“dealing in securities” 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 --

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement 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;

“exchange” means a stock exchange established under subsection 8(2) of the Securities Industry Act 1983 or an exchange company;

“exchange company” means a company established under subsection 4(1) of the Futures Industry Act 1993;

“Fund” means the fund established under section 23;

“futures contract” has the same meaning as in the Futures Industry Act 1993;

“futures market” has the same meaning as in the Futures Industry Act 1993;

“licence” means any licence issued under Part IV of the Securities Industry Act 1983 or Part III of the Futures Industry Act 1993;

“licensed institution” means any institution licensed or deemed to be licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989;

“licensed person” means a person licensed under Part IV of the Securities Industry Act 1983 or Part III of the Futures Industry Act 1993;

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

“Minister” means the Minister for the time being charged with the responsibility for finance;

“officer” means any officer or servant appointed under section 20 and includes an Investigating Officer of the Commission appointed under section 35;

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

“record” includes record stored or recorded by means of a computer;

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

“stock exchange” means any body corporate which has been approved by the Minister under subsection 8 (2) of the Securities Industry Act 1983;

“securities” means debentures, stocks and shares in a public company or corporation, or bonds of any government or of any body, corporate or unincorporate, and includes any right or option in respect thereof and any interest in unit trust schemes;

“securities laws” means the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991, the Securities Commission Act 1993 and the Futures Industry Act 1993;

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

“trade”, in relation to futures contracts, has the same meaning as in the Futures Industry Act 1993;

“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 securities or any other property.

2A. References to “this Act” and “securities law”.

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

PART II

SECURITIES COMMISSION

3. Establishment of the Commission.

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

4. Membership of the Commission.

(1) The Commission shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman, who shall be an Executive Chairman;
- (b) four members representing the Government; and
- (c) four other persons.

(2) The Chairman shall be entrusted with the day-to-day administration of the Commission.

(3) In the event of the Chairman being absent or unable to act due to illness or any other cause, the Minister shall appoint any member of the Commission to carry out the functions of the Chairman.

5. Disqualification of members.

No person shall be appointed to be or shall remain as a member of the Commission who holds full-time office in any public listed company.

6. Tenure of office.

Subject to such conditions as may be specified in his instrument of appointment, a member of the Commission shall hold office for a term not exceeding three years and is eligible for reappointment.

7. Resignation and revocation.

(1) The appointment of any member may at any time be revoked by the Minister.

(2) A member may at any time resign his office by a written notice addressed to the Minister.

8. Vacation of office.

The office of a member of the Commission shall be vacated --

- (a) if he dies;
- (b) if he has been convicted of any offence under the law;
- (c) if he becomes bankrupt;

- (d) if he is of unsound mind or is otherwise incapable of discharging his duties; or
- (e) if he absents himself from three consecutive meetings of the Commission without leave of the Chairman.

9. Remuneration or allowance.

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

10. Meetings.

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

(2) The quorum of the Commission shall be five.

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

11. Commission may invite others to meetings.

The Commission may invite any person to attend any meeting or deliberation of the Commission 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.

12. Common seal.

(1) The Commission shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Commission may think fit.

(2) Until a seal is provided by the Commission, a stamp bearing the words "Securities Commission" may be used and shall be deemed to be the common seal of the Commission.

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

Provided that any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Commission, and any such document or instrument may be executed on behalf of the Commission by any officer or servant of the Commission generally or specifically authorised by the Commission in that behalf.

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

13. Disclosure of interest.

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

(2) (Deleted)

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

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

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

relating to the matter.

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

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

(6) (Deleted)

14. Minutes

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

(2) Any minutes made of meetings of the Commission or committee, if duly signed, shall, in any legal proceedings, be admissible as *prima facie* evidence of the facts stated therein and every meeting of the Commission or committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

15. Functions of the Commission.

(1) The Commission shall have the following functions:

- (a) to advise the Minister on all matters relating to securities and futures industries;
- (b) to regulate all matters relating to securities and futures contracts;
- (c) to ensure that the provisions of the securities laws are complied with;
- (d) to regulate the take-overs and mergers of companies;
- (e) to regulate all matters relating to unit trust schemes;
- (f) to be responsible for supervising and monitoring the activities of any exchange, clearing house and central depository;
- (g) to take all reasonable measures to maintain the confidence of investors in the securities and futures markets by ensuring adequate protection for such investors;
- (h) to promote and encourage proper conduct amongst members of the exchanges, clearing houses, central depository and all licensed persons;
- (i) to suppress illegal, dishonourable and improper practices in dealings in securities and trading in futures contracts, and the provision of investment advice or other services relating to securities or futures contracts;
- (j) to consider and make recommendations for the reform of the law relating to securities and futures contracts;
- (k) to encourage and promote the development of securities and futures markets in Malaysia including research and training in connection thereto;

- (l) to encourage and promote self-regulation by professional associations or market bodies in the securities and futures industries;
- (m) to license and supervise all licensed persons as may be provided for under any securities law;
- (n) to promote and maintain the integrity of all licensed persons in the securities and futures industries.
- (2) (Deleted)
- (3) The Commission shall have the functions and powers conferred upon it by or under the securities laws.
- (4) Nothing in paragraph (1)(l) shall limit or otherwise affect the functions of the Commission.

16. Powers of the Commission.

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

17. Delegation of Commission's functions or powers.

(1) The Commission may delegate any of its functions or powers, other than its power under section 44, to --

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

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

18. Commission may establish committee.

(1) The Commission may establish such committee as it considers necessary or expedient to assist it in the performance of its functions under this Act.

(2) The Commission may appoint any person to be a member of any committee established under subsection (1).

(3) A committee established under this section may elect any of its members to be chairman and may regulate its own procedure and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Commission.

(4) Meetings of a committee established under this section shall be held at such times and places as the chairman of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person for the purpose of advising it on any matter under discussion to attend any meeting of the committee but the person so invited shall not be entitled to vote at any such meeting.

(6) The members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Commission may determine.

(7) Section (5) shall apply to a member of a committee established under this section in the same manner as it applies to a member of the Commission.

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

(1) The Minister may, from time to time, give to the Commission directions of a general character not inconsistent with this Act relating to the Commission's functions and such directions shall be binding on the Commission.

(2) The Commission shall furnish the Minister with such returns, accounts and information with respect to the performance of any of its functions under the securities laws as the Minister may from time to time require.

20. Appointment of officers and servants of the Commission.

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

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

21. Regulations with respect to discipline.

(1) The Commission may from time to time, make regulations with respect to the discipline of its officers and servants.

- (2) The regulations made under this section may include provisions for--
 - (a) the interdiction with reduction in salary or in other remuneration; and
 - (b) the suspension without salary or other remuneration,

of an officer or servant of the Commission during the pendency of disciplinary proceedings against him.

(3) The regulations made under this section shall, in prescribing the procedure for disciplinary proceedings, provide for an opportunity for representations to be made by the person against whom the disciplinary proceedings are taken before a decision is arrived at by the Commission on the disciplinary charge laid against such person.

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

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

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

22A. Commission may establish and participate in body corporate.

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

PART III

FINANCE

23. The Fund.

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

- (2) The Fund shall consist of --
 - (a) such sums as may be provided from time to time for the purposes of this Act by Parliament;
 - (b) sums borrowed by the Commission for the purposes of meeting any of its obligations or discharging any of its duties;

- (c) levies payable under section 24;
- (d) fees or other charges imposed by the Commission; and
- (e) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions and powers.

24. Levies.

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

(2) In the case of every futures contract effected on a futures market of an exchange company, the person in the short position and the person in the long position in relation to futures contracts shall be liable to pay to the Commission a levy of such amount as may be specified by order of the Minister to be published in the *Gazette*; and different amounts may be specified in respect of different types or classes of futures contracts or different classes or categories of persons in respect of futures contracts.

(3) The exchanges shall collect and account to the Commission for the levy referred to in subsections (1) and (2).

(4) The amount of any levy payable under this section shall be recoverable as a civil debt due to the Commission.

(5) The Minister may make rules providing for --

- (a) the payment of the levies under this section; and
- (b) the keeping, examination and audit of the accounts of the exchanges relating to the collection of such levies.

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

25. Conservation of the Fund.

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

26. Expenditure to be charged on the Fund.

The Fund shall be expended for the purpose of --

- (a) paying any expenditure lawfully incurred by the Commission including legal fees and costs and other fees and costs, and the remuneration of officers and servants appointed and employed by the Commission, including the granting of loans, superannuation allowances or gratuities;
- (b) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act;
- (c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;
- (d) repaying any moneys borrowed under this Act and the interest due thereon; and
- (e) generally, paying any expenses for carrying into effect the provisions of this Act.

27. Commission's financial year.

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

28. Annual report.

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

29. Accounts.

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

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

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

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

30. Power to borrow.

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

31. Investment.

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

PART IV

ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

DIVISION I

PROPOSALS IN RELATION TO SECURITIES

32. Proposals to be submitted to the Commission.

(1) In this Division and the Schedule -

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

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

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

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

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

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

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

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

- (2) This section applies to a person who proposes to do any of the following:
 - (a) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia;
 - (b) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company, or to list such securities on a securities exchange outside Malaysia;
 - (c) make a bonus issue of securities of a public company other than by way of the capitalisation of unappropriated profits;
 - (d) by way of issue of securities, effect -
 - (i) a compromise or arrangement whether or not for the purposes of or in connection with a scheme, compromise or arrangement for the amalgamation of any two or more corporations or for reconstruction of any corporation;
 - (ii) an employee share or employee share option scheme; or
 - (iii) an acquisition of securities or assets;

- (e) apply for the listing of a corporation, or for the quotation of securities, on a stock market of a stock exchange;
- (f) distribute the assets of a public company to its members other than distribution in cash or distribution of assets to members of the public company on its winding up; or
- (g) effect a restructuring exercise involving an acquisition or disposal of assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed public company.

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

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

(5) The Commission may -

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

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

(7) Where the Commission is satisfied that -

- (a) there is a contravention of subsection 32B(1); or
- (b) there is a breach of any term or condition imposed under paragraph (5)(b); or
- (c) there is any change or development in the circumstances relating to a proposal occurring subsequent to the Commission giving its approval under subsection (5), and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the proposal,

the Commission may -

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

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

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

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

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

(10) Where -

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

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

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

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

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

(13) Any person who contravenes subsection (3),(4),(9) or (11) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

32A. Classes or categories of transactions or securities not subject to subsection 32(4).

- (1) Subsection 32(4) shall not apply to the following:
 - (a) such classes or categories of securities or classes or categories of transactions as specified in the Schedule;
 - (b) the making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase securities as may be prescribed by the Minister on the basis of the manner or total value thereof or the characteristics, types or numbers of investors in relation thereto;
 - (c) such categories or classes of securities as may be prescribed by the Minister.

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

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

32B. False or misleading statements, etc.

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

- (a) an applicant, any of its officers or associates;
- (b) a financial adviser or an expert; or

(c) any other person,

shall not -

(aa) submit or cause to be submitted any statement or information that is false or misleading;

(bb) submit or cause to be submitted any statement or information from which there is a material omission; or

(cc) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.

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

(a) the statement or information was true and not misleading;

(b) the omission was not material;

(c) there was no material omission; or

(d) the conduct in question was not misleading or deceptive.

(3) Where -

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

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

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

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

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

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

DIVISION 2
TAKE-OVERS, MERGERS AND COMPULSORY
ACQUISITIONS

33. Definition.

(1) In this Division

“acquirer” means -

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

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

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

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

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

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

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

“offeror” means a person who makes a take-over offer;

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

- (i) a director, secretary, executive officer or employee of the corporation;

- (ii) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation;
- (iii) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

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

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

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

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

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

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

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

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

- (a) a corporation and its related and associate corporations;
- (b) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;
- (c) a corporation and any pension fund established by it;
- (d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis;

- (e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation's funds and has ten per centum or more of the voting shares in that corporation; and
- (f) a person who owns or controls twenty per centum or more of the voting shares of a corporation falling within paragraph (a) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within paragraph (a).

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

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

33A. Malaysian Code on Take-Overs and Mergers.

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

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

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

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

- (a) issue rulings from time to time, interpreting the Code;
- (b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and

- (c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission deems fit with respect thereto.

(5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure -

- (a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer -
 - (i) are aware of the identity of the acquirer and offeror;
 - (ii) have reasonable time in which to consider a take-over offer; and
 - (iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;
- (b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control;
- (c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and
- (d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

33B. Compliance with Code and rulings.

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

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

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

(4) Any person who contravenes subsection (1),(2) or (3) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

33C. Exemptions.

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

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

33D. Action by Commission in cases of non-compliance with Code and rulings.

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

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

- (iii) to remove from the official list the corporation or the class of securities of the corporation;
- (f) where the defaulting person is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities; or
- (g) direct a stock exchange to prohibit the defaulting person from engaging in transactions to be executed through the use of the facilities of the stock exchange.

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

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

33E. False or misleading documents, information, etc.

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

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

shall not-

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

(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries

as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that -

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

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

34. Compulsory acquisition.

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

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

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

- (4) Any person who -

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

shall be guilty of an offence.

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

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

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

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

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

- (a) send a copy of the notice to the offeree together with an instrument of transfer executed on behalf of a dissenting shareholder by a person appointed by the offeror; and
- (b) pay, allot or transfer to the offeree the amount or other consideration for the shares to which the notice relates,

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

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

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

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

34A. Right of minority shareholder.

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

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

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

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

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

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

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

34B. Application to Court.

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

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

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

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

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

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

(5) Subject to subsection (6), the Court may, on an application made by an offeror who has not obtained acceptances to the extent necessary for entitling him to give notice under subsection 34(1), make an order authorising the offeror to give notices under subsection 34(1).

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

- (a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares

to which the take-over offer relates after having made reasonable enquiries;

- (b) the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the take-over offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in subsection 34(1); and
- (c) the consideration offered is fair and reasonable:

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

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

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

PART V

ENFORCEMENT AND INVESTIGATION

35. Appointment of Investigating Officers of the Commission

(1) The Commission may appoint such number of investigating officers to be known as Investigating Officers of the Commission as it considers necessary for the purposes of carrying out investigation of any offence under this Act, the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991 and the Futures Industry Act 1993.

(2) An Investigating Officer of the Commission appointed under subsection (1) shall have all the powers given to any person for the purposes of carrying out investigation of any offence under this Act, the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991 and the Futures Industry Act 1993.

35A. Examination of licensed persons.

(1) The Commission may, from time to time examine, without any prior notice, the books or other documents, accounts and transactions of a licensed person.

(2) For the purposes of this section and section 35B, "licensed person" means a licensed person as defined in section 2 and includes --

- (a) a stock exchange, an exempt fund manager and a recognised clearing house as defined in the Securities Industry Act 1983; and
- (b) a central depository, an authorised depository agent and an authorised nominee as defined in the Securities Industry (Central Depositories) Act 1991.

35B. Production of licensed persons' books, etc.

(1) For the purposes of an examination under section 35A the licensed person under examination and its directors and officers shall accord any person carrying out the examination access to all its books or other documents and accounts, including documents of title to its assets, all securities held by it in respect of securities transactions, all its cash, and to all such documents, information and facilities as may be required by that person for the purpose of the examination, and shall produce to that person all such books or other documents, accounts, titles, securities or cash, and give all such information, as he may require, but so far as is consistent with the conduct of the examination, such books or documents, accounts, titles, securities and cash shall not be required to be produced at such times or at such places as may interfere with the proper conduct of the normal daily business of that licensed person.

(2) Notwithstanding subsection (1), any person authorised by the Commission in writing for this purpose may take possession of any books or other documents, accounts, titles, securities or cash to which he has access under subsection (1) if in his opinion –

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

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

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

36. Powers of the Investigating Officers of the Commission.

(1) An Investigating Officer of the Commission carrying out an investigation of inspection may enter any place or building and may --

(a) inspect and make copies of or take extracts from any book, minute book, register or document; and

(b) where he has reason to believe that an offence has been committed against a securities law search for, seize, take possession of and detain any object, article, material, thing, account, book or other document, including any travel or other personal document, which may be used as evidence.

(2) An Investigating Officer of the Commission may by notice in writing require any person to produce to him such books, registers or documents as are in the custody or under the control of that person.

- (3) A person who -
 - (a) fails to produce any such books, registers or documents as required by an Investigating Officer of the Commission; or
 - (b) obstructs or hinders an Investigating Officer of the Commission while exercising any of the powers under this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

(4) An Investigating Officer of the Commission may grant permission to any person to inspect any accounts, book or other document seized and taken possession of by the Investigating Officer of the Commission under subsection (1) if such person is entitled to inspect such accounts, book or document under this Act.

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

36A. Procedure by Investigating Officer on seizure of property.

(1) A list of all things seized in the course of an inspection made under section 36 and of the place or building in which they are respectively found shall be prepared by the Investigating Officer of the Commission conducting the search and signed by him.

(2) The occupant of the place or building entered under subsection 36(1), or some person in his behalf, shall in every instance be permitted to attend during the inspection, and a copy of the list prepared and signed under subsection (1) shall be delivered to such occupant or person at his request.

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

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

(5) Where the Investigating Officer of the Commission is unable to determine the person who is lawfully entitled to the property or where there is more than one claimant to such property, the Investigating Officer of the Commission shall report the matter to a Magistrate who shall then order that the property be dealt with as provided for in section 36B.

(6) For the purpose of this section and of sections 36B and 36C, "property" includes books and other documents.

36B. Procedure by Magistrate in respect of property seized.

(1) Where a report is forwarded to the Magistrate by an Investigating Officer of the Commission under section 36A(5), the Magistrate shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession of the property or, if such persons cannot be ascertained, respecting the custody and production of such property.

(2) If the person entitled to the property is known, the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall, if he makes such order, cause a notice to be served on such person informing the person of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than forty-eight hours) as the Magistrate may in such notice prescribe.

(3) If the person to whom the property has been ordered to be delivered under subsection (2) neglects or omits to take delivery of such property within the period prescribed, the Magistrate may, where such property is subject to speedy and natural decay or where in his opinion its value is less than fifty ringgit, direct that such property be sold and the net proceeds of such sale shall, on demand, be paid over to the person entitled thereto.

(4) If the person entitled to the possession of such property is absent from Malaysia and the property is subject to speedy and natural decay or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner or that the value of such property is less than fifty ringgit, the Magistrate may, at any time, direct it to be sold and subsection 36C(4) shall apply to the net proceeds of such sale.

(5) If the person entitled to the property is unknown, the Magistrate may direct that the property be detained in the custody of the Investigating Officer of the Commission.

(6) Notwithstanding subsection (5), if the person entitled to the property is unknown and it is shown to the satisfaction of the Magistrate that such property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate to render impracticable the sale, as provided in section 36C, of such property or as to make its detention in the custody of the Investigating Officer of the Commission unreasonable in view of the expense or inconvenience that would thereby involve, the Magistrate may order such property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification referred to in subsection 36C(1) as he may determine or forthwith as he thinks fit.

36C. Procedure in respect of property detained in Investigating Officer's custody.

(1) Where a Magistrate has directed under subsection 36B(5) that any property seized be detained in the custody of an Investigating Officer of the Commission, the Chairman acting on behalf of the Commission, shall issue a public notification specifying the articles of which the property consists and requiring any person who has any claim to make such a claim within six months from the date of such public notification.

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

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

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

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

36D. Surrender of travel documents.

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

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

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

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

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

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

whichever occurs earlier.

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

(6) No legal proceedings shall be instituted or maintained against the Government, an officer of the Commission, a public officer or any other person, in respect of anything lawfully done under this section.

37. Forcible entry.

(1) For the purpose of exercising his powers under paragraph 36(1) (b) an Investigating Officer of the Commission may enter any place or building by force, if necessary.

(2) Notwithstanding subsection (1), no Investigating Officer of the Commission shall enter any premises by the use of force without a search warrant by a Magistrate unless he has reasonable grounds for believing that, by reason of the delay in obtaining a search warrant, any object, article, material, thing, accounts, book or other document referred to in paragraph 36(1) (b) may be interfered with or destroyed or the object of any entry is likely to be frustrated.

38. Power to call for examination.

(1) If an Investigating Officer of the Commission carrying out an investigation under any securities law suspects or believes on reasonable grounds that any person can give information relevant to a matter that he is investigating, the Investigating Officer of the Commission may by notice in writing to such person require such person –

(a) to give to the Investigating Officer of the Commission all reasonable assistance in connection with the investigation; and

(b) to appear before a specified Investigating Officer of the Commission or specified Investigating Officers of the Commission to be examined orally.

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

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

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

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

(3A) An examination of a person under subsection (1) shall take place in private and the Investigating Officer of the Commission or Investigating Officers of the Commission examining him may give directions about who may be present during the examination, or during any part of it.

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

(5) Any person who --

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

(b) refuses to answer any question put to him by an Investigating Officer of the Commission as required under subsection (2); or

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

38A. Destruction, concealment, mutilation and alteration of records.

Any person who –

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

any record or account in his possession that is required to be produced under this Part with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, audit or investigation, or the exercise of any power under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

PART VI

GENERAL

39. Conduct of prosecution.

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

(2) (deleted)

39A. General Penalty.

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

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

39B. Offences by body corporate.

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

(2) Where a person convicted in respect of any offence under this Act is a body corporate, every person who at the time of the commission of the offence was a director, an executive officer, an employee or the secretary of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to

exercise having regard to the nature of his functions in that capacity and to all the circumstances.

39C. Compounding of offences.

(1) The Chairman of the Commission may, with the consent of the Public Prosecutor, compound any offence under this Act or the regulations made under this Act which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the sum of money referred to in subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any goods such goods shall be released, subject to such conditions as may be imposed in accordance with the conditions of the composition.

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

39D. Protection of informers and information.

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

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court tribunal or authority before which the proceedings are held shall cause all parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(4) Subsections (1) and (2) shall not apply to any investigation into, or prosecution of, any offence under subsection (3).

39E. Offences under securities law are seizable offences.

Every offence punishable under a securities law shall be a seizable offence, and a police officer not below the rank of Inspector, or an Investigating Officer of the Commission appointed under subsection 35(1), may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

39F. Duty of Investigating Officer to make over arrested person to the police.

If an Investigating Officer of the Commission appointed under section 35(1) makes an arrest under section 39E he shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested shall be dealt with in accordance with the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

39G. Detention of person arrested

Notwithstanding any other provision in any other written law relating to criminal procedure, a Magistrate authorising the detention of a person arrested under section 39E shall authorise the detention of the person arrested in the custody of the police.

40. Public servants.

All members of the Commission or any of its committee or any officer, servant or agent of the commission while discharging their duties as such members, officers, servants or agents shall be deemed to be public servants within the meaning of the Penal Code.

41. Power to engage persons to render assistance.

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

42. Power to review.

(1) The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

(2) 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.

42A. Decision of Commission shall be final.

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

43. Obligation of secrecy.

(1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorised by the Commission, no member of the Commission or any of its committees or any officer, servant or agent of the Commission or any person attending any meeting of the Commission or any of its committees shall disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of this Act.

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

43A. Assistance to police or other public officer.

Notwithstanding section 43, the Commission may, at its own initiative, or at the request of a public officer -

- (a) supply to a police officer or any other public officer a copy of any book or other document seized, detained or taken possession of under section 36 or of any record of examination made under section 38, or of any statement made under subsection 38(3), or of any book or other document produced under subsection 36(2), or otherwise in the course of any examination under section 38, and such police officer or other public officer may make use of such copy of such book statement, record or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or
- (b) allow a police officer or any other public officer to have access to and inspect any property, book, other document, article or thing which had been produced before, or seized, detained or taken possession of by an

Investigating Officer under this Act, and such police officer or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

43B. Assistance to and co-operation with foreign supervisory authorities.

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

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

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

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

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

43C. Power of Commission to require information.

Where under this Act, power is given to the Commission to require any person, or where any person is required under this Act, to submit to the Commission any information, document or book, the Commission may require that the same shall be submitted within such period, at such intervals, in such manner, in such form, and in writing or by means of any visual recording (whether of still or moving images) or sound recording, or any electronic, magnetic, mechanical or other recording whatsoever, on any substance, material, thing or article, as the Commission may set out in the specification.

44. Power to make regulations.

(1) The Commission may, with the approval of the Minister, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for --

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing fees to be paid in respect of any matter required for the purposes of this Act;
- (c) prescribing the principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition;
- (d) all matters relating to proposals referred to in subsection 32(2); and
- (e) all matters which by this Act are required or permitted to be prescribed.

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

44A. Indemnity.

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

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

PART VII

REPEAL AND TRANSITIONAL PROVISIONS

45. Repeal.

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

46. Saving.

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

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

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

(2) All applications pending under the repealed sections shall be dealt with under this Act by the Commission as if they had been made under the provisions of this Act.

48. Continuance of criminal and civil proceedings.

(1) Subject to the provisions of this Act, neither the repealed sections nor anything contained in this Act shall affect any person liable to be prosecuted or punished for offences committed under the repealed sections before the appointed day, or any proceedings brought or sentence imposed before that day in respect of such offence.

(2) Subject to the provisions of this Act, any proceedings, whether civil or criminal, or cause of action pending or existing immediately before the appointed day, by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers or any person acting on behalf of the Capital Issues Committee or the Panel On Take-Overs And Mergers may be continued or instituted by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers as it might have been continued or instituted by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers or such person if this Act had not been passed.

(3) Any appeal brought or any leave to appeal applied for on or after the appointed day against a decision given in any legal proceedings before that day may be

brought by or against the Commission as it might have been brought by or against the Capital Issues Committee or the Panel On Take-Overs And Mergers if this Act had not been passed.

SCHEDULE

(Subsection 32A (1))

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

1. The issuance of securities by or guaranteed by the Government or the Central Bank of Malaysia.
2. Securities of a private company.
3. Bonus issues of securities of a public company which is not listed.
4. Securities which are permitted by the Central Bank of Malaysia to be traded in the money market.
5. Making available or creation of, or issuance or execution of -
 - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) cheques or other bills of exchange, a banker's draft or a letter of credit; or
 - (c) a banknote, a statement showing a balance in a current, deposit or savings account, or (by reason of any financial obligation contained in it) a charge or other disposition of property, or an insurance policy.
6. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
7. An offer or invitation to enter into an underwriting agreement or is made or issued to an underwriter under such an underwriting agreement.
8. An issue or allotment of securities to an underwriter under an underwriting agreement.
9. An offer or invitation with respect to securities of a corporation which is not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 39A of the Companies Act 1965 applies.

10. The making available, offering for subscription or purchase or issuing an invitation to subscribe for or purchase, securities of a corporation to existing members of a company within the meaning of section 270 of the Companies Act 1965.
11. Issuance or allotment of securities by a listed corporation pursuant to the exercise of a warrant, convertible note, option or transferable subscription right, in respect of which the Commission has given its prior approval under subsection 32(4).