



LAWS OF MALAYSIA

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Act 498

SECURITIES COMMISSION ACT 1993

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LAWS OF MALAYSIA**Act 498****SECURITIES COMMISSION ACT 1993**

ARRANGEMENT OF SECTIONS

PART I**PRELIMINARY**

Section

1. Short title and commencement
2. Interpretation
 - 2A. References to “this Act” and “securities law”
 - 2B. Prescription of securities
 - 2C. Regulations on procedure and manner of registration or lodgement
 - 2D. Registers
 - 2E. Electronic filing of books
 - 2F. Power of Commission to specify form and manner of keeping or maintaining books
 - 2G. Power of Commission to access books kept or maintained otherwise than in writing
 - 2H. Power of Commission to require production, *etc.* of books kept or maintained otherwise than in writing

PART II**SECURITIES COMMISSION**

3. Establishment of the Commission
4. Membership of the Commission
5. Disqualification of members

Section

6. Tenure of office
7. Resignation and revocation
8. Vacation of office
9. Remuneration or allowance
10. Meetings
11. Commission may invite others to meetings
12. Common seal
13. Disclosure of interest
14. Minutes
15. Functions of the Commission
16. Powers of the Commission
17. Delegation of Commission's functions or powers
18. Commission may establish committee
19. Power of the Minister to give directions and require information
20. Appointment of officers and servants of the Commission
21. Regulations with respect to discipline
22. Power to grant loans and make advances to its officers and servants
- 22A. Commission may establish and participate in body corporate

PART III

FINANCE

23. The Fund
24. Levies
25. Conservation of the Fund
26. Expenditure to be charged on the Fund
27. Commission's financial year
28. Annual report
29. Accounts
30. Power to borrow
31. Investment

PART IV

ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

DIVISION 1

Proposals in Relation to Securities

Section

- 32. Proposals to be submitted to the Commission
- 32A. Classes or categories of transactions or securities not subject to subsection 32(4)
- 32B. False or misleading statements, *etc.*

DIVISION 2

Take-Overs, Mergers and Compulsory Acquisitions

- 33. Definition
- 33A. Malaysian Code on Take-Overs and Mergers
- 33B. Compliance with Code and rulings
- 33C. Exemptions
- 33D. Action by Commission in cases of non-compliance with Code and rulings
- 33E. False or misleading documents, information, *etc.*
- 34. Compulsory acquisition
- 34A. Right of minority shareholder
- 34B. Application to Court
- 34C. Section 180 of the Companies Act 1965 shall not apply to take-over offers to which subsection 34(1) applies

DIVISION 3

Prospectus

- 35. Definitions
- 36. Invitation
- 37. Offer for subscription or purchase
- 38. Excluded offers and invitations

Section

39. Excluded issues
40. Exceptions
41. Requirement to register prospectuses in relation to securities
42. Registration of prospectus
43. Requirement to lodge prospectus with Registrar
44. Contents of prospectus
45. General duty of disclosure in prospectus
46. Abridged prospectus for renounceable rights issues
47. Supplementary prospectus
48. Consequences of registering a supplementary prospectus
49. Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, *etc.*
50. Restrictions in advertising
51. Document containing offer of securities for purchase deemed to be a prospectus
52. Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made
53. Consent from person to issue of prospectus containing statement by him
54. Order to stop issue of securities
55. Criminal liability for false statements, *etc.*, in prospectus
56. Persons not to be taken to have authorized or caused issue of prospectus
57. Right to recover for loss or damage resulting from false or misleading statement in prospectus, *etc.*
58. Civil liability for misleading or deceptive acts
59. Due diligence defence
60. Reliance on statement and information in respect of false or misleading statement
61. Reliance on statement and information in respect of misleading or deceptive act
62. Reliance on public official statement in respect of false and misleading statement
63. Defence of withdrawal of consent
64. Restriction on offering securities for subscription or purchase
65. Agreements to exclude or restrict liability void

DIVISION 4

DEBENTURES

*Subdivision 1—Trust deeds, duties of trustees,
borrowers, etc.*

Section

66. Application of Division 4 of Part IV
67. Requirement for trust deed and trustee
68. Form and contents of trust deeds
69. Persons who can be trustees
70. Existing trustee continue to act until new trustee takes office
71. Replacement of trustee
72. Duties of the borrower
73. Duty of borrower to replace trustee
74. Duty of borrower to inform trustee about charge, *etc.*
75. Duty of borrower to give trustee and Commission quarterly reports
76. Duty of borrower to inform trustee and Commission of occurrence of material event
77. Duty of borrower where prospectus states purpose or project for which moneys are to be applied
78. Obligations of directors of borrower to deliver financial statements
79. Borrower to issue document evidencing indebtedness, *etc.*
80. Duties of guarantors
81. Obligations of directors of guarantor to deliver financial statements
82. Duties of trustees
83. Exemption and indemnification of trustee from liability
84. Indemnity of trustee
85. Duty of auditor to trustee for debenture holders
86. Duty of borrower to call a meeting
87. Power of trustee to call a meeting
88. Court may order a meeting of debenture holders
89. Powers of Commission to protect interests of debenture holders
90. General power of Court to give directions and determine questions
91. Specific Court powers

Subdivision 2—General

Section

- 92. Register of debenture holders
- 93. Specific performance
- 94. Perpetual debentures
- 95. Reissue of redeemed debentures

DIVISION 5

UNIT TRUST SCHEMES AND PRESCRIBED INVESTMENT
SCHEMES

- 96. Definition
- 97. Requirement for trustee and deed
- 98. Approval of trustee and management company
- 99. Persons who can be trustees
- 100. Existing trustee to continue to act until new trustee takes office
- 101. Replacement of trustee
- 102. Registration of deed
- 103. Contents of deed
- 104. Modification of deed through supplementary deed
- 105. Deed to be lodged with Commission
- 106. Duties of a management company
- 107. Duty of management company to lodge returns, *etc.*
- 108. Duty of management company to replace trustee
- 109. Duties of trustee
- 110. Duty of trustee to wind up scheme
- 111. Duties of management company and trustee under general law
- 112. Exemptions and indemnification of trustee from liability
- 113. Indemnity of trustee
- 114. Duty of management company to call meeting of unit holders
- 115. Power of trustee to call a meeting
- 116. Court may order a meeting of unit holders
- 117. Register of unit holders
- 118. Where register is to be kept

Section

- 119. Closure and inspection of register
- 120. Power of Court to rectify register
- 121. Branch register
- 122. Rights of trustee, executor, administrator in relation to a deceased unit holder
- 123. Power of Court to make orders
- 124. Disapplication of Division 5 of Part IV

PART IVA

AGREEMENT OR ARRANGEMENT FOR TRANSFER
OF BUSINESS

- 124A. Definitions
- 124B. Application to High Court to facilitate agreement or arrangement for transfer of whole or part of business of licensed persons, exempt fund manager and exempt futures fund manager

PART V

ENFORCEMENT AND INVESTIGATION

- 125. Appointment of Investigating Officers of the Commission
- 126. Examination of licensed persons
- 127. Production of licensed person's books, *etc.*
- 128. Powers of Investigating Officers of the Commission
- 129. Procedure by Investigating Officer on seizure of property
- 130. Procedure by Magistrate in respect of property seized
- 131. Procedure in respect of property detained in Investigating Officer's custody
- 132. Surrender of travel documents
- 133. Forcible entry
- 134. Power to call for examination
- 135. Destruction, concealment, mutilation and alteration of records

PART VI

GENERAL

Section

136. Conduct of prosecution
137. General penalty
138. Offences by bodies corporate
139. Compounding of offences
140. Protection of informers and information
141. Offences under securities law are seizable offences
142. Duty of Investigating Officer to make over arrested person to the police
143. Detention of arrested person
144. Public servants and public officers
145. Power to engage persons to render assistance
146. Power to review
147. Decision of Commission shall be final
148. Obligation of secrecy
149. Assistance to police or other public officer
150. Assistance to and co-operation with foreign supervisory authorities
151. Power of Commission to require information
- 151A. Evidential provision
152. Disclosure of information to Commission
153. Civil liability of person in contravention of this Act
154. Officers of Commission may represent Commission in civil proceedings
155. Commission may recover loss or damage
156. Reference to conduct
157. Attempts, abetments and conspiracies
158. Written notices, circulars, conditions or guidelines
159. Power to make regulations
160. Indemnity

PART VII

REPEAL AND TRANSITIONAL PROVISIONS

Section

- 161. Repeal
- 162. Saving
- 163. Continuance of other rights, liabilities, *etc.*, under the repealed sections
- 164. Continuance of criminal and civil proceedings
- 165. Transitional and savings
- 166. Prevention of anomalies

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

SCHEDULE 4

SCHEDULE 5

LAWS OF MALAYSIA

Act 498

SECURITIES COMMISSION ACT 1993

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

[1 March 1993, P.U. (B) 57/1993]

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

PART I

PRELIMINARY

Short title and commencement

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

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

Interpretation

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

“affiliate” has the same meaning as in the Futures Industry Act 1993 [*Act 499*];

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

“associated person” shall be construed as provided under section 3 of the Securities Industry Act 1983 [*Act 280*];

“books” has the same meaning as in the Securities Industry Act 1983 [*Act 280*];

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

“Central Bank of Malaysia” means the Central Bank established under the Central Bank of Malaysia Act 1958 [*Act 519*];

“central depository” means a company approved by the Minister under section 5 of the Securities Industry (Central Depositories) Act 1991 [*Act 453*]—

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

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

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

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

“Chairman” means the Chairman of the Commission appointed under paragraph 4(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 [*Act 499*];

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

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

“company” means a company incorporated pursuant to the Companies Act 1965 [*Act 125*] 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 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 [*Act 92*] 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;

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

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;
- (b) a cheque, banker’s draft or any other bill of exchange or a letter of credit;
- (c) a banknote, an insurance policy or a guarantee;
- (d) a statement, passbook or other document showing any balance in a current, deposit or savings account;
- (e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or
- (f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*;

“Deputy Chief Executive” means the Deputy Chief Executive appointed under paragraph 4(1)(aa);

“director” includes a reference to—

- (a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position;
- (b) a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;
- (c) an alternate or substitute director; or
- (d) in the case of a corporation formed or incorporated or existing outside Malaysia—
 - (i) a member of the corporation’s board of directors or governing body;

- (ii) a person occupying or acting in the position of a member of the corporation's board, by whatever name called and whether or not validly appointed to occupy, or duly authorized to act in, the position; or
- (iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act;

“document” has the same meaning as in the Evidence Act 1950 [*Act 56*];

“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;

“exchange holding company” has the same meaning as in the Securities Industry Act 1983;

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

“Fund” means the fund established under section 23;

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

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

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

“issue” means—

- (a) in relation to securities, to bring or cause to be brought into existence those securities; and
- (b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

“issuer” means—

- (a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;
- (b) in the case of units of a unit trust scheme or prescribed investment scheme, the management company;
- (c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

“licence” means 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 [*Act 372*];

“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;

“management company” means a company by which or on whose behalf a unit of a unit trust scheme or prescribed investment scheme has been or is proposed to be issued or offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made and includes any person for the time being exercising the functions of the management company;

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

“officer” means any officer or servant appointed under section 20 and includes an Investigating Officer of the Commission appointed under section 125;

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

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

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

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

“prescribed investment” means an interest as defined under subsection 84(1) of the Companies Act 1965 that has been exempted under section 96 of the Companies Act 1965 and in respect of which the Minister has made a prescription under subsection 2B(3);

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

“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;

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

“securities” means—

- (a) debentures, stocks or bonds issued or proposed to be issued by any government;
- (b) shares in or debentures of, a body corporate or an unincorporated body; or
- (c) unit trusts or prescribed investments,

and includes any right, option or interest in respect thereof;

“securities laws” means the Securities Industry Act 1983, the Securities Industry (Central Depositories) Act 1991, the Securities Commission Act 1993 [*Act 498*] and the Futures Industry Act 1993;

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

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

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

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

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

- (i) securities;
- (ii) futures contracts; or
- (iii) any other property;

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

(2) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend Schedule 2, Schedule 3 or any prescription made under paragraph 38(1)(b) or 39(1)(b), as the case may be, and upon such publication, Schedule 2, Schedule 3 or the prescription, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

References to “this Act” and “securities law”

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

Prescription of securities

2B. (1) Notwithstanding the definition of “securities” under this Act, “futures contract” under the Futures Industry Act 1993 and “interest” as defined in subsection 84(1) of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette*, prescribe any instrument or product or class of instruments or products to be—

- (a) securities for the purposes of this Act or the Securities Industry Act 1983 or any particular provision of this Act or the Securities Industry Act 1983; or
- (b) futures contracts for the purposes of this Act or the Futures Industry Act 1993 or any particular provision of this Act or the Futures Industry Act 1993.

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

- (a) securities for the purposes of this Act or the Securities Industry Act 1983 or any particular provision of this Act or the Securities Industry Act 1983; or
- (b) a futures contract for the purposes of this Act or the Futures Industry Act 1993 or any particular provision of this Act or the Futures Industry Act 1993.

(3) Where the Minister has made a prescription under subsection (1) or (2) in respect of securities or futures contracts, the Minister may prescribe—

- (a) in the case of securities, any provision of Part IV to apply to such securities;
- (b) in the case of futures contracts, any provision of the Futures Industry Act 1993 to apply to such a futures contract.

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

Regulations on procedure and manner of registration or Lodgement

2c. Where any instrument or document is required to be registered by or lodged with the Commission under this Act, the Commission, with the approval of the Minister, may make such regulations as may be expedient or necessary relating to the procedure or manner of registration or lodgement of such instrument or document.

Registers

2d. (1) The Commission may keep such registers as it considers necessary in such form as it deems fit.

(2) Any person may, on payment of the prescribed fee—

- (a) inspect any prospectus or deed relating to a unit trust scheme or prescribed investment scheme that is lodged with the Commission; or
- (b) require a copy of or extract from any document that he is entitled to inspect pursuant to paragraph (a).

(3) If a reproduction or transparency of a document is produced for inspection, a person is not entitled pursuant to paragraph (2)(a) to require the production of the original of that document.

(4) The reference in paragraph (2)(b) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document.

(5) A copy of or extract from any document, including a copy produced by way of microfilm, lodged with the Commission and certified to be a true copy or extract by any officer authorized by the Commission shall in any proceedings be admissible in evidence as of equal validity with the original document.

(6) A reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

Electronic filing of books

2E. (1) The Commission may provide a service for the electronic filing, lodging or submission of books required by any of the provisions of the securities laws to be filed or lodged with or submitted to the Commission.

(2) A person who intends to use the service provided under subsection (1) shall become a subscriber to the service by paying the prescribed fee, if any, and by complying with such terms and conditions as may be determined by the Commission.

(3) Only a subscriber to the service provided under subsection (1), or such other person as the Commission may allow, may electronically file or lodge books with or submit books to the Commission.

(4) A book electronically filed, lodged or submitted under this section shall be deemed to have satisfied the requirement for filing, lodgement or submission if the book is communicated or transmitted to the Commission in such manner as may be specified by the Commission.

(5) The Commission may specify the books that may be electronically filed, lodged or submitted.

(6) A book that is required to be stamped, signed or sealed shall, if it is to be electronically filed, lodged or submitted, be certified or authenticated in such manner as may be specified by the Commission.

(7) A copy of or an extract from any book electronically filed or submitted to the Commission under subsection (1), supplied or issued by the Commission and certified to be a true copy thereof or extract therefrom by any officer authorized by the Commission, shall be admissible in evidence in any proceedings as of equal validity as the original book.

(8) Where a book is electronically filed or lodged with or submitted to the Commission, the Commission or its authorized agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission, of whatever nature or however arising, appearing in any book obtained by any person under the service referred to in subsection (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Commission or of its authorized agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

Power of Commission to specify form and manner of keeping or maintaining books

2F. (1) Where under any of the provisions of the securities laws any person is required, or power is given to the Commission to require any person, to keep or maintain any book, the Commission may specify the form and manner in which such book is to be kept or maintained.

(2) The person referred to in subsection (1) shall take all reasonable precautions, including such precautions as may be specified by the Commission, to prevent damage to, or destruction or falsification of, such book.

Power of Commission to access books kept or maintained otherwise than in writing

2G. (1) Where under any of the provisions of the securities laws, power is given to the Commission to allow the Commission to inspect and make copies of or take extracts from any book required under any of the provisions of the securities laws to be kept or maintained, the Commission shall have access to the book and may—

- (a) obtain clear reproductions in writing; or
- (b) copy or move it to a storage or recording device.

(2) For the purposes of this section, the Commission may require any person involved in the compilation of the book, or in the storing or recording of the book in a storage or recording device, to make a statement providing an explanation of how to secure access to the book.

Power of Commission to require production, etc., of books kept or maintained otherwise than in writing

2H. (1) Where under any of the provisions of the securities laws, power is given to the Commission to allow the Commission to require the production of, search for, seize, take possession of, secure against interference or detain any book, the Commission may require the production of, search for, seize, take possession of, secure against interference or detain any storage or recording device in which the book is stored or recorded.

(2) For the purposes of this section, the Commission may require any person who is involved in the compilation of the book, or in the storing or recording of the book in a storage or recording device, to make a statement providing an explanation of how to secure access to the book.

PART II

SECURITIES COMMISSION

Establishment of the Commission

3. 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.

Membership of the Commission

4. (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;
- (aa) a Deputy Chief Executive;
- (b) four members representing the Government; and
- (c) three 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 Deputy Chief Executive shall carry out the functions of the Chairman.

Disqualification of members

5. 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.

Tenure of office

6. 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.

Resignation and revocation

7. (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.

Vacation of office

8. 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.

Remuneration or allowance

9. 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.

Meetings

10. (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.

Commission may invite others to meetings

11. 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.

Common seal

12. (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 authorized by the Commission, and shall be authenticated by either the Chairman or such authorized

person or by any officer authorized 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 authorized by the Commission in that behalf.

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

Disclosure of interest

13. (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 by Act A926).*

(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 by Act A926*).

Minutes

14. (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 thereof to have been duly qualified to act.

Functions of the Commission

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

- (a) to advise the Minister on all matters relating to securities and futures industries;
- (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 holding company, 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 participating organizations, participants, affiliates, depository participants and all licensed or registered persons of an exchange, clearing house and central depository, as the case may be;
- (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 by Act A987).*

(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.

(5) For the purposes of this section, “depository participants” means persons to whom section 9 of the Securities Industry (Central Depositories) Act 1991 apply.

Powers of the Commission

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

Delegation of Commission's functions or powers

17. (1) The Commission may delegate any of its functions or powers, other than its power under section 159, 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.

Commission may establish committee

18. (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.

Power of the Minister to give directions and require information

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

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

Appointment of officers and servants of the Commission

20. (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 their dependants of such retirement benefits, gratuities or other allowances as it may determine.

Regulations with respect to discipline

21. (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.

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

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

(2) In this section, the term “officers and servants” includes the Chairman and the Deputy Chief Executive.

Commission may establish and participate in body corporate

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

PART III

FINANCE

The Fund

23. (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.

Levies

24. (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.

Conservation of the Fund

25. 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.

Expenditure to be charged on the Fund

26. 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.

Commission's financial year

27. 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.

Annual report

28. The Commission shall, as soon as practicable after the end of each financial year, prepare a report on its activities during that 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.

Accounts

29. (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 them to be laid before both Houses of Parliament.

(4) The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall not apply to the Commission.

Power to borrow

30. 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.

Investment

31. 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 1

*Proposals in Relation to Securities***Proposals to be submitted to the Commission**

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

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

“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 capitalization 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) acquire or dispose assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed public company.

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

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

(5) The Commission may—

- (a) approve a proposal subject to such terms and conditions as it deems fit;
- (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)(a) or (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)(a) or (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 this Act 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 this Act in connection with the proposal, the applicant shall include in any document issued with respect to the proposal, in such form as the Commission may require, a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal.

(10) Where—

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

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

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

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

(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 punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both.

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

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

- (a) such classes or categories of securities or classes or categories of transactions as specified in Schedule 1;
- (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) or in making any order under subsection (4), 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.

(4) The Minister may, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend Schedule 1 and upon such publication, Schedule 1 as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

False or misleading statements, etc.

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

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

shall not—

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

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

making of the statement or provision of the information or engaging in the conduct, was of the belief that—

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

(3) Where—

- (a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and
- (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 punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

DIVISION 2

Take-Overs, Mergers and Compulsory Acquisitions

Definition

33. (1) In this Division—

“acquirer” means—

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

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

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

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

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

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

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

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

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

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

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

Malaysian Code on Take-Overs and Mergers

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

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

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

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

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

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

(5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this 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 takeover offer; and
 - (iii) are supplied with sufficient information necessary to enable them to assess the merits of any takeover 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 takeover 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.

Compliance with Code and rulings

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

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

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

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

Exemptions

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

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

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

33D. (1) Where any person who is under an obligation to comply with, observe or give effect to the provisions of the Code or any ruling made under subsection 33A(4), fails to comply with,

observe or give effect to any such provision of the Code or ruling, the Commission may take one or more of the following actions:

- (a) direct the person in breach to comply with, observe or give effect to any such provision of the Code or ruling;
- (b) impose a penalty, in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million ringgit;
- (c) reprimand the person in breach;
- (d) direct a stock exchange to deprive the person in breach access to the facilities of the stock exchange;
- (e) where the person in breach 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 person in breach is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities;
- (g) direct a stock exchange to prohibit the person in breach from engaging in transactions to be executed through the use of the facilities of the stock exchange; or
- (h) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

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

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

(4) For the purposes of paragraph (1)(h), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—

- (a) the profits that have accrued to such person in breach;
or
- (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(5) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any of the provisions of the securities laws against the person in breach.

(6) For the purposes of this section—

“person in breach” means a person who fails to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 33A(4), in circumstances where the person is under an obligation to do so;

“breach” means a failure to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 33A(4), in circumstances where there is an obligation to do so.

False or misleading documents, information, etc.

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

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

shall not—

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

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

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

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

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

Compulsory acquisition

34. (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.

Right of minority shareholder

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

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

Application to Court

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

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

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

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

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

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

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

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

- (a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares to which the take-over offer relates after having made reasonable enquiries;

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

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

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

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

DIVISION 3

Prospectus

Definitions

35. In this Division and Divisions 4 and 5 of this Part, unless the contrary intention appears—

“approved company auditor” means a person approved by the Minister under subsection 8(2) of the Companies Act 1965 as a company auditor and whose approval has not been revoked;

“excluded invitation” or “excluded offer” means an invitation or offer which is specified in Schedule 2 or which is prescribed by the Minister to be an excluded invitation or excluded offer under paragraph 38(1)(b);

“excluded issue” means an issue which is specified in Schedule 3 or which is prescribed by the Minister to be an excluded issue under paragraph 39(1)(b);

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

“preliminary prospectus” means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

“promoter” means—

- (a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;
- (b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or
- (c) in relation to a prospectus in any other case, a person,

who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“prospectus” means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

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

“shelf prospectus” means a prospectus issued under a shelf registration scheme;

“shelf registration scheme” means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

“supplementary shelf prospectus” means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

Invitation

36. In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

Offer for subscription or purchase

37. For the purposes of this Division and Division 5 of Part IV, the expression “offer for subscription or purchase” or “making an invitation to subscribe for or purchase”, in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units.

Excluded offers and invitations

38. (1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—

- (a) the offer or invitation is so specified in Schedule 2; or
- (b) the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*,

to be an excluded offer or an excluded invitation.

(2) A prescription made under paragraph (1)(b) may specify the provisions of this Act to which an offer or invitation so prescribed to be an excluded offer or an excluded invitation shall not apply.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

- (a) any excluded offer or excluded invitation specified in Schedule 2; or
- (b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) For the purposes of this section, section 39, Schedules 2 and 3, “underwriting” includes sub-underwriting.

(6) Paragraph 17 of Schedule 2 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Excluded issues

39. (1) An issue of securities is an excluded issue if—

- (a) the issue is so specified in Schedule 3; or
- (b) the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*,

to be an excluded issue.

(2) A prescription made under paragraph (1)(b) may specify the provisions of this Act to which the issue so prescribed to be an excluded issue shall not apply.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

- (a) any excluded issue specified in Schedule 3; or
- (b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus in so far as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 17 of Schedule 3 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Exceptions

40. (1) The provisions of this Division as specified in Schedule 2 or 3 or as may be so prescribed by the Minister pursuant to paragraph 38(1)(b) or 39(1)(b) shall not apply to—

- (a) an excluded offer;
- (b) an excluded invitation; or
- (c) an excluded issue.

(2) The provisions of this Part shall not apply to the making available of, the offer for subscription or purchase of, or an invitation to subscribe for or purchase, shares or debentures by any unlisted recreational club.

Requirement to register prospectuses in relation to securities

41. (1) A person shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, any securities unless—

- (a) a prospectus in relation to the securities has been registered by the Commission under section 42; and
- (b) the prospectus complies with the requirements or provisions of this Act.

(2) Unless authorized in writing by the Commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 42.

(3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

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

Registration of prospectus

42. (1) The Commission shall refuse to register a prospectus if—

- (a) the Commission is of the opinion that the prospectus does not comply with any requirement or provision of this Act;
- (b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates does not comply with any other requirement or provision of this Act;
- (c) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;
- (d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates—
 - (i) requires the approval of the Commission under section 32 and such approval has not been given; or
 - (ii) does not comply with any term or condition imposed under subsection 32(5);
- (e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or
- (f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 1965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper

person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.

(2) No prospectus shall be registered unless it is submitted to the Commission together with—

- (a) a written application for its registration;
- (b) true copies of all consents required under subsection 53(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
- (c) true copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and
- (d) all such information or documents as may be required by the Commission.

(3) An issuer shall cause a true copy of—

- (a) any consent required under subsection 53(1) in relation to the issue of the prospectus; and
- (b) every material contract or document referred to in the prospectus,

to be deposited—

- (aa) at the registered office of the issuer in Malaysia, and if it has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and
- (bb) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose,

within three days after the registration of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

Requirement to lodge prospectus with Registrar

43. An issuer shall cause a copy of the prospectus registered by the Commission under this Act and a copy of the form of application accompanying such prospectus—

- (a) in relation to securities other than a unit trust scheme or prescribed investment scheme, to be lodged with the Registrar;
- (b) in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission,

before the date of issue of the prospectus.

Contents of prospectus

44. (1) Without prejudice to section 45, a prospectus—

- (a) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;
- (b) shall state that—
 - (i) the prospectus has been registered by the Commission;
 - (ii) in respect of securities other than a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Registrar and in respect of a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Commission; and
 - (iii) the registration of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus;
- (c) shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period after the date of issue of the prospectus as the Commission may specify;
- (d) shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the

date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(e) shall not contain the name of any person named in the prospectus as having made a statement—

(i) that is included in the prospectus; or

(ii) on which a statement made in the prospectus is based,

unless the requirements of subsection 53(1) are satisfied; and

(f) shall set out such information, matters or reports as may be specified by the Commission.

(2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 45, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 41 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.

(4) In making an order under subsections (3), the Commission may impose such terms and conditions as it deems fit.

(5) The Commission shall not make an order under subsection (3) unless it is satisfied that—

(a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

(b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (3).

(7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(8) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (4) shall be guilty of an offence.

General duty of disclosure in prospectus

45. (1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 55(1) or subsection 57(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;
- (b) the rights attaching to the securities; and
- (c) the merits of investing in the securities and the extent of the risk involved in doing so.

(2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under subsection (1) is information—

- (a) which is known to all or any of the following persons:
 - (i) a person who was a director of the issuer at the time of issue of the prospectus;

- (ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
 - (iii) a promoter;
 - (iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
 - (vi) a person named in the prospectus, with his consent, as a stockbroker, sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; or
- (b) which any of the persons referred to in paragraph (2)(a) would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) Without prejudice to the generality of subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be had to—

- (a) the nature of—
 - (i) the securities;
 - (ii) the business of the issuer of the securities; and
 - (iii) the unit trust scheme or prescribed investment scheme;

- (b) the persons likely to consider acquiring such securities;
- (c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 45(1) may reasonably be expected to consult; and
- (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law or any requirement of the rules of a stock exchange, if applicable, or otherwise.

Abridge prospectus for renounceable rights issues

46. (1) A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and in respect of which an application has been or will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is registered by the Commission.

(2) Any abridged prospectus registered pursuant to subsection (1) shall contain such particulars or information as may be specified by the Commission.

(3) Nothing in this section shall be construed as preventing a full prospectus from being registered containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in subsection (1).

Supplementary prospectus

47. (1) This section applies—

- (a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or
- (b) in any other case, where a prospectus has been registered but before the issue of securities,

and where the issuer becomes aware that—

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

- (i) section 44 or 45;
- (ii) any requirement under this Act;
- (iii) any guidelines issued by the Commission; or
- (iv) any listing requirement of a stock exchange,

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

(bb) there has been a significant change affecting a matter disclosed in the prospectus;

(cc) the prospectus contains a material statement or information that is false or misleading; or

(dd) the prospectus contains a statement or information from which there is a material omission.

(2) As soon as practicable after becoming aware of a matter referred to in subsection (1), the issuer shall submit a supplementary prospectus to the Commission for registration.

(3) The issuer shall lodge the supplementary prospectus—

(a) in relation to securities other than a unit trust scheme or prescribed investment scheme, with the Registrar immediately upon registration by the Commission; and

(b) in relation to a unit trust scheme or prescribed investment scheme, with the Commission immediately upon registration by the Commission.

(4) Subsection (1) shall apply with respect to matters contained in a supplementary prospectus previously registered under this section in respect of the securities in question.

(5) There shall be, on each page of a supplementary prospectus, a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with—

(a) the original prospectus; and

- (b) if other supplementary prospectuses have been issued in relation to the original prospectus—those supplementary prospectuses.

(6) A supplementary prospectus shall be regarded as being a part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.

(7) Where a supplementary prospectus has been registered by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.

(8) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from or approving any variation of the requirements of this section.

(9) In making an order under this section, the Commission may impose such terms and conditions as it deems fit.

(10) The Commission shall not make an order under subsection (8) unless it is satisfied that—

- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(11) Any person who contravenes subsection (2), (3), (5) or (7) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(12) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (9) shall be guilty of an offence.

Consequences of registering a supplementary prospectus

48. (1) This section applies—

(a) where a person (“the applicant”) applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and—

(i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or

(ii) in any other case, before the issue of securities; and

(b) the issuer delivers to the Commission for registration a supplementary prospectus that relates to the prospectus.

(2) As soon as practicable after the registration of the supplementary prospectus by the Commission, the issuer shall—

(a) give to the applicant a written notice or such other notice as may be specified by the Commission—

(i) advising the applicant that a supplementary prospectus has been registered by the Commission;

(ii) giving the applicant no less than 14 days from the date of receipt of the notice an opportunity to withdraw his application; and

(b) ensure that the written notice referred to in paragraph (2)(a) is accompanied by a copy of a supplementary prospectus.

(3) If the applicant withdraws his application pursuant to subparagraph (2)(a)(ii), the issuer shall immediately pay to the applicant any moneys that the applicant has paid to the issuer on account of the application.

(4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(5) In making an order under this section, the Commission may impose such terms and conditions as it deems fit.

(6) The Commission shall not make an order under subsection (4) unless it is satisfied that—

- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.

(7) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(8) Any person who fails to comply with any term or condition as may be imposed by the Commission under subsection (5) shall be guilty of an offence.

Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, etc.

49. (1) Notwithstanding the provisions of sections 44 and 45, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force—

- (a) a shelf prospectus as updated by a supplementary shelf prospectus;
- (b) a short form prospectus; or
- (c) a profile statement,

relating to all matters which the Commission, with the approval of the Minister, may provide by way of regulations made under this Act with respect to a shelf prospectus, a supplementary shelf prospectus, a short form prospectus or a profile statement, as the case may be.

(2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters:

- (a) a shelf prospectus, including a supplementary shelf prospectus;
- (b) a short form prospectus;
- (c) a profile statement;
- (d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, a short form prospectus or profile statement, as the case may be;
- (e) the form and content of a prospectus referred to in paragraph (a), (b) or (c);
- (f) the persons or classes of persons to which any prospectus referred to in paragraph (a), (b) or (c) may apply; or
- (g) the securities or classes of securities to which any prospectus referred to in paragraph (a), (b) or (c) may apply.

(3) Where the Commission makes regulations under subsection (1) with respect to a shelf prospectus, a supplementary shelf prospectus, a short form prospectus or a profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

Restrictions in advertising

50. (1) A person shall not publish a notice that—

- (a) issues, offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; or
- (b) refers, whether directly or indirectly, to—
 - (i) a prospectus in respect of securities of a corporation;
 - (ii) in the case of a unit trust scheme or prescribed investment scheme, a prospectus in respect of any unit of the unit trust scheme or prescribed investment scheme, as the case may be;

- (iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or
- (iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.

(2) Subsection (1) shall apply to such notices mentioned therein which are issued in relation to the securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.

(3) Subsection (1) shall not apply to—

- (a) such notices referred to in subsection (4) or (5);
- (b) such preliminary prospectuses referred to in subsection (6);
- (c) such reports referred to in subsection (7); or
- (d) such notices or reports as may be specified by the Commission.

(4) Subsection (1) shall not apply to a notice that is issued or published before the registration of a prospectus—

- (a) with the consent of the Commission and subject to such terms and conditions as it may impose; and
- (b) which does not contain any information or matter other than the following:
 - (i) the name of the issuer of securities;
 - (ii) in the case of a unit trust scheme or prescribed investment scheme, the name of the unit trust scheme or the prescribed investment scheme, and the names of the trustee and the management company in relation to the unit trust scheme or prescribed investment scheme, as the case may be;
 - (iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;
 - (iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors;

- (v) the names and addresses of stockbrokers, sharebrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (vi) in the case of debentures, the name and address of the trustee for debenture holders;
 - (vii) a brief description of the listing status of the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the corporation, unit trust scheme or prescribed investment scheme, as the case may be, will be listed;
 - (viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus;
 - (ix) in the case of a unit trust scheme or prescribed investment scheme, a description of the persons from whom the units are available for purchase or subscription; and
 - (x) such other information or matters which the Commission may specify in writing.
- (5) Subsection (1) shall not apply to a notice that is issued or published after the registration of a prospectus that—
- (a) states that a prospectus in relation to any securities has been registered;
 - (b) specifies the date of the prospectus;
 - (c) specifies where a copy of the prospectus can be obtained;

- (d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and
- (e) states such other information or matters which the Commission may specify in writing.

(6) Subsection (1) shall not apply to a preliminary prospectus where the following requirements are met:

- (a) a copy of the preliminary prospectus is delivered to the Commission prior to its issue;
- (b) the preliminary prospectus is issued to any person referred to in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (22), (23), (24), (25), (26) or (27) of Schedule 2 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing;
- (c) the preliminary prospectus contains on its front page a conspicuous notice that—
 - (i) it is not a prospectus;
 - (ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and
 - (iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus;
- (d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation;
- (e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person;
- (f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and

- (g) where a prospectus which is registered in relation to securities to which the preliminary prospectus relates differs from the preliminary prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission:

Provided that the Commission may, either of its own accord or on a written application by an issuer, make an order approving any variation of the requirements of this subsection.

(7) Subsection (1) shall not apply to the issuing or publishing of all or any of the following reports:

- (a) a report that relates to the affairs of a corporation, a unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme, as the case may be;
- (b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a prescribed investment scheme where the body corporate, unit trust scheme or prescribed investment scheme is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting;
- (c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to—
- (i) a prospectus that has been registered or information that is contained in such a prospectus; or
 - (ii) a report referred to in paragraph (a) or (b),

if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:

- (aa) the person making the report or comment;

- (bb) an agent or employee of the person making the report or comment;
- (cc) where the report or comment is published in a newspaper or periodical – the publisher of the newspaper or periodical; or
- (dd) where the report or comment is published by broadcasting or televising – the licensee of the broadcasting or television station by which it is published.

(8) A notice that is issued or published under subsection (4) or (5), a preliminary prospectus that is issued under subsection (6) or a report that is issued or published under subsection (7) shall not constitute a prospectus.

(9) Nothing in this section shall limit or diminish the liability that a person may incur under any other law.

(10) Where it appears to the Commission that a notice, preliminary prospectus or report referred to in this section—

- (a) contravenes subsection (1);
- (b) contains a statement or information that is false or misleading;
- (c) contains a statement or information from which there is a material omission; or
- (d) contains a material misrepresentation,

the Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report—

- (aa) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or
- (bb) direct the person to take such other action as may be specified in the order.

(11) In this section, “notice” includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.

- (12) A person who—
- (a) issues or publishes a notice in contravention of subsection (1);
 - (b) issues or publishes a notice in contravention of subsection (4) or (5);
 - (c) issues a preliminary prospectus in contravention of subsection (6); or
 - (d) issues or publishes a report in contravention of subsection (7),

shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Document containing offer of securities for purchase deemed to be a prospectus

51. (1) Subject to subsection (3), where an issuer allots or issues or agrees to allot or issue to any person any securities with a view to all or any of them being offered for purchase—

- (a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and
- (b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers therefor.

(2) Nothing in subsection (1) shall prejudice the liability of the persons by whom the offer for purchase is made in respect of statements in, or omissions from, the document by which the offer for purchase is made or otherwise.

(3) Subsection (1) shall not apply in relation to an offer for purchase or an invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on a stock market of a stock exchange.

(4) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment or issue of, or an agreement to allot or issue, any securities was made with a view to the securities being offered for purchase if it is shown that—

- (a) an offer of the securities for purchase was made within such period as may be specified by the Commission under paragraph 44(1)(c) after the allotment or issue or agreement to allot or issue; or
- (b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.

(5) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of the issuer.

(6) In addition to complying with the other requirements of this Division, the document by which the offer for purchase is made shall state—

- (a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.

(7) Where an offer to which this section relates is made by a corporation or a firm, the document by which the offer for purchase is made shall—

- (a) in the case of a corporation, be signed on behalf of the corporation by two directors of the corporation; and
- (b) in the case of a firm, be signed by not less than half of the members of the firm,

and any such director or member may authorize his agent in writing to sign on his behalf.

(8) For the purpose of this section, an invitation to make an offer to purchase securities shall be deemed to constitute an offer of the securities for purchase, and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for purchase that is so deemed to be constituted by the invitation.

(9) The provisions of this section shall not apply to an offer for purchase which is an excluded offer, an excluded invitation or an excluded issue.

Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made

52. (1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia, any allotment made on an application to subscribe for securities in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if—

- (a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; or
- (b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.

(2) Where permission has not been applied for, or has not been granted by the exchange referred to in subsection (1), the issuer shall, subject to subsection (3), forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such money is not repaid within fourteen days after the issuer so becomes liable to repay it, then, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of ten percent per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

(3) Where in relation to any securities—

- (a) permission is not applied for as specified in paragraph (1)(a); or
- (b) permission is not granted as specified in paragraph (1)(b),

the Commission may, on the application of the issuer, by order published in the *Gazette*, before the securities are purported to be allotted, exempt the allotment of securities from the operation of subsection (1) or (2).

(4) An officer of the issuer shall not be so liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding an applicant for any securities to waive compliance with this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect—

- (a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and
- (b) in relation to a prospectus offering securities for purchase, as if—
 - (i) a reference to purchase were substituted for a reference to allotment;
 - (ii) the persons by whom the offer is made, and not the issuer, were liable under subsection (2) to repay moneys received from applicants, and references to the issuer's liability under that subsection were construed accordingly; and
 - (iii) a reference in subsection (7) to the issuer and every officer of the issuer who is in default under subsection (2) were substituted with a reference to any person by or through whom the issue, offer or invitation is made and who knowingly authorizes or permits the default.

(7) All moneys received from the applicants shall be kept in trust in a separate bank account so long as the issuer may become liable to repay it under subsection (2); and if default is made in complying with this subsection, the issuer and every officer of the issuer who is in default commits an offence under this Act.

(8) Where the exchange referred to in subsection (1) has within the time specified in paragraph (1)(b) granted permission, subject to compliance with any requirements specified by the exchange, permission shall be deemed to have been granted by the exchange if the directors of the issuer have given the exchange an undertaking in writing to comply with the requirements of the exchange, but if any such undertaking is not complied with, each director of the issuer or the management company who is in default commits an offence.

(9) A person shall not issue a prospectus in relation to any securities if it includes—

- (a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in subsection (1); or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on any exchange referred to in subsection (1), or to any requirements of the exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the exchange within three days of the issue of the prospectus or within such longer period as may be specified by the Commission or the statement has been approved by the Commission for inclusion in the prospectus.

(10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under section 96 complies with, or has been drawn so as to comply with, the requirements of any exchange referred to in subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the exchange.

(11) In this section, “officer”, in relation to an issuer means a director, a secretary or an executive officer of the issuer.

(12) A person who contravenes this section shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Consent from person to issue of prospectus containing statement by him

53. (1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Commission, purporting to be made by any person or to be based on a statement made by such person shall not be issued unless—

- (a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and
- (b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

(2) Every person who knowingly is a party to the issue of any prospectus in contravention of subsection (1) shall be guilty of an offence.

Order to stop issue of securities

54. (1) Where in the opinion of the Commission—

- (a) a prospectus does not comply with or is not prepared in accordance with any requirement or provision of this Act;
- (b) a prospectus contains a statement or information that is false or misleading;
- (c) a prospectus contains a statement or information from which there is a material omission; or

- (d) an issuer has contravened any provision of the securities laws or the Companies Act 1965,

the Commission may, by order in writing served on the issuer or such other person as the Commission may determine, direct the issuer or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further securities to which the prospectus relates, as the case requires.

(2) Subject to subsections (3) and (5), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Commission may make an interim order without giving the opportunity to be heard.

(4) An interim order made under subsection (3) shall have effect until the Commission makes an order under subsection (1) or until the interim order is revoked, whichever first occurs.

(5) Subject to subsection (4), an interim order, unless sooner revoked, shall have effect until the end of twenty-one days after the day on which it is made.

(6) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Division shall apply as if the prospectus had not been registered.

(7) An order made under subsection (1) or an interim order made under subsection (3) may, by further order in writing made by the Commission, be revoked if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(8) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) shall be guilty of an offence.

Criminal liability for false statements, etc., in prospectus

55. (1) No person shall authorize or cause the issue of a prospectus which contains—

- (a) any statement or information that is false or misleading; or
- (b) any statement or information from which there is a material omission.

(2) For the purposes of this Division, a statement shall be deemed to be in a prospectus if it is—

- (a) contained in a report or memorandum that appears on the face of the prospectus; or
- (b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorized or caused the issue of the prospectus.

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

Persons not to be taken to have authorized or caused issue of prospectus

56. (1) For the purposes of this Division, neither the Commission nor the Registrar shall be taken to have authorized or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Commission under the securities laws or the Registrar under the Companies Act 1965 respectively.

(2) For the purpose of section 55, a person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given a consent as required under subsection 53(1).

Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc.

57. (1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for—

- (a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage;
- (b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;
- (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;
- (d) a principal adviser, for any loss or damage;
- (e) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;
- (f) a person named in the prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or
- (g) a person who authorized or caused the issue of a prospectus in contravention of section 55, for any loss or damage caused by such contravention.

(2) For the purposes of paragraphs (1)(a) and (1)(b), a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.

(3) For the purpose of paragraph (1)(f), an underwriter shall not include a sub-underwriter.

Civil liability for misleading or deceptive acts

58. (1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with—

- (a) any prospectus issued;
- (b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (c) any notice referred to in subsection 50(4) or 50(5) or a preliminary prospectus referred to in subsection 50(6), or any report referred to in subsection 50(7) or any notice or report as may be specified by the Commission under paragraph 50(3)(d); or
- (d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in paragraph (a), (b) or (c).

(2) A person who contravenes this section does not commit an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in paragraph (1)(a), (1)(b), (1)(c) or (1)(d) may recover the amount of the loss or damage under section 153.

Due diligence defence

59. A person does not commit an offence under section 55 and is not liable under section 57 if he proves that—

- (a) he had made all enquiries as were reasonable in the circumstances; and
- (b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—
 - (i) the statement or information was true and not misleading; or
 - (ii) there was no material omission.

Reliance on statement and information in respect of false or misleading statement

60. A person does not commit an offence under section 55 and is not liable under section 57 if the person (hereinafter referred to as the “first-mentioned person”) proves that the false or misleading statement or material omission from a statement in a prospectus—

- (a) is or is based on a statement made by a person referred to in subsection 53(1) (hereinafter referred to as the “second-mentioned person”); or
- (b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

- (aa) the statement accurately represented the statement made by the second-mentioned person, or the copy or the purported copy or extract was a correct copy of, or extract from, the report or valuation, as the case may be; and
- (bb) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person, in making the statement, report or valuation, as the case may be—
 - (i) was competent to make it;
 - (ii) had given the consent required by subsection 53(1); and
 - (iii) had not withdrawn that consent.

Reliance on statement and information in respect of misleading or deceptive act

61. A person is not liable under section 58 in respect of an act that is misleading or deceptive or is likely to mislead or deceive

if the person (hereinafter referred to as the “first-mentioned person”) proves that the act consists of a representation made in reliance on—

- (a) a statement made by a person referred to in subsection 53(1) (hereinafter referred to as the “second-mentioned person”); or
- (b) a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

- (aa) the representation accurately reflects the statement made by the second-mentioned person or is contained in the report or valuation of the second-mentioned person, as the case may be; and
- (bb) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person in making the statement, report or valuation, as the case may be,—
 - (i) was competent to make it;
 - (ii) had given the consent required by subsection 53(1); and
 - (iii) had not withdrawn that consent.

Reliance on public official statement in respect of false and misleading statement

62. (1) A person does not commit an offence under section 55 and is not liable under section 57 if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred to as the “defective statement”) is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document, and it is proved by the person that—

- (a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; or

- (b) the defective statement is contained in a copy of or what purports to be a copy of, or an extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the defective statement was true and not misleading and that there was no material omission from the defective statement, as the case may be.

(2) A person is not liable under section 58 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official document or statement made by a public officer in the course of his duties and it is proved that—

- (a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; or
- (b) the representation is contained in a copy of, or an extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the representation was not misleading or deceptive or is likely to mislead or deceive.

Defence of withdrawal of consent

63. (1) A person who is named in a prospectus as—
- (a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (b) making a statement that is included in the prospectus; or
 - (c) making a statement on the basis of which a statement is included in a prospectus,

does not commit an offence under section 55 and is not liable under section 57 if—

- (aa) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus, and the prospectus was issued despite such withdrawal; or
- (bb) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.

(2) A person who is named in a prospectus as—

- (a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (b) making a statement that is included in the prospectus; or
- (c) making a statement on the basis of which a statement is included in a prospectus,

does not commit an offence under section 55 and is not liable under section 57 if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

Restriction on offering securities for subscription or purchase

64. (1) Except as otherwise expressly provided in this Act, a person shall not make—

- (a) an unsolicited invitation to subscribe for or purchase any securities;
- (b) an unsolicited offer of any securities for subscription or purchase; or
- (c) an unsolicited recommendation of any securities.

- (2) Subsection (1) shall not—
- (a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations—
 - (i) in relation to any securities which are listed on a stock market of a stock exchange in Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission; and
 - (ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:
 - (A) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Commission, in the twelve months before the making of the invitation or offer or recommendation; or
 - (B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;
 - (b) prohibit a management company from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders;
 - (c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the Commission;
 - (d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act;

- (e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;
- (f) apply to an invitation or offer to which the provisions of the Companies Act 1965 apply; or
- (g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the *Gazette*.

(3) The Commission in exercising its discretion under subsection (2) may impose such terms and conditions as it deems fit.

(4) A person allowed in writing by the Commission under paragraph (2)(a) or (2)(c) shall comply with such terms and conditions as may be imposed by the Commission.

(5) The provisions of subsection (1) shall apply to an invitation, offer or recommendation in relation to any securities of a corporation or units of a unit trust scheme or prescribed investment scheme that is proposed to be formed.

(6) Where the making of any invitation, offer or recommendation is subject to subsection (1) or is in respect of any exception under subsection (2), section 363 of the Companies Act 1965 shall not apply.

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

Agreements to exclude or restrict liability void

65. An agreement is void in so far as it purports to exclude or restrict the liability of a person for contravention of section 55, 57 or 58 or for loss or damage under section 153.

DIVISION 4

DEBENTURES

*Subdivision 1—Trust deeds, duties of trustees,
borrowers, etc.*

Application of Division 4 of Part IV

66. (1) Subdivision 1 of Division 4 of Part IV and section 92 of subdivision 2 of Division 4 of Part IV shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 4.

(2) Division 4 of Part IV as specified in Schedule 5 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 5.

(3) Division 4 of Part IV shall not apply to an issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(4) A prescription made under subsection (3) may specify the provisions of Division 4 of Part IV to which an issue, offer or invitation shall not apply.

(5) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend Schedule 4, Schedule 5 or any prescription made under subsection (3), as the case may be, and upon such publication, Schedule 4, Schedule 5 or the prescription, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

Requirement for trust deed and trustee

67. (1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall—

- (a) enter into a trust deed that meets the requirements of section 68;
- (b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 69; and
- (c) comply with the requirements and provisions of this Division.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 68 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 69.

(3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.

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

Form and contents of trust deeds

68. (1) A trust deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

(2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

Persons who can be trustees

69. (1) A trustee shall be—

- (a) a company registered as a trust company under the Trust Companies Act 1949 [*Act 100*]; or
- (b) a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to act as trustee for the purposes of this Act.

(2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission if the person—

- (a) is a shareholder who beneficially holds shares in the borrower;
- (b) is beneficially entitled to moneys owed by the borrower to it;
- (c) has entered into a guarantee in respect of the amount secured or payable under the debenture; or
- (d) is a related corporation of—
 - (i) the persons referred to in paragraphs (a) to (c); or
 - (ii) the borrower.

(3) An application made by a corporation referred to in paragraph (1)(b) or an application for approval made by a person referred to in subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(4) Notwithstanding the provisions of subsection (2), a person is not prevented from being appointed or from acting as trustee by reason only that—

- (a) the borrower owes to the trustee or any related corporation of the trustee any moneys, so long as such moneys are—
 - (i) moneys that do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to

be issued within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount the borrower owes to the holders of the debentures; or

- (ii) moneys to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; or

- (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.

(5) Where an application has been made to the Commission under subsection (3), the Commission may, subject to such terms and conditions as it thinks fit—

- (a) allow a corporation to act as trustee for the purposes of this Act; or
- (b) approve a person to be appointed or to act as trustee.

(6) In exercising its discretion whether to allow a corporation to act as a trustee under paragraph (5)(a) or approve a person to be appointed or to act as trustee under paragraph (5)(b), the Commission shall have regard to—

- (a) the interests of holders of any debenture; and
- (b) the ability of the trustee to safeguard the interests of such debenture holders as required by the provisions and covenants of the trust deed and the provisions of this Act.

(7) The Commission may revoke a decision to allow a corporation to act as trustee or an approval of a person to be appointed or to act as trustee under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.

(8) A trustee who—

- (a) contravenes subsection (1) or (2); or
- (b) fails to comply with a term or condition imposed by the Commission under subsection (5),

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

Existing trustee continue to act until new trustee takes office

70. Notwithstanding the provisions of section 43 of the Trustee Act 1949 [*Act 208*] or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

71. (1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 69.

(2) A Court may, on the application of the borrower, a debenture holder or the Commission—

- (a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 69 if—
 - (i) the trustee has not been validly appointed; or
 - (ii) the trustee has ceased to exist; or
- (b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 69 if—
 - (i) the existing trustee is not eligible to be appointed or to act as trustee under section 69;
 - (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;
 - (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the

winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

- (iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duties of the borrower

72. (1) A borrower shall—

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) provide a copy of the trust deed to—
 - (i) a debenture holder;
 - (ii) the trustee; or
 - (iii) any other person as may be allowed by the Commission,

if they request a copy and upon payment of such reasonable sum as may be imposed by the borrower;

- (c) make all of its financial and other records available for inspection by—
 - (i) the trustee;
 - (ii) an officer or employee of the trustee authorized by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection,

and give any person carrying out the inspection any information, explanation or other assistance that the person may require; and

(d) comply with any direction issued by the Commission under subsection 89(1).

(2) A borrower who contravenes—

(a) paragraph (1)(a) shall not be guilty of an offence;

(b) paragraph (1)(b) or (1)(c) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;

(c) paragraph (1)(d) shall be guilty of an offence.

(3) Where a borrower contravenes paragraph (1)(b) or (1)(c), the Commission may direct the borrower to comply with the provisions of those paragraphs.

(4) A borrower who fails to comply with a direction of the Commission issued pursuant to subsection (3) shall be guilty of an offence.

Duty of borrower to replace trustee

73. (1) A borrower shall take all reasonable steps to replace a trustee as soon as is practicable after becoming aware that—

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

(c) the trustee is not eligible to be appointed or to act as trustee under section 69;

(d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act;

(e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duty of borrower to inform trustee about charge, etc.

74. (1) Where a borrower creates a charge, it shall—

- (a) give the trustee written details of the charge within twenty-one days after it is created; and
- (b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with bankers, trade creditors or any other person, give the trustee written details of the amount of each advance within seven days after it is made.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duty of borrower to give trustee and Commission quarterly reports

75. (1) A borrower shall, within one month after the end of each quarter—

- (a) deliver to the trustee a quarterly report that sets out the information required by subsections (3), (4), (5) and (7);
- (b) lodge a copy of the report with the Registrar; and
- (c) deliver a copy of the report to the Commission.

(2) For the purpose of this section—

- (a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and
- (b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.

(3) The report for a quarter shall include details of—

- (a) any breach of any limitations on the amount the borrower may borrow;

- (b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter;
- (c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:
 - (i) any amount secured or payable under the debenture to become immediately payable;
 - (ii) the debenture to become immediately enforceable;
 - (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable;
- (d) any circumstance that has occurred during the quarter that would materially prejudice—
 - (i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; or
 - (ii) any security or charge included in or created by the debenture or the trust deed;
- (e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter;
- (f) any of the following events that has happened in the quarter:
 - (i) the appointment of a guarantor;
 - (ii) the cessation of liability of a guarantor for the payment of the whole or part of the moneys for which it was liable under the guarantee; or
 - (iii) a change of name of a guarantor;
- (g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where—
 - (i) the total amount to be advanced on the security of the charge is indeterminate; and
 - (ii) the advances are merged in a current account with bankers, trade creditors or any other person; and
- (h) any other matter that may materially prejudice the interests of debenture holders.

(4) If money is owed to a borrower during the quarter by a related corporation of the borrower, not being such amounts that the borrower deposits with a licensed institution in the normal course of the borrower's business, the report must also include details of—

- (a) the total amount owing by the related corporation during the quarter; and
- (b) the total amount owing by the related corporation at the end of the quarter.

(5) If a borrower has assumed a liability of a related corporation during the quarter, the report shall include details of the extent of the liability assumed during the quarter and the extent of liability as at the end of the quarter.

(6) For purposes of subsections (4) and (5), the report—

- (a) shall distinguish between amounts owing and assumptions of liability that are secured and those that are unsecured; and
- (b) may exclude any deposit, loan or assumption of liability on behalf of the related corporation if it has—
 - (i) guaranteed the repayment of the debentures of the borrower; and
 - (ii) secured the guarantee by a charge over all of its property in favour of the trustee for the holders of the debentures of the borrower.

(7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which moneys received by a person in response to the issue, offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.

(8) The report shall—

- (a) be made in accordance with a resolution of the directors; and
- (b) specify the date on which the report is made.

(9) Where a borrower fails to deliver the report to the trustee, the trustee shall inform the Commission of that fact.

(10) A borrower who contravenes this section shall be guilty of an offence.

Duty of borrower to inform trustee and Commission of occurrence of material event

76. (1) Notwithstanding section 75, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware—

(a) of the happening of any event that has caused or could cause, one or more of the following:

- (i) any amount secured or payable under the debenture to become immediately payable;
- (ii) the debenture to become immediately enforceable; or
- (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; or

(b) of any circumstance that has occurred that would materially prejudice—

- (i) the borrower, its subsidiaries or its guarantors; or
- (ii) any security or charge included in or created by the debenture or the trust deed.

(2) A borrower who contravenes subsection (1) shall be guilty of an offence.

Duty of borrower where prospectus states purpose or project for which moneys are to be applied

77. (1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed

relates are to be applied and the borrower intends to change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall—

- (a) notify the Commission; and
- (b) give a notice in writing that is approved by the Commission under subsection (2) to each debenture holder.

(2) A notice referred to in subsection (1) may be approved by the Commission if the notice—

- (a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied;
- (b) offers to repay such amounts to each debenture holder; and
- (c) contains such information and particulars as may be approved by the Commission.

(3) The borrower shall not be liable to repay the amount secured or payable under the debenture issued by the borrower under subsection (1) where the debenture holder does not demand in writing for the repayment of such amounts within fourteen days after receipt of the notice or such longer period as may be specified in the notice.

(4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under subsection 32(5), the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.

(5) Where a borrower receives a notice referred to in paragraph 82(1)(m), subsection 89(4) or 89(5), the borrower shall be liable to repay the amount secured or payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.

(6) Subject to subsection (4), a notice given by the borrower under paragraph (1)(b) shall have effect as if the purpose or project specified in the notice is the purpose or project specified in the prospectus.

(7) Notwithstanding the provisions of subsection (1), the Commission may, on the written application of any borrower or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

(8) A borrower who contravenes this section shall be guilty of an offence and shall on conviction be punished with a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Obligations of directors of borrower to deliver financial statements

78. (1) The directors of every borrower shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the borrower as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the borrower shall deliver to the trustee and the Commission a copy of the borrower's annual audited accounts within two weeks from the date of the borrower's annual general meeting.

(3) Where the borrower is a listed corporation that is required to submit information to the Commission under section 99D of the Securities Industry Act 1983, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a borrower do not deliver to the trustee a copy of such financial statements of the borrower as may be specified by the Commission under subsection (1) or a copy of the borrower's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a borrower contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director shall be guilty of an offence.

Borrower to issue document evidencing indebtedness, etc.

79. (1) The borrower shall, within two weeks or such other period as may be specified by the Commission, after the acceptance of the moneys in response to an issue of, offer for subscription or

purchase of, or invitation to subscribe for or purchase, a specified number or value of debentures, give to that person a document that acknowledges, evidences or constitutes an acknowledgment of the indebtedness of the borrower in respect of the receipt of moneys in response to the issue, offer or invitation.

(2) A document issued by the borrower in respect of any moneys received by the borrower in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any debenture that certifies that a person named in the document—

- (a) is the registered holder of a specified number or value of debentures issued by the borrower; and
- (b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document,

shall be deemed to be a document evidencing the indebtedness of the borrower in respect of such moneys.

(3) A borrower shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrower has specified in the prospectus—

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than twenty-five per centum in excess of the amount of the issue as disclosed in the prospectus.

(4) A borrower who contravenes subsection (1) or (3) shall be guilty of an offence.

Duties of guarantors

80. (1) Where a borrower is required to enter into a trust deed under section 67 in relation to any debenture, a guarantor in respect of such debenture shall—

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;

- (b) make all of its financial or other records available for inspection by—
- (i) the trustee;
 - (ii) an officer or employee of the trustee authorized by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection,

and give such persons carrying out the inspection any information, explanation or other assistance that they may require;

- (c) furnish the borrower with any information relating to itself which is required under subsection 75(3) to be contained in the quarterly report, within fourteen days from the date the borrower requests for such information by notice in writing or within such other period which shall not be less than fourteen days as may be specified in the notice; and
- (d) where it creates a charge—
- (i) give the trustee written details of the charge within twenty-one days after it is created; and
 - (ii) give the trustee written details of—
 - (A) the amount of each advance made within seven days after it is made; or
 - (B) where the advances are merged in a current account with bankers, trade creditors or any other person, the net amount outstanding on the advances at the end of every three months.

(2) A guarantor who contravenes paragraph (1)(a) shall not be guilty of an offence.

(3) A guarantor who contravenes paragraph (1)(b) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

(4) Where a guarantor contravenes paragraph (1)(b), the Commission may direct the guarantor to comply with the provisions of that paragraph.

(5) A guarantor who fails to comply with a direction of the Commission issued pursuant to subsection (4) shall be guilty of an offence.

(6) A guarantor who contravenes paragraph (1)(c) or (1)(d) shall be guilty of an offence.

Obligations of directors of guarantor to deliver financial statements

81. (1) The directors of every guarantor shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the guarantor as may be specified by the Commission.

(2) Subject to subsection (3), the directors of the guarantor shall deliver to the trustee and the Commission a copy of the guarantor's annual audited accounts within two weeks from the date of the guarantor's annual general meeting.

(3) Where the guarantor is a listed corporation that is required to submit information to the Commission under section 99D of the Securities Industry Act 1983, the guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.

(4) Where the directors of a guarantor do not deliver to the trustee a copy of such financial statements of the guarantor as may be specified by the Commission under subsection (1) or a copy of the guarantor's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.

(5) Where the directors of a guarantor contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director shall be guilty of an offence.

Duties of trustees

82. (1) The trustee of a trust deed that is entered into under section 67—

- (a) shall exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or

otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;

- (b) shall satisfy itself that the provisions of a prospectus relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;
- (c) shall exercise reasonable diligence to ascertain whether the borrower or each guarantor has committed any breach of the terms, provisions or covenants of the debenture or the trust deed or has contravened any of the provisions of this Act;
- (d) shall do everything in its power to ensure that the borrower or each guarantor remedies any breach known to the trustee of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach or contravention will not materially prejudice the debenture holder's interest or any security for the debenture;
- (e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interests of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;
- (f) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;
- (g) shall notify the Commission as soon as practicable if—
 - (i) the borrower has contravened section 74 or 75; or
 - (ii) a guarantor has contravened paragraph 80(1)(d);
- (h) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 69;

- (i) shall give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that—
 - (i) the Court calls in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or
 - (ii) the trustee calls under subsection 87(1);
- (j) shall comply with any directions given to it at a debenture holders' meeting referred to in sections 86, 87 and 88 unless—
 - (i) the trustee is of the opinion that the direction is inconsistent with the terms, provisions or covenants of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and
 - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under section 91 to set aside or vary that direction;
- (k) shall apply to the Commission for a direction under subsection 89(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;
- (l) shall apply to the Court for an order under section 91 where—
 - (i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due; or
 - (ii) the borrower has failed to comply with a direction made by the Commission under subsection 89(1); and

- (m) shall, where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amounts are to be applied and—
- (i) it appears to the trustee that the purpose or project has not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; or
 - (ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders,

give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:

- (A) that the purpose or project has been substantially achieved or completed; or
- (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(2) For the purposes of paragraphs (1)(k) and (1)(l), a trustee in making any application to the Commission or to the Court—

- (a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and
- (b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.

(3) A trustee who contravenes subsection (1) shall not be guilty of an offence.

Exemption and indemnification of trustee from liability

83. (1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void in so far as the term, provision or covenant, as the case may be, would have the effect of—

- (a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; or
- (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee,

unless the term, provision or covenant—

- (aa) releases the trustee from liability for anything done or omitted to be done before the release is given; or
- (bb) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.

(2) For the purpose of paragraph (1)(bb)—

- (a) a release is approved if the debenture holders who vote for the resolution hold seventy-five percent of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and
- (b) a debenture holder attends the meeting and votes on the resolution if—
 - (i) such debenture holder attends the meeting in person and votes on the resolution; or
 - (ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Indemnity of trustee

84. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 86, 87 or 88.

(2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any moneys coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 82(1)(i).

Duty of auditor to trustee for debenture holders

85. (1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the Companies Act 1965 or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.

(2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee—

- (a) by this Act; or
- (b) under the trust deed,

the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.

(3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware—

- (a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or
- (b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture,

the auditor shall immediately report the matter to the Commission.

(4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in subsection (1), (2) or (3).

- (5) An auditor who—
- (a) contravenes subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;
 - (b) contravenes subsection (3) shall be guilty of an offence.

Duty of borrower to call a meeting

86. (1) A borrower shall call a meeting of debenture holders if—
- (a) debenture holders who together hold ten per cent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so;
 - (b) the direction is given to the borrower in writing at its registered office; and
 - (c) the purpose of the meeting is to—
 - (i) consider the financial statements or annual audited accounts that were last delivered to the trustee under section 78 or 81;
 - (ii) give the trustee such directions as the meeting thinks proper; or
 - (iii) consider any other matter in relation to the trust deed.
- (2) Where a borrower is required to call a meeting, it must give notice of the time and place of the meeting to—
- (a) the trustee;
 - (b) the borrower's auditor; and
 - (c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,

in accordance with the provisions of subsections (3) and (4).

(3) For the purpose of subsection (2), notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders or record of depositors, as the case may be.

- (4) A borrower may give notice to a debenture holder—
- (a) personally;
 - (b) by sending it by post to the address of the debenture holder in the register of debenture holders; or
 - (c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.

(5) A notice of meeting posted to a debenture holder shall be taken as being given three days after it is posted, unless the terms, provisions or covenants of the debenture or the trust deed provide otherwise.

(6) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

(7) A borrower who contravenes subsection (1) or (2) shall be guilty of an offence.

Power of trustee to call a meeting

87. (1) Where a borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of a debenture or a trust deed or any contravention of any provision of this Act when required by the trustee, the trustee may—

- (a) call a meeting of debenture holders;
- (b) inform the debenture holders of the failure at the meeting;
- (c) submit proposals for the protection of debenture holders' interests to the meeting; and
- (d) ask for directions from the debenture holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power the debenture holders present at the meeting may appoint a person to chair the meeting.

(3) A trustee is entitled to be reimbursed by the borrower for any costs incurred in calling for a meeting of debenture holders in pursuance of any of its duties or functions under this Act or any term, provision or covenant of the debenture or the trust deed.

Court may order a meeting of debenture holders

88. (1) Without limiting the effect of section 90 or 91, the Court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.

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

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

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

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

Powers of Commission to protect interests of debenture holders

89. (1) The Commission may, on the application of a trustee under paragraph 82(1)(k) or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.

(2) The Commission shall serve the written direction issued under subsection (1) at the borrower's registered office in Malaysia.

(3) The Commission in issuing a direction under subsection (1) shall first give the borrower an opportunity to be heard in relation to the application.

(4) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture are to be applied and—

- (a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time;
- (b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and
- (c) the trustee in relation to the debenture has failed or refused to act under paragraph 82(1)(m),

the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:

- (aa) that the purpose or project has been substantially achieved or completed; or
- (bb) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.

(5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under subsection 77(1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

General power of Court to give directions and determine questions

90. Where a trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter or make any ancillary or consequential orders that the Court considers appropriate.

Specific Court powers

91. (1) Where a borrower, trustee or the Commission applies to the Court for an order under the provisions of this Act or pursuant to any term, provision or covenant of a debenture or a trust deed, the Court may make any or all of the following orders:

- (a) an order staying an action or other civil proceedings before a Court by or against a borrower or a guarantor;
- (b) an order restraining a borrower from paying any moneys to the debenture holders or holders of any other class of debentures;
- (c) an order that any security for the debentures be enforceable immediately or at the time the Court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency;
- (d) an order appointing a receiver of any property constituting security for the debentures;
- (e) an order restricting advertising by a borrower for deposits or loans;
- (f) an order restricting borrowing by a borrower;
- (g) an order varying or rescinding any order made by the Court under this Act; or
- (h) any other order that the Court considers appropriate to protect the interests of existing or prospective debenture holders.

(2) In deciding whether to make an order under subsection (1), the Court shall have regard to the rights of all creditors of the borrower.

Subdivision 2—General

Register of debenture holders

92. (1) Subject to subsection (2), every borrower which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Malaysia.

(2) Where the borrower is a company, the borrower shall comply with the provisions of section 70 of the Companies Act 1965 that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.

(3) The register shall contain particulars of—

- (a) the names and addresses of debenture holders; and
- (b) the amount of debentures held by them.

(4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under subsection (5).

(5) A register is deemed to be duly closed—

- (a) if it is closed in accordance with the provisions contained in—
 - (i) the constituent documents of the borrower;
 - (ii) the debentures or debenture stock certificates;
 - (iii) the trust deed; or
 - (iv) any other document relating to or securing the debenture; and

(b) where it is closed for such periods as is specified in any of the documents mentioned in subparagraphs (5)(a)(i), (5)(a)(ii), (5)(a)(iii) and (5)(a)(iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.

(6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.

(7) The copy of the register of debenture holders referred to in subsection (6) need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.

(8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit.

(9) A borrower issuing debentures may keep at any place outside Malaysia a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders, and Division 4 of Part V of the Companies Act 1965 shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.

(10) Notwithstanding the provisions of subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in subsection (1) or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of debenture holders, subject to such terms and conditions as it deems fit.

(11) A borrower and every officer of the borrower who is in contravention of subsection (1), (3) or (9) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit.

Specific performance

93. A contract with a borrower to take up and pay for any debenture of the borrower may be enforced by an order for specific performance.

Perpetual debentures

94. Notwithstanding any rule of law or equity which disallows perpetual debentures, a condition contained in any debenture or any trust deed relating to a debenture shall not be invalid by reason only that the debenture is—

- (a) irredeemable;
- (b) redeemable only on the happening of a contingency, however remote; or
- (c) redeemable on the expiration of a period, however long.

Reissue of redeemed debentures

95. (1) Where a borrower has redeemed any debenture—

- (a) unless any provision to the contrary, whether express or implied, is contained in the constituent documents of the borrower or any contract entered into by the borrower; or
- (b) unless the borrower has shown an intention that the debenture shall be cancelled by passing a resolution to that effect or by some other act,

the borrower shall have and shall be deemed to have had the power to reissue the debenture, either by reissuing the same debenture or issuing any other debenture in its place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1) shall not be regarded as an issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the borrower.

(3) After the reissue, the person entitled to the debenture shall have and shall be deemed to have had the same priorities as if the debenture had never been redeemed.

(4) Where a borrower has deposited any of its debentures to secure advances on a current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the borrower having ceased to be in debit while the debentures remain so deposited.

DIVISION 5

UNIT TRUST SCHEMES AND PRESCRIBED
INVESTMENT SCHEMES**Definition**

96. In this Division, unless the contrary intention appears—

“deed” means a document having the effect of a deed and, where applicable, includes a supplementary deed.

Requirement for trustee and deed

97. (1) Subject to subsection (2), every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any unit shall—

- (a) ensure that a trustee who has been approved by the Commission under section 98 and who is eligible to be appointed or to act as trustee under section 99 has been appointed;
- (b) enter into a deed that has been registered under section 102 and that meets with the requirements of section 103 or ensure that there is in force a deed that has been registered under section 102 and that meets with the requirements of section 103; and
- (c) comply with the requirements and provisions of this Act.

(2) No person except a management company approved by the Commission under section 98 or a person authorized to act on behalf of a management company that has been approved by the Commission under section 98 shall—

- (a) issue;
- (b) offer for subscription or purchase; or
- (c) invite any person to subscribe for or purchase,

any unit.

(3) A person who contravenes subsection (1) or (2) shall be guilty of an offence.

Approval of trustee and management company

98. (1) No person shall act or be appointed to act as trustee or as a management company in relation to a unit trust scheme or prescribed investment scheme without obtaining the prior approval of the Commission to act as trustee or as a management company.

(2) The Commission may, subject to such terms and conditions as it thinks fit, approve—

- (a) a company to act as a management company of a unit trust scheme or a prescribed investment scheme; and
- (b) a person who is eligible to be appointed or to act as trustee under section 99, to act as trustee of a unit trust scheme or a prescribed investment scheme.

(3) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted under this Division or by reason of a contravention of this Act or any securities law, revoke such approval.

(4) Without prejudice to subsection (1), the Commission may impose such other terms and conditions as it thinks fit while the approval is in force, but if the terms and conditions proposed to be imposed are likely to prejudice the interests of the management company or trustee, as the case may be, the Commission shall give the management company or trustee an opportunity to be heard.

(5) An application for an approval under subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

(6) A trustee or a management company who contravenes subsection (1) shall be guilty of an offence.

Persons who can be trustees

99. (1) A person shall not be eligible to be appointed or to act as trustee for unit holders without the approval of the Commission if the person—

- (a) is a shareholder who beneficially holds shares in the management company;

- (b) is beneficially entitled to moneys owed by the management company to it; or
- (c) is a related corporation of—
 - (i) the persons referred to in paragraphs (a) and (b); or
 - (ii) the management company.

(2) An application for approval by a person referred to in subsection (1) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(3) Notwithstanding the provisions of subsection (1), a person is not prevented from being appointed or from acting as trustee by reason only that—

- (a) the moneys that the management company owes to the trustee or any related corporation of the trustee are moneys to which the trustee or any related corporation of the trustee is entitled to as trustee, in accordance with the provisions or covenants of the deed; or
- (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the management company, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the management company.

(4) The Commission may, subject to such terms and conditions as it thinks fit, approve a person to be appointed or to act as trustee where an application has been made to the Commission pursuant to subsection (1).

(5) In exercising its discretion under subsection (4) the Commission shall have regard to—

- (a) the interests of holders of any unit; and
- (b) the ability of the trustee to safeguard the interests of unit holders as required by the provisions and covenants of the deed and the provisions of this Act.

(6) The Commission may revoke an approval granted under subsection (4) where the trustee has failed to comply with any term or condition imposed under subsection (4) or has contravened any provision of this Act.

- (7) A trustee who—
- (a) contravenes subsection (1);
 - (b) fails to comply with a term or condition imposed by the Commission under subsection (4),

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

Existing trustee to continue to act until new trustee takes office

100. Notwithstanding section 43 of the Trustee Act 1949 or any provision or covenant in the deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

101. (1) Where no provision has been made in the deed for the appointment of a successor to a retiring trustee, the management company shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who has been approved by the Commission under section 98 and who is a person eligible to be appointed or to act as trustee under section 99.

(2) The Commission may, on the application of the management company, a unit holder or of its own accord—

- (a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 99 if—
 - (i) a trustee has not been validly appointed; or
 - (ii) the trustee has ceased to exist; or
- (b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 99 if—
 - (i) the existing trustee is not eligible to be appointed or to act as trustee under section 99;

- (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the deed or the provisions of this Act;
- (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
- (iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) Except for subparagraph (2)(a)(ii), a trustee shall be given the opportunity to be heard before the Commission takes any action under subsection (2).

(4) A management company who contravenes subsection (1) shall be guilty of an offence.

Registration of deed

102. (1) The management company shall submit the deed referred to in paragraph 97(1)(b) to the Commission for registration and such deed shall not have effect unless so registered.

(2) On an application for registration of a deed, the Commission may—

- (a) register the deed;
- (b) register the deed with such revisions or subject to such terms and conditions as it deems fit; or
- (c) refuse to register the deed.

(3) An application under subsection (2) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.

(4) The Commission shall refuse to register a deed under paragraph (2)(c) if—

- (a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission;
- (b) the making available of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a unit to which the deed relates has not been approved by the Commission under section 32; or
- (c) the trustee referred to in paragraph 97(1)(a) has not been appointed for the purposes of the deed.

(5) Subject to subsection (4), the Commission shall register a deed together with an application for its registration.

Contents of deed

103. A deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

Modification of deed through supplementary deed

104. (1) A modification may be made to a deed only by a deed expressed to be supplementary to the principal deed and submitted by the management company to the Commission for registration, and a supplementary deed shall not have effect unless it has been so registered.

(2) On an application for registration of a supplementary deed, the Commission may—

- (a) register the supplementary deed;
- (b) register the supplementary deed with such revisions or subject to such terms and conditions as it deems fit; or
- (c) refuse to register the supplementary deed.

(3) The Commission shall refuse to register a supplementary deed under paragraph (2)(c) if it appears to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.

(4) The supplementary deed submitted for registration shall be accompanied by—

- (a) a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held according to the provisions and covenants of the deed sanctioning the proposed modification to the deed; or
- (b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unit holders and does not operate to release the trustee or the management company from any responsibility to the unit holders.

(5) The Commission may require the management company, in any application for registration of a supplementary deed, to obtain a resolution under paragraph (4)(a) if in the Commission's opinion any modification, alteration or addition to the deed may prejudice the interests of unit holders.

(6) A supplementary deed proposing any modification, alteration or addition to the deed which—

- (a) would increase the maximum service charge or annual management fee payable to the management company, whether payment is made out of the property or assets of the unit trust scheme or prescribed investment scheme or otherwise; or
- (b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or prescribed investment scheme to the trustee by way of remuneration for the trustee's services,

shall be submitted for registration accompanied by a resolution under paragraph (4)(a).

(7) A supplementary deed upon registration under this section shall be deemed to be part of the deed to which it relates for the purposes of this Act.

(8) A person who contravenes subsection (1) shall be guilty of an offence.

Deed to be lodged with Commission

105. The management company shall lodge a deed with the Commission within seven days after the deed has been registered under section 102 or 104.

Duties of a management company

106. (1) A management company who is required to enter into a deed under section 97—

- (a) shall carry on and manage its business and the unit trust scheme or prescribed investment scheme, as the case may be, in a proper, diligent and efficient manner;
- (b) shall carry on and manage its business in accordance with the provisions and covenants of the deed, the provisions of this Act, any securities law and any regulations made thereunder;
- (c) shall provide a copy of the deed to—
 - (i) a unit holder; or
 - (ii) a trustee, upon request for a copy of the deed and on payment of such reasonable sum as may be imposed by the management company;
- (d) shall make all financial or other records of a unit trust scheme or a prescribed investment scheme available for inspection by—
 - (i) a trustee;
 - (ii) an officer or employee of the trustee authorized by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection,

and give such persons carrying out the inspection any information, explanation or other assistance that they may require in relation to those records; and

- (e) shall make a copy of the deed available for inspection without charge to any member of the public.

(2) Except as may be prescribed by way of regulations made under section 159, a management company shall not act as principal in the sale and purchase of securities, property and assets to and from the unit trust scheme or prescribed investment scheme.

(3) A management company shall not make improper use of its position in managing the unit trust scheme or prescribed investment scheme to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such unit trust scheme or prescribed investment scheme.

(4) A management company shall not, without the prior approval of the trustees, invest any moneys available under the deed in any securities, property and assets in which the management company or any officer of the management company has a financial interest or from which the management company or any officer of the management company derives a benefit.

(5) A management company who contravenes—

- (a) paragraph (1)(a) shall not be guilty of an offence;
- (b) paragraph (1)(c), (1)(d) or (1)(e) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit;
- (c) paragraph (1)(b) or subsection (2), (3) or (4) shall be guilty of an offence.

(6) Where a management company contravenes paragraph (1)(c), (1)(d) or (1)(e), the Commission may direct the management company to comply with all or any of the provisions of those paragraphs.

(7) A management company who fails to comply with a direction of the Commission issued pursuant to subsection (6) shall be guilty of an offence.

Duty of management company to lodge returns, etc.

107. (1) A management company—

- (a) shall lodge with the Commission—
 - (i) the annual report of a unit trust scheme or a prescribed investment scheme within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(ii) the annual report of the management company within six months after the end of each financial year of the management company; and

(b) shall deliver to the Commission such other statements, documents, books and other particulars as may be required by the Commission.

(2) Any document required to be lodged with or delivered to the Commission by a management company under subsection (1) shall be signed by at least one of the directors of the management company.

(3) A management company shall—

(a) send to every unit holder without charge a copy of the document referred to in subparagraph (1)(a)(i) within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and

(b) where a unit holder requests for the document referred to in subparagraph (1)(a)(ii) and any additional copies of the document referred to in subparagraph (1)(a)(i), send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the management company.

(4) A management company shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the unit trust scheme or prescribed investment scheme shall comply with approved accounting standards.

(5) A management company who contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence.

Duty of management company to replace trustee

108. (1) A management company shall take all reasonable steps to replace a trustee as soon as practicable after becoming aware that—

(a) the trustee has ceased to exist;

(b) the trustee has not been validly appointed;

- (c) the trustee is not eligible to be appointed or to act as trustee under section 99;
- (d) the trustee has failed or refused to act as trustee in accordance with the provisions or covenants of the deed or the provisions of this Act;
- (e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
- (f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(2) A management company who contravenes subsection (1) shall be guilty of an offence.

Duties of trustee

109. (1) A trustee shall take custody and control of all securities, property and assets of a unit trust scheme or prescribed investment scheme and hold it in trust for the unit holders in accordance with the deed, such requirements as may be specified by the Commission, the provisions of this Act, all applicable securities laws and any regulations made thereunder.

- (2) A trustee of a deed entered into under section 97 shall—
- (a) satisfy itself that the provisions of a prospectus relating to any unit trust scheme or prescribed investment scheme do not contain any matter which is inconsistent with the provisions and covenants of the deed;
 - (b) exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions or covenants of the deed or has contravened any of the provisions of this Act;

- (c) do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach will not materially prejudice the unit holders' interests;
- (d) notify the Commission as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of the provisions of this Act or any inconsistency between the provisions of the prospectus and the provisions or covenants of the deed as referred to in paragraph (a) which, in the trustee's opinion, may indicate that the interests of the unit holders are not being served;
- (e) give the unit holders a statement explaining the effect of any proposal that the management company submits to the unit holders before any meeting that—
 - (i) the Court orders in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or
 - (ii) the trustee may call under section 115; and
- (f) comply with any direction given to the trustee at a unit holders' meeting referred to in section 114, 115 or 116 unless—
 - (i) the trustee is of the opinion that the direction is inconsistent with any provision or covenant of the deed or the provisions of this Act or is otherwise objectionable; and
 - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the Court under section 123 to set aside or vary that direction.

(3) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duty of trustee to wind up scheme

110. (1) Where a management company is in liquidation or where, in the opinion of the trustee, a management company has ceased to carry on business or has, to the prejudice of the unit holders,

failed to comply with any provision or covenant of the deed or contravened any of the provisions of this Act, the trustee shall summon a meeting of the unit holders—

- (a) by sending by post a notice of the proposed meeting at least twenty-one days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and
- (b) by publishing, at least twenty-one days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission.

(2) If at any meeting summoned under subsection (1) a resolution is passed by a majority in number representing at least three-fourths of the value of the units held by unit holders voting at the meeting that the unit trust scheme or prescribed investment scheme be wound up, the trustee shall apply to the Court for an order confirming the resolution.

(3) On an application by the trustee, if the Court is satisfied that it is in the interest of the unit holders, the Court may confirm the resolution and may make such orders as it thinks necessary or expedient for the winding up of the unit trust scheme or prescribed investment scheme.

(4) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duties of management company and trustee under general law

111. The duties of a management company and a trustee imposed on them by this Act and the deed are in addition to and not in derogation of the duties which are otherwise imposed on them by any other law.

Exemptions and indemnification of trustee from liability

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

- (a) exempting a trustee under the deed from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee; or
- (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision, covenant or term enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths of the holders of units voting at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Indemnity of trustee

113. (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the unit holders at any meeting called under section 114, 115 or 116.

(2) A trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any moneys coming into the trustee's hands from the management company, all reasonable costs incurred in explaining the effect of any proposal that the management company submits to the unit holders in the circumstances set out in paragraph 109(2)(e).

Duty of management company to call meeting of unit holders

114. (1) A management company shall call for a meeting of unit holders if—

- (a) not less than fifty unit holders or one-tenth of all unit holders direct the management company to do so;
- (b) the direction is given to the management company in writing at its registered office; and
- (c) the purpose of the meeting is—
 - (i) to consider the most recent financial statements of the unit trust scheme or prescribed investment scheme;
 - (ii) to give to the trustee such directions as the meeting thinks proper; or
 - (iii) to consider any other matter in relation to the deed.

(2) Where a management company is required to call meeting under subsection (1), it shall do so within twenty-one days after the direction is given to the management company in writing at its registered office.

(3) Where a management company is required to call a meeting under subsection (1) or pursuant to any provision or covenant of the deed, it shall give notice of the time and place of the meeting—

- (a) by sending by post a notice of the proposed meeting at least seven days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and
- (b) by publishing, at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission.

(4) A meeting summoned in accordance with a provision or covenant contained in a deed shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice and—

- (a) be chaired by such person as is appointed in that behalf by the unit holders that are present at the meeting; or
- (b) where no such appointment is made, be chaired by a nominee of the trustee,

and shall be conducted in accordance with the deed or, if the deed makes no provision, as directed by the chairman of the meeting.

(5) A notice of meeting posted to a unit holder shall be taken as given three days after it is posted, unless the deed provides otherwise.

(6) A management company who contravenes subsection (1), (2) or (3) shall be guilty of an offence.

Power of trustee to call a meeting

115. (1) Where a management company fails to remedy a breach of the provisions or covenants of the deed or a contravention of the provisions of this Act, any securities law or regulations made thereunder when required by the trustee, the trustee may—

- (a) call a meeting of unit holders;
- (b) inform the unit holders of the failure at the meeting;
- (c) submit proposals for the protection of interests of unit holders; and
- (d) ask for directions from unit holders in relation to the matter.

(2) A trustee may appoint a person to chair a meeting of unit holders called under subsection (1) and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

Court may order a meeting of unit holders

116. (1) Without limiting the effect of section 123, the Court may make an order for a meeting of all or any of the unit holders to be held to give directions to the trustee.

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

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

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

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

Register of unit holders

117. (1) Every management company shall keep a register of unit holders and enter into the register—

- (a) in the case of a unit holder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959 [*Act 78*], if any, of that individual; or
- (b) in the case of a unit holder that is a corporation, the name, registered address and registration number of that corporation, if applicable.

(2) The management company shall enter into the register—

- (a) the number of units held by each unit holder;
- (b) the date on which the name of each person was entered in the register as a unit holder;
- (c) the date on which any person ceased to be a unit holder; and
- (d) any other relevant information or particulars of the unit holder,

within the previous seven years.

(3) Notwithstanding anything in subsections (1) and (2), a management company may keep the names and particulars relating to persons who have ceased to be unit holders of the unit trust scheme or prescribed investment scheme in a separate register.

(4) The register of unit holders shall be *prima facie* evidence of any matters inserted therein in accordance with the provisions of this Act.

(5) Where a unit trust scheme or prescribed investment scheme has more than fifty unit holders, the management company shall, unless the register of unit holders is in such a form as to constitute in itself an index, keep an index of the names of the unit holders in a convenient form and shall, within fourteen days after the date on which any alteration is made in the register of unit holders, make any necessary alteration in the index.

(6) The index shall, in respect of each unit holder, contain sufficient indication to enable the account of that unit holder in the register to be readily found.

(7) Any person who contravenes subsection (1), (2), (5) or (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Where register is to be kept

118. (1) A register of unit holders and the index shall be kept at the registered office of a management company in Malaysia.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Closure and inspection of register

119. (1) A management company may, on giving not less than fourteen days' notice to the Commission, close the register of unit holders at any time, but no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(2) Any unit holder may request the management company to furnish him with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units, and the management company shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the management company.

(3) A management company who contravenes subsection (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Power of Court to rectify register

120. (1) Any unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the Court for the rectification of the register, and the Court may refuse the application or may order the rectification of the register and the payment by the management company of any damages sustained by any party to the application.

(2) On an application under subsection (1), the Court may decide—

- (a) on any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between unit holders or alleged unit holders, or between registered unit holders or alleged registered unit holders, on the one part and the management company on the other part; and
- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

Branch register

121. (1) Notwithstanding the provisions of section 117, a management company may cause to be kept in any place outside Malaysia a branch register of unit holders of a unit trust scheme or prescribed investment scheme which shall be deemed to be part of the register of unit holders.

(2) A management company shall deliver to the Commission a notice of the location of the office where any branch register is kept and of any change in its location and, if the branch office is permanently closed, of its closure, and any such notice shall be delivered within one month after the opening of the office or of the change or closure, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(4) A management company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practicable after the entry is made, and shall cause to be kept at that office, duly entered up from time to time, a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) A management company may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.

(6) A person who contravenes subsection (2), (3) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Rights of trustee, executor, administrator in relation to a deceased unit holder

122. (1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a unit holder of any unit trust scheme or prescribed investment scheme may become registered as the unit holder in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as he would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.

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

(3) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register, and no liability shall be affected by anything done in pursuance of subsection (1) or (2) or pursuant to any law outside Malaysia which corresponds to the provisions of this section.

Power of Court to make orders

123. (1) A Court may make any order that it considers appropriate to protect the interests of existing or prospective unit holders.

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

Disapplication of Division 5 of Part IV

124. (1) Division 5 of Part IV shall not apply to an issue, offer or invitation made to a person or a class of persons, or made in respect of a unit trust scheme or prescribed investment scheme or a class of unit trust schemes or prescribed investment schemes as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

(2) A prescription made under subsection (1) may specify the provisions of Division 5 of Part IV to which an issue, offer or invitation shall not apply.

(3) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend the prescription made under subsection (1) and upon such publication, the prescription as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or such later date as may be specified in the order.

PART IVA

AGREEMENT OR ARRANGEMENT FOR TRANSFER OF
BUSINESS

Definitions

124A. In this Part, unless the context otherwise requires—

“business” means any activity which a licensed person, exempt fund manager or exempt futures fund manager carries on pursuant to its licence or which it is allowed to carry on as the case may be, and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity;

“exempt fund manager” has the same meaning as in the Securities Industry Act 1983;

“exempt futures fund manager” has the same meaning as in the Futures Industry Act 1993;

“liabilities” includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

“licensed dealer” means a person licensed under subsection 12(1) of the Securities Industry Act 1983;

“licensed fund manager” means a person licensed under subsection 15A(1) of the Securities Industry Act 1983;

“licensed futures broker” means a person licensed under subsection 16(1) of the Futures Industry Act 1993;

“licensed futures fund manager” means a person licensed under subsection 16A(1) of the Futures Industry Act 1993;

“licensed futures trading adviser” means a person licensed under subsection 17(1) of the Futures Industry Act 1993;

“licensed investment adviser” means a person licensed under subsection 14(1) of the Securities Industry Act 1983;

“property” means any movable or immovable property and includes—

- (a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, future, vested or contingent or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property, of which the person executing the conveyance is proprietor, possessed or entitled to a contingent right, either for the whole interest or for any less interest;
- (c) securities;
- (d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent; and
- (f) any other tangible or intangible property;

“securities account” means an account established by a central depository for a depositor for the recording of securities and for dealings in such securities by the depositor;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent.

Application to High Court to facilitate agreement or arrangement for transfer of whole or part of business of licensed persons, exempt fund manager and exempt futures fund manager

124B. (1) Where in the case of—

- (a) a licensed dealer or licensed futures broker, the Minister, on the recommendation of the Commission, has granted his approval;
- (b) a licensed fund manager, licensed investment adviser, licensed futures fund manager or licensed futures trading adviser, the Commission has granted its approval; and
- (c) an exempt fund manager or exempt futures fund manager, the Commission has granted its approval,

in relation to an agreement or arrangement—

- (A) for the sale, disposal or transfer in any manner of the whole or any part of the business of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager;
- (B) for the amalgamation or merger of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager with any other person; or
- (C) for the reconstruction of a licensed dealer, licensed fund manager, licensed investment adviser, licensed futures broker, licensed futures fund manager, licensed futures trading adviser, exempt fund manager or exempt futures fund manager,

the entity whose business is to be transferred, referred to as “the transferor”, and the entity to whom the transfer is to be made, referred to as “the transferee”, may make a joint application to the High Court by way of *ex parte* originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement being given effect to.

(2) In an application to the High Court under subsection (1) there may be sought all or any of the following orders:

- (a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as “the transfer date”);
- (b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities applicable to that matter respectively;
- (c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee;
- (d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor;
- (e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client;
- (f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal;
- (g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the transferee either alone or, as the case may be, jointly with the other person;

- (h) for any moneys received from commission, interest and other sources payable by any person to the transferor to be payable by the person to the transferee;
- (i) for any negotiable instrument or order for payment of money drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been drawn on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee;
- (j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee;
- (k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee, and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date;
- (l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies, and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;

- (m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee;
- (n) for all such other incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.

(3) On the hearing of an application under subsection (2), the High Court may grant an order in the terms applied for, or with such modifications or variations as the High Court deems just or proper in the circumstances of the case.

(4) Where the order of the High Court granted under subsection (3) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law, and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

(5) The order of the High Court granted under subsection (3) shall, subject to the directions of the High Court, be published by the transferee in at least one national language daily newspaper and one English language national daily newspaper as approved by the Commission.

(6) The transferor shall, within thirty days from the date the order of the High Court was granted under subsection (3), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Minister or the Commission, as the case may be, with—

- (a) the Registrar of Companies; and
- (b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.

(7) Where an order of the High Court granted under subsection (3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

- (a) the High Court shall, where such alienated land is in Peninsular Malaysia, including the Federal Territory of Putrajaya, pursuant to subsection 420(2) of the National Land Code 1965 [*Act 56 of 1965*], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator immediately after the order is granted so that the Registrar of Titles or the Land Administrator can effect the provisions of subsections 420(2), 420(3) and 420(4) respectively;
- (b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been granted, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah [*Sabah Cap. 68*];
- (c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under section 171 of the Land Code of Sarawak [*Sarawak Cap. 81*]; or
- (d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984 [*P.U. (A) 291/1984*].

(8) An order of the High Court granted under subsection (3) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where the property or business is or, where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

PART V

ENFORCEMENT AND INVESTIGATION

Appointment of Investigating Officers of the Commission

125. (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.

Examination of licensed persons

126. (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 127, “licensed person” means a licensed person as defined in section 2 and includes—

- (a) a stock exchange, an exempt fund manager and a recognized clearing house as defined in the Securities Industry Act 1983;
- (b) a central depository, an authorized depository agent and an authorized nominee as defined in the Securities Industry (Central Depositories) Act 1991; and
- (c) an exchange company, an exempt futures fund manager and clearing house, as defined in section 2 of the Futures Industry Act 1993.

Production of licensed person's books, etc.

127. (1) For the purposes of an examination under section 126 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 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 authorized 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 of 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).

Powers of Investigating Officers of the Commission

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

- (a) inspect and make copies of or take extracts from any book, minute book, account, register or document;
- (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, property, book, minute book, account, register or other document including any travel or other personal document, which may be used as evidence; and
- (c) search any person who is in, or on, the premises and, for the purpose of such search, detain the person and remove him to such place as may be necessary to facilitate the search, and seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document, including any travel or other personal document found on the person.

(2) An Investigating Officer of the Commission may search any person whom he has reason to believe has on his person any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document necessary, in his opinion, for the purpose of investigation into any offence under any securities law, and for the purpose of such search may detain the person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorization of the Magistrate, and may remove him into custody at such place as may be necessary to facilitate the search.

(3) An Investigating Officer of the Commission making a search of a person under subsection (1) or (2) may seize, take possession of and detain any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document found upon such person for the purpose of the investigation being carried out by him.

(4) No female person shall be searched under this section except by another female person.

(5) An Investigating Officer of the Commission may by notice in writing require any person to produce to him such object, article, material, thing, property, book, minute book, account, register or other document as are in the custody or under the control of that person.

(6) An Investigating Officer of the Commission may seize, take possession of and detain for such duration as he deems necessary any object, article, material, thing, property, book, minute book, account, register or other document produced before him as required under subsection (5).

(7) A person who—

- (a) refuses an Investigating Officer of the Commission, while exercising his powers under this Part, access to any premises or part thereof, or fails to submit to the search of his person;
- (b) assaults, obstructs, hinders or delays an Investigating Officer of the Commission in effecting any entrance which he is entitled to effect;
- (c) fails to comply with any lawful demands of an Investigating Officer of the Commission in the execution of his duties under this Part; or
- (d) rescues or endeavours to rescue any thing which has been duly seized,

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

(8) An Investigating Officer of the Commission may grant permission to any person to inspect any book, minute book, account, register or other document seized and taken possession of by the Investigating Officer of the Commission under this section if such person is entitled to inspect such book, minute book, account, register or other document under this Act.

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

Procedure by Investigating Officer on seizure of property

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

(2) The occupant of the place or building entered under subsection 128(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 130.

(6) For the purpose of this section and of sections 130 and 131, “property” includes books and other documents.

Procedure by Magistrate in respect of property seized

130. (1) Where a report is forwarded to the Magistrate by an Investigating Officer of the Commission under subsection 129(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 person 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 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 the 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 131(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 131, 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 be involved, 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 131(1) as he may determine or forthwith as he thinks fit.

Procedure in respect of property detained in Investigating Officer's custody

131. (1) Where a Magistrate has directed under subsection 130(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 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 a 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.

Surrender of travel documents

132. (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 in the manner specified in section 134.

(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 a 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) An Investigating Officer of the Commission may, with the approval of the Commission, by notice issued to any Immigration Officer, request that any person who is the subject of an investigation in respect of an offence under a securities law be prevented from leaving Malaysia.

(7) The Immigration Officer, upon being notified of a request made under subsection (6), may require the person who is the subject of an investigation in respect of an offence under a securities law to surrender his certificate of identity, passport or exit permit, or any other travel document in his possession to the Immigration Officer.

(8) Subject to any order issued or made under any written law relating to banishment or immigration, “immigration officer” means any person appointed under section 3 of the Immigration Act 1959/1963 [*Act 155*].

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

Forcible entry

133. (1) For the purpose of exercising his powers under paragraph 128(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 128(1)(b) may be interfered with or destroyed or the object of any entry is likely to be frustrated.

Power to call for examination

134. (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) A person referred to in subsection (1) 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) In an examination of a person under subsection (1), an Investigating Officer of the Commission or Investigating Officers of the Commission examining the person 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 neglects to give any information which may reasonably be required of him and which he has in his power to give; 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 on conviction be punished with to a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or both.

(6) For the purposes of this section and any other provision of Part V, any notice that is given shall, if practicable, be served personally on the person specified in such notice.

(7) In the case of a corporation, the notice may be served on the secretary or other like officer of the corporation or on any person who is responsible for the management of the affairs of the corporation.

(8) Where the person specified in a notice given under this section or any other provision of Part V cannot by the exercise of due diligence be found, the notice may be served by leaving a copy thereof for him with some adult member of his family or with his servant residing with him.

(9) When the person specified in any notice given under this section or any other provision of Part V cannot by the exercise of due diligence be found, and service cannot be effected as directed by subsection (8), a copy of the notice shall be affixed to some conspicuous part of the house or such other place in which the person specified in the notice ordinarily resides, and in such case the notice shall be deemed to have been duly served.

(10) If upon an investigation made under this Act it appears to the Investigating Officer of the Commission that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or continuance of any proceedings against any person, the Investigating Officer of the Commission shall require the complainant, if any, and so many of the persons who appear to such Investigating Officer of the Commission to be acquainted with the circumstances of the case as he thinks necessary, to execute a bond to appear before any Court therein named and to give evidence in such proceedings.

(11) If any complainant or person referred to in subsection (10) refuses to execute a bond under that subsection, the Investigating Officer of the Commission shall report such refusal to the Court which may thereupon in its discretion issue a warrant or summons to secure the attendance of such complainant or person before itself to give evidence in the proceedings concerned.

Destruction, concealment, mutilation and alteration of records

135. 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 on conviction be punished with to a fine not exceeding ten million ringgit or imprisonment for a term not exceeding ten years or both.

PART VI

GENERAL

Conduct of prosecution

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

(2) *(Deleted by Act A1041).*

General penalty

137. (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 punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years, or both; and in the case of a continuing offence the offender, in addition to the penalty provided in this subsection, shall be punished with a daily fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.

Offences by bodies corporate

138. (1) Where a person convicted in respect of any offence under this Act is a body corporate, it shall only be punished with the fine provided for such offence.

(2) Where an offence against this Act or any regulations made thereunder has been committed by a body corporate, any person who at the time of the commission of the offence was a director, a chief executive officer, an officer, an employee, a representative or the secretary of the body corporate or was purporting to act in such capacity, shall be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(3) Where a person who is an employee of a body corporate contravenes any provision of this Act, that body corporate shall be deemed to have contravened such provision.

(4) For the purposes of this section, “officer”, in relation to a director of a corporation, includes—

- (a) a person occupying or acting in the position of a director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position;
- (b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and
- (c) if the corporation is incorporated outside Malaysia—
 - (i) a member of the corporation’s board;
 - (ii) a person occupying or acting in the position of director of the corporation’s board, by whatever name called, and whether or not validly appointed to occupy or duly authorized to act in the position; and
 - (iii) a person in accordance with whose directions or instructions the members of the corporation’s board are accustomed to act.

Compounding of offences

139. (1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence under this Act or 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 property or document such property or document 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.

Protection of informers and information

140. (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 before 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 before 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).

Offences under securities law are seizable offences

141. 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 125(1), may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

Duty of Investigating Officer to make over arrested person to the police

142. If an Investigating Officer of the Commission appointed under subsection 125(1) makes an arrest under section 141 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 detention under section 117 of the Criminal Procedure Code [*Act 593*] as if he had been arrested by a police officer.

Detention of arrested person

143. Notwithstanding any other provision in any other written law relating to criminal procedure, a Magistrate authorizing the detention of a person arrested under section 141 shall authorize the detention of the person arrested in the custody of the police.

Public servants and public officers

144. (1) All members of the Commission or any of its committees 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 [*Act 574*] and public officers for the purposes of the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

(2) Without affecting the generality of subsection (1), an Investigating Officer of the Commission shall be deemed to be a public servant for the purposes of the Penal Code, and a public officer for the purposes of the Criminal Procedure Code and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

Power to engage persons to render assistance

145. 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.

Power to review

146. (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.

Decision of Commission shall be final

147. 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 146(1), shall be final.

Obligation of secrecy

148. (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 authorized by the Commission or subject to section 124 of the Evidence Act 1950, 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.

Assistance to police or other public officer

149. Notwithstanding section 148, 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 128 or of any record of examination made under section 134, or of any statement made under subsection 134(3), or of any book or other document produced under subsection 128(2), or otherwise in the course of any examination under section 134, 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.

*NOTE—Previously “fifty thousand ringgit”—see Securities Commission (Amendment) Act 1998 [Act A1041].

**NOTE—Previously “three years”—see Securities Commission (Amendment) Act 1998 [Act A1041].

Assistance to and co-operation with foreign supervisory authorities

150. (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 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.

Power of Commission to require information

151. 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.

Evidential provision

151A. In any criminal or civil proceedings under the securities laws, any statement purporting to be signed by the Chairman or any other person to whom power has been delegated under section 17, which forms part of or is annexed to any letter, register, record or document, howsoever expressed, described or represented, shall, until the contrary is proved, be evidence of any fact stated therein.

Disclosure of information to Commission

152. (1) The Commission may, by notice in writing, require any person to disclose to the Commission such information as the Commission may specify in the notice as it deems expedient for the due administration of the securities laws.

(2) Where any information is required to be disclosed to the Commission under subsection (1), the person to whom the notice is directed shall not—

- (a) disclose or cause to be disclosed any information that is false or misleading;
- (b) disclose or cause to be disclosed any information from which there is a material omission; or
- (c) engage in, or aid, or abet, conduct that is misleading or deceptive or is likely to mislead or deceive the Commission.

(3) Without prejudice to subsection (2), where a person referred to in subsection (1) becomes aware that—

- (a) any information disclosed to the Commission under subsection (1) is false or misleading;
- (b) any information disclosed to the Commission under subsection (1) is information from which there is a material omission; or

- (c) the person's conduct is misleading or deceptive or is likely to mislead or deceive the Commission,

the person shall advise the Commission of the facts and shall take such action as the Commission may require.

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

Civil liability of person in contravention of this Act

153. (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in subsection (1) became aware of the contravention, whichever is the later.

Officers of Commission may represent Commission in civil proceedings

154. Notwithstanding the provisions of any written law—

- (a) in any civil proceedings by or against the Commission;
or
(b) in any other civil proceedings in which the Commission is required or permitted by the court to be represented or to be heard, or is otherwise entitled to be represented or to be heard,

any officer of the Commission authorized by the Chairman for the purpose may, on behalf of the Commission, institute such proceedings or appear as an advocate therein, and may make all appearances and applications and to do all acts in respect of such proceedings on behalf of the Commission.

Commission may recover loss or damage

155. (1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part IV or any regulations made under this Act the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.

(2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.

Reference to conduct

156. (1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.

(2) Where, in a proceeding under Part IV in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.

(3) Conduct engaged in on behalf of an issuer—

- (a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or

- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the issuer, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed to have been engaged in by the issuer.

(4) Where, in a proceeding under Part IV in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(5) Conduct engaged in on behalf of a person other than an issuer—

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed to have been engaged in also by the first-mentioned person.

Attempts, abetments and conspiracies

157. A person who—

- (a) attempts to commit any offence under this Act;
- (b) does any act in furtherance of the commission of any offence under this Act; or

- (c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code) any offence under this Act, whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and shall be punished with or be liable to the penalty provided for such offence.

Written notices, circulars, conditions or guidelines

158. (1) The Commission may, generally in respect of this Act or any securities law or in respect of any particular provision of this Act or any securities law, issue such written notices, circulars or guidelines as the Commission considers desirable.

(2) Subject to this Act or unless the contrary intention is expressly stated, the Commission may require a person to whom the provisions of Part I and Part IV apply to give effect to all written notices, circulars, conditions or guidelines issued by the Commission within such period as may be specified by the Commission.

(3) A person to whom the provisions of Part I and Part IV apply shall give effect to all written notices, circulars, conditions or guidelines issued by the Commission under subsection (1) within such period as may be prescribed by the Commission.

(4) Where a person referred to in subsection (2) fails to give effect to any written notice, circular, condition or guideline issued by the Commission, the Commission may, after giving such person a reasonable opportunity to be heard, take such action as the Commission deems fit.

(5) For the purposes of subsection (4), the Commission may take any one or more of the following actions against a person for failing to give effect to any written notice, circular, condition or guideline issued by the Commission under Part I and Divisions 1, 3, 4 and 5 of Part IV:

- (a) direct the person failing to give effect to any written notice, circular, condition or guideline to comply with, observe, enforce or give effect to such written notice, circular, condition or guideline;

- (b) impose a penalty, in proportion to the severity or gravity of the failure to give effect to any written notice, circular, condition or guideline, on the person failing to give effect to such written notice, circular, condition or guideline, but in any event not exceeding one million ringgit;
 - (c) issue a public reprimand against the person failing to give effect to any written notice, circular, condition or guideline;
 - (d) issue a caution letter or a reprimand letter against the person failing to give effect to any written notice, circular, condition or guideline;
 - (e) refuse to accept or consider any submission under section 32;
 - (f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a) to (e), the following actions may be taken by the Commission:
 - (i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission deems fit by the promoter or director or any persons connected with the promoter or director; or
 - (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest;
 - (g) require the person failing to give effect to any written notice, circular, condition or guideline to take such steps as the Commission may direct to remedy the failure or mitigate the effect of such failure, including making restitution to any other person aggrieved by such failure.
- (6) For the purposes of paragraph (5)(g), in determining whether or not restitution is to be made by a person failing to give effect to any written notice, circular, condition or guideline, the Commission shall have regard to—
- (a) the profits that have accrued to such person failing to give effect to any written notice, circular, condition or guideline; or

- (b) whether one or more persons have suffered loss or have otherwise been adversely affected as a result of the failure to give effect to any written notice, circular, condition or guideline.

(7) The Commission shall give written notice to any person who has failed to give effect to any written notice, circular, condition or guideline of its intention to take action under subsection (5) and shall give such person an opportunity to be heard prior to it taking any action under subsection (5).

(8) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any of the provisions of the securities laws against the person failing to give effect to any written notice, circular, condition or guideline.

Power to make regulations

159. (1) The Commission may, with the approval of the Minister, make 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);
- (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.

(4) Regulations may provide that all or any of the provisions of this Act—

- (a) shall not have effect in relation to any specified person or persons or any particular class of persons, either generally or as otherwise provided in the exemption, from all or any of the provisions of any regulations made under this section; and
- (b) shall have effect in relation to any specified person or persons or any particular class of persons to such extent as is prescribed.

Indemnity

160. 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

Repeal

161. 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.

Saving

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

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

163. (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.

Continuance of criminal and civil proceedings

164. (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.

Transitional and savings

165. (1) All actions, regulations, orders, directions, notifications, approvals, decisions and other executive acts, howsoever called, made, given or done under, or in accordance with, or by virtue of, the provisions of the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 [*P.U. (A) 439/1996*] before the commencement of this Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 as amended by this Act, and shall continue to remain in force and have effect in relation to the persons to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act.

(2) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act or any proceedings brought or sentence imposed before the date of commencement of this Act in respect of such offence.

(3) Nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the Companies Act 1965 or the Securities Commission (Unit Trust Scheme) Regulations 1996 before the commencement of this Act and any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings, remedy or investigation may be instituted, continued or enforced as if this Act had not been enacted.

(4) Nothing in this Act shall—

- (a) affect the validity of any securities or the operation of any trust deed or deed issued or executed before the commencement of this Act;
- (b) apply in relation to an issuer, borrower, guarantor or trustee or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the commencement of this Act; or

- (c) require the appointment of any trustee or the execution of any trust deed in respect of any debenture issued before the commencement of this Act, where there was no such requirement before the commencement of this Act.

(4A) Any condition imposed in relation to an approval given by the Central Bank of Malaysia or terms of a debenture approved by the Central Bank of Malaysia pursuant to paragraph (e) of Part I of the First Schedule to the Banking and Financial Institutions Act 1989 [*Act 372*] before 1 July 2000 may, after 1 July 2000, be varied or modified by the Commission under section 32 of the Act.

(5) Where, upon the commencement of this Act, securities may be issued, offered for subscription or purchase or where an invitation to subscribe for or purchase securities has been made on the basis of any prospectus issued before the commencement of this Act, the issuer shall, unless the written approval of the Commission granting an exemption is obtained, issue such supplementary prospectus and take such other action to ensure that the issue, offer or invitation complies with the requirements of this Act.

(6) The Commission may, by a direction in writing given to any issuer referred to in subsection (5) determine what action is to be taken by that issuer and how any difficulty arising in respect of the provisions introduced or amended by this Act may be overcome.

(7) Nothing in this Act shall—

- (a) affect the validity or operation of any interest or deed, to which Division 5 of Part IV of the Companies Act 1965 applies, issued or executed before the commencement of this Act; or
- (b) apply in relation to the management company by or on whose behalf any interest to which Division 5 of Part IV of the Companies Act 1965 applies and which have been issued before the commencement of this Act or in relation to the trustee for the holders of any such interest.

Prevention of anomalies

166. If any difficulty arises with respect to the foregoing saving and transitional provisions, the Minister may by order make such modifications in those provisions as may appear to him necessary for preventing anomalies:

Provided that the Minister shall not exercise the power so conferred by this section after the expiration of two years from the date of commencement of this Act.

SCHEDULE 1

[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 Federal or any State Government or the Central Bank of Malaysia.
2. Securities of a private company other than debentures.
3. Bonus issues of securities of a corporation.
4. All trades in securities effected 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 or such other exchange outside Malaysia which is recognized under the rules of an exchange 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 46 applies.
10. The making available, offering for subscription or purchase of 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 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).

12. An offer or invitation with respect to the existing securities of an unlisted corporation made to existing holders of those securities or made to a person falling within paragraph 9, 10 or 11 of Schedule 2.
13. The making available of, offering for subscription or purchase of, or making an invitation to subscribe for or purchase, securities of a corporation pursuant to an employee share or employee share option scheme.
14. The listing of securities that are issued by way of bonus issue.
15. The issuance of notes pursuant to a notes issuance facility or revolving underwriting facility as may be specified by the Commission.
16. All trades in foreign currency denominated debentures and Islamic securities effected as may be specified by the Commission.

SCHEDULE 2

[Section 38]

Excluded offers or excluded invitations to which sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52 and 53 of Division 3 of Part IV shall not apply.

1. An offer or invitation to enter into an underwriting agreement or an offer or invitation made to an underwriter under such an agreement.
2. With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 46 applies.
3. An offer or invitation made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
4. An offer or invitation made to a unit trust scheme or prescribed investment scheme.
5. An offer or invitation made to a person licensed as a dealer under the Securities Industry Act 1983.
6. An offer or invitation made exclusively to persons outside Malaysia.
7. An offer or invitation made to a closed end fund approved by the Commission.
8. An offer or invitation made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.

9. An offer or invitation made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.
10. An offer or invitation made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
11. An offer or invitation made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
12. An offer or invitation made to a licensed offshore bank as defined under the Offshore Banking Act 1990 [*Act 443*].
13. An offer or invitation made to an offshore insurer as defined under the Offshore Insurance Act 1990 [*Act 444*].
14. An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.
15. 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 or such other exchange outside Malaysia which is recognized under the rules of an exchange approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
16. An offer or invitation of securities made or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.
17. An offer or invitation in respect of securities of a private company.
18. An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. All trades in securities effected in the money market.
20. An offer or invitation made to employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An offer or invitation made to any creditor or holder of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*] which may not be renounced to any person other than a creditor or holder of securities of the company.
22. An offer or invitation made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983 [*Act 276*].

23. An offer or invitation made to an insurance company registered under the Insurance Act 1996 [*Act 89*].
24. An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.
25. An offer or invitation made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967 [*Act 53*].
26. An offer or invitation made by or to Danamodal Nasional Berhad.
27. An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

SCHEDULE 3

[Section 39]

Excluded issues to which sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52 and 53 of Division 3 of Part IV shall not apply.

1. An issue made to an underwriter under an underwriting agreement.
2. An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which section 46 applies.
3. An issue made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purpose of this Act.
4. An issue made to a unit trust scheme or prescribed investment scheme.
5. An issue made to a person licensed as a dealer under the Securities Industry Act 1983.
6. An issue made exclusively to persons outside Malaysia.
7. An issue made to a closed end fund approved by the Commission.
8. An issue made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.
9. An issue made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.

10. An issue made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
11. An issue made to corporation with total net assets exceeding three million ringgit or its equivalent in foreign currencies based in the last audited accounts.
12. An issue made to a licenced offshore bank as defined under the Offshore Banking Act 1990.
13. An issue made to an offshore insurer as defined under the Offshore Insurance Act 1990.
14. An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.
15. 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 or such other exchange outside Malaysia which is recognized under the rules of an exchange approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
16. An issue of securities made or guaranteed by the Federal or any State Government or the Central Bank of Malaysia.
17. An issue in respect of securities of a private company.
18. An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. All trades in securities effected in the money market.
20. An issue in respect of securities which are acquired by employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.
22. An issue made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
23. An issue made to an insurance company registered under the Insurance Act 1996.
24. An issue made to a statutory body established by an Act of Parliament or an enactment of any State.

25. An issue made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.
26. An issue made by or to Danamodal Nasional Berhad.
27. An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
28. An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the convertible note converts into are listed securities.
29. An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.
30. An issue of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.
31. A bonus issue of securities made by a corporation.

SCHEDULE 4

[Section 66]

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sub division 1 of Division 4 of Part IV and section 92 of subdivision 2 of Division 4 of Part IV shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal or any State Government or any statutory body.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or the Central Bank of Malaysia.
3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.
4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.

5. All trades in debentures 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.
6. All trades in debentures effected in the money market.
7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.
8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.
10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.
11. An issue, offer or invitation made in relation to a foreign currency denominated debenture to:
 - (i) an underwriter under an underwriting or initial purchase agreement;
 - (ii) a unit trust scheme or prescribed investment scheme;
 - (iii) a person licensed as a dealer under the Securities Industry Act 1983;
 - (iv) a closed end fund approved by the Commission;
 - (v) a person licensed as a fund manager under the Securities Industry Act 1983 or a person declared to be an exempt fund manager under that Act;
 - (vi) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;
 - (vii) a licensed offshore bank as defined under the Offshore Banking Act 1990;
 - (viii) an offshore insurer as defined under the Offshore Insurance Act 1990.
12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures or Islamic securities made by a multilateral development bank, a multilateral financial institution, a foreign sovereign or a corporation guaranteed or controlled by a foreign sovereign with a credit rating of AAA, or its equivalent, assigned by a credit rating agency.

Schedule 5

[Subsection 66(2)]

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which sections 72, 74, 75, 76, 77, 78, 80, 81, 82, 84, 86, 87, subsections 89(4) and 89(5) of Division 4 of Part IV shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a unit trust scheme or prescribed investment scheme.
3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person licensed as a dealer under the Securities Industry Act 1983.
4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a closed end fund approved by the Commission.
5. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person licensed as a fund manager under the Securities Industry Act 1983 or any person declared to be an exempt fund manager under that Act.
6. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.
7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed offshore bank as defined under the Offshore Banking Act 1990.
10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an offshore insurer as defined under the Offshore Insurance Act 1990.
11. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures of a private company.

12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.

13. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to an insurance company registered under the Insurance Act 1996.

14. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

LAWS OF MALAYSIA

Act 498

SECURITIES COMMISSION ACT 1993

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A926	Securities Commission (Amendment) Act 1995	25-11-1995; except section 11: 01-01-1999
Act A987	Futures Industry (Amendment and Consolidation) Act 1997	16-04-1997
Act A1041	Securities Commission (Amendment) Act 1998	01-11-1998
Act A1074	Securities Commission (Amendment) Act 2000	01-07-2000
P.U. (A) 354/2000	Securities Commission (Modification) Order 2000	01-07-2000
P.U. (A) 238/2001	Securities Commission (Amendment of Schedule 2 and Schedule 3) Order 2001	03-08-2001
P.U. (A) 239/2001	Securities Commission (Amendment of Schedule 4) Order 2001	03-08-2001; Except subparagraph 2(c): 01-03-2001
Act A1149	Securities Commission (Amendment) Act 2002	12-06-2002
Act A1217	Securities Commission (Amendment) Act 2003	05-01-2004
P.U. (A) 373/2004	Securities Commission (Amendment of Schedule 4) Order 2004	04-11-2004
P.U. (A) 343/2005	Securities Commission (Amendment of Schedule 1) Order 2005	16-09-2005

190

Laws of Malaysia

ACT 498

Amending law	Short title	In force from
P.U. (A) 344/2005	Securities Commission (Amendment of Schedule 2 and Schedule 3) Order 2005	16-09-2005
P.U. (A) 69/2006	Securities Commission (Amendment of Schedule 4) Order 2006	24-02-2006

LAW OF MALAYSIA

Act 498

SECURITIES COMMISSION ACT 1956

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A926	25-11-1995
	Act A1041	01-11-1998
	Act A1074	01-07-2000
	Act A1217	05-01-2004
2A	Act A926	25-11-1995
2B	Act A1074	01-07-2000
2C	Act A1074	01-07-2000
2D	Act A1074	01-07-2000
2E	Act A1074	01-07-2000
	Act A1217	05-01-2004
2F	Act A1217	05-01-2004
2G	Act A1217	05-01-2004
2H	Act A1217	05-01-2004
4	Act A1217	05-01-2004
13	Act A926	25-11-1995
15	Act A926	25-11-1995
	Act A987	16-04-1997
	Act A1217	05-01-2004
16	Act A926	25-11-1995
17	Act A1149	12-06-2002
19	Act A926	25-11-1995
22	Act A926	25-11-1995
	Act A1217	05-01-2004

Section	Amending authority	In force from
22A	Act A926	25-11-1995
24	Act A926	25-11-1995
32	Act A926 Act A1074 Act A1149	01-01-1999 01-07-2000 12-06-2002
32A	Act A926 Act A1074	01-01-1999 01-07-2000
32B	Act A926 Act A1074	01-01-1999 01-07-2000
33	Act A926	01-01-1999
33A	Act A926	01-01-1999
33B	Act A926 Act A1074	01-01-1999 01-07-2000
33C	Act A926	01-01-1999
33D	Act A926 Act A1217	01-01-1999 05-01-2004
33E	Act A926 Act A1074	01-01-1999 01-07-2000
34	Act A926	01-01-1999
34A	Act A926	01-01-1999
34B	Act A926	01-01-1999
34C	Act A926	01-01-1999
35	Act A1041 Act A1074 Act A1149	01-11-1998 01-07-2000 12-06-2002
35A	Act A1041 Act A1074	01-11-1998 01-07-2000
35B	Act A1041 Act A1074	01-11-1998 01-07-2000
36	Act A926 Act A1041 Act A1074	25-11-1995 01-11-1998 01-07-2000

Securities Commission

193

Section	Amending authority	In force from
36A	Act A1041 Act A1074	01-11-1998 01-07-2000
36B	Act A1041 Act A1074	01-11-1998 01-07-2000
36c	Act A1041 Act A1074	01-11-1998 01-07-2000
36D	Act A1041 Act A1074	01-11-1998 01-07-2000
37	Act A1074	01-07-2000
38	Act A1041 Act A1074	01-11-1998 01-07-2000
38A	Act A1041 Act A1074	01-11-1998 01-07-2000
39	Act A1041 Act A1074	01-11-1998 01-07-2000
39A	Act A926 Act A1074	25-11-1995 01-07-2000
39B	Act A926 Act A1074	25-11-1995 01-07-2000
39C	Act A1041 Act A1074	01-11-1998 01-07-2000
39D	Act A1041 Act A1074	01-11-1998 01-07-2000
39E	Act A1041 Act A1074	01-11-1998 01-07-2000
39F	Act A1041 Act A1074	01-11-1998 01-07-2000
39G	Act A1041 Act A1074	01-11-1998 01-07-2000
40	Act A1074	01-07-2000
41	Act A926 Act A1074 Act A1149	25-11-1995 01-07-2000 12-06-2002
42	Act A1074	01-07-2000

Section	Amending authority	In force from
42A	Act A926 Act A1074	25-11-1995 01-07-2000
43	Act A1041 Act A1074	01-11-1998 01-07-2000
43A	Act A926 Act A1074	25-11-1995 01-07-2000
43B	Act A926 Act A1041 Act A1074	25-11-1995 01-11-1998 01-07-2000
43C	Act A926 Act A1074	25-11-1995 01-07-2000
44	Act A926 Act A1074	25-11-1995 01-07-2000
44A	Act A926 Act A1074	25-11-1995 01-07-2000
45	Act A1074 Act A1217	01-07-2000 05-01-2004
46	Act A1074	01-07-2000
47	Act A1074	01-07-2000
48	Act A1074	01-07-2000
49	Act A1074	01-07-2000
50	Act A1074	01-07-2000
51	Act A1074	01-07-2000
52	Act A1074	01-07-2000
53	Act A1074	01-07-2000
54	Act A1074	01-07-2000
55	Act A1074	01-07-2000
56	Act A1074	01-07-2000
57	Act A1074	01-07-2000
58	Act A1074	01-07-2000
59	Act A1074	01-07-2000

Securities Commission

195

Section	Amending authority	In force from
60	Act A1074	01-07-2000
61	Act A1074	01-07-2000
62	Act A1074	01-07-2000
63	Act A1074	01-07-2000
64	Act A1074	01-07-2000
65	Act A1074	01-07-2000
66	Act A1074	01-07-2000
67	Act A1074	01-07-2000
68	Act A1074	01-07-2000
69	Act A1074	01-07-2000
70	Act A1074	01-07-2000
71	Act A1074	01-07-2000
72	Act A1074	01-07-2000
73	Act A1074	01-07-2000
74	Act A1074	01-07-2000
75	Act A1074	01-07-2000
76	Act A1074	01-07-2000
77	Act A1074	01-07-2000
78	Act A1074	01-07-2000
79	Act A1074	01-07-2000
80	Act A1074	01-07-2000
81	Act A1074	01-07-2000
82	Act A1074	01-07-2000
83	Act A1074	01-07-2000
84	Act A1074	01-07-2000
85	Act A1074	01-07-2000

Section	Amending authority	In force from
86	Act A1074	01-07-2000
87	Act A1074	01-07-2000
88	Act A1074	01-07-2000
89	Act A1074	01-07-2000
90	Act A1074	01-07-2000
91	Act A1074	01-07-2000
92	Act A1074	01-07-2000
93	Act A1074	01-07-2000
94	Act A1074	01-07-2000
95	Act A1074	01-07-2000
96	Act A1074	01-07-2000
97	Act A1074	01-07-2000
98	Act A1074	01-07-2000
99	Act A1074	01-07-2000
100	Act A1074	01-07-2000
101	Act A1074	01-07-2000
102	Act A1074	01-07-2000
103	Act A1074	01-07-2000
104	Act A1074	01-07-2000
105	Act A1074	01-07-2000
106	Act A1074	01-07-2000
107	Act A1074	01-07-2000
108	Act A1074	01-07-2000
109	Act A1074	01-07-2000
110	Act A1074	01-07-2000
111	Act A1074	01-07-2000

Securities Commission

197

Section	Amending authority	In force from
112	Act A1074	01-07-2000
113	Act A1074	01-07-2000
114	Act A1074	01-07-2000
115	Act A1074	01-07-2000
116	Act A1074	01-07-2000
117	Act A1074	01-07-2000
118	Act A1074	01-07-2000
119	Act A1074	01-07-2000
120	Act A1074	01-07-2000
121	Act A1074	01-07-2000
122	Act A1074	01-07-2000
123	Act A1074	01-07-2000
124	Act A1074	01-07-2000
124A	Act A1149	12-06-2002
124B	Act A1149	12-06-2002
125	Act A1074	01-07-2000
126	Act A1074	01-07-2000
127	Act A1074	01-07-2000
128	Act A1074	01-07-2000
129	Act A1074	01-07-2000
130	Act A1074	01-07-2000
131	Act A1074	01-07-2000
132	Act A1074	01-07-2000
133	Act A1074	01-07-2000
134	Act A1074	01-07-2000
135	Act A1074	01-07-2000

Section	Amending authority	In force from
136	Act A1074	01-07-2000
137	Act A1074	01-07-2000
138	Act A1074	01-07-2000
139	Act A1074	01-07-2000
140	Act A1074	01-07-2000
141	Act A1074	01-07-2000
142	Act A1074	01-07-2000
143	Act A1074	01-07-2000
144	Act A1074	01-07-2000
145	Act A1074	01-07-2000
146	Act A1074	01-07-2000
147	Act A1074	01-07-2000
148	Act A1074	01-07-2000
149	Act A1074	01-07-2000
150	Act A1074	01-07-2000
151	Act A1074	01-07-2000
151A	Act A1217	05-01-2004
152	Act A1074 Act A1217	01-07-2000 05-01-2004
153	Act A1074	01-07-2000
154	Act A1074	01-07-2000
155	Act A1074	01-07-2000
156	Act A1074	01-07-2000
157	Act A1074	01-07-2000
158	Act A1074 Act A1217	01-07-2000 05-01-2004
159	Act A1074	01-07-2000

Securities Commission

199

Section	Amending authority	In force from
160	Act A1074	01-07-2000
161	Act A1074	01-07-2000
162	Act A1074	01-07-2000
163	Act A1074	01-07-2000
164	Act A1074	01-07-2000
165	Act A1074 Act A1149 P.U. (A) 354/2000	01-07-2000 12-06-2002 01-07-2000
166	Act A1074	01-07-2000
Schedule	Act A926 Act A1074	25-11-1995 01-07-2000
Schedule 1	Act A1074 Act A1217 P.U. (A) 343/2005	01-07-2000 05-01-2004 16-09-2005
Schedule 2	Act A1074 P.U. (A) 238/2001 Act A1217 P.U.(A) 344/2005	01-07-2000 03-08-2001 05-01-2004 16-09-2005
Schedule 3	Act A1074 P.U. (A) 238/2001 Act A1217 P.U. (A) 344/2005	01-07-2000 03-08-2001 05-01-2004 16-09-2005
Schedule 4	Act A1074 P.U. (A) 239/2001 P.U. (A) 373/2004 P.U. (A) 69/2006	01-07-2000 Paragraph 11, 01-03-2001; paragraphs 5 and 6, 03-08-2001 04-11-2004 24-02-2006
Schedule 5	Act A1074	01-07-2000