

ACT 498

SECURITIES COMMISSION ACT 1993

(Incorporating latest amendment - Act A1305/2007)

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RULES, REGULATIONS & ORDERS

LONG TITLE & PREAMBLE

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

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

1. Short title and commencement.

(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.

2. Interpretation.

(1) In this Act, unless the context otherwise requires-

[Am. Act A1074:s.2]

"affiliate" has the meaning assigned to it in the Capital Markets and Services Act 2007 *[Act 671]*.

[Subs. Act A1305:s.2]

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

"books" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"central depository" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"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 section 38 of the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"Commission" means the Securities Commission established under section 3;

"committee" means any committee established by the Commission under section 18;

[Am. Act A1074:s.2]

"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;

[Subs. Act A1041:s.2]

"dealing in securities" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

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

[Ins. Act A1217:s.2]

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

[Ins. Act A1074:s.2]

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

[Ins. Act A1074:s.2]

"exchange" means a stock exchange established under the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"exchange holding company" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"Fund" means the fund established under section 23;

"futures contract" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"futures exchange" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Ins. Act A1305:s.2]

"futures market" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"licensed person" means a person licensed under the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"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;

[Am. Act A1074:s.2]

"participant" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"participating organization" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

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

[Ins. Act A926:s.2]

"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 5(3) of the Capital Markets and Services Act 2007;

[Ins. Act A1074:s.2]; Act A1305:s.2]

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

[Ins. Act A1074:s.2]

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

[Ins. Act A926:s.2]

"stock exchange" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"securities" has the meaning assigned to it in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"securities laws" means this Act, the Securities Industry (Central Depositories) Act 1991 *[Act 453]* and the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.2]

"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;

[Ins. Act A926:s.2]

"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;

[Subs. Act A1074:s.2]

- (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.

[Ins. Act A1074:s.2]

2A. References to "this Act" and "securities law".

Any reference in this Act to "this Act" or a "securities law" shall, unless otherwise "securities 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.

[Ins. Act A926:s.3]

2B. [Deleted]. *[Deleted Act A1305:s.3]*

2C. [Deleted]. *[Deleted Act A1305:s.4]*

2D. Registers.

- (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 authorised 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.

[Ins. Act A1074:s.3]

2E. Electronic filing of books.

[Am. Act A1217:s.3]

- (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.

[Am. Act A1217:s.3]

- (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.

[Am. Act A1217:s.3]

- (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.

[Am. Act A1217:s.3]

- (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.

[Am. Act A1217:s.3]

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

[Am. Act A1217:s.3]

- (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.

[Am. Act A1217:s.3]

- (7) A copy of or an extract from any book electronically filed or lodged with 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.

[Am. Act A1217:s.3]

- (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.

[Ins. Act A1074:s.3; Am. Act A1217:s.3]

2F. Power of Commission to specify form and manner of keeping or maintaining books.

- (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.

[Ins. Act A1217:s.4]

2G. Power of Commission to access books kept or maintained otherwise than in writing.

- (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.

[Ins. Act A1217:s.4]

2H. Power of Commission to require production, etc. of books kept or maintained otherwise than in writing.

- (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.

[Ins. Act A1217:s.4]

PART II - SECURITIES COMMISSION

3. Establishment of the Commission.

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

4. Membership of the Commission.

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

(a) a Chairman, who shall be an Executive Chairman;

(aa) a Deputy Chief Executive;

[Ins. Act A1217:s.5]

(b) four members representing the Government; and

(c) three other persons.

[Am. Act A1217:s.5]

- (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.

[Am. Act A1217:s.5]

5. Disqualification of members.

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

6. Tenure of office.

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

7. Resignation and revocation.

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

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

8. Vacation of office.

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

(a) if he dies;

(b) if he has been convicted of any offence under the law;

(c) if he becomes bankrupt;

(d) if he is of unsound mind or is otherwise incapable of discharging his duties; or

(e) if he absents himself from three consecutive meetings of the Commission without leave of the Chairman.

9. Remuneration or allowance.

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

10. Meetings.

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

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

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

11. Commission may invite others to meetings.

The Commission may invite any person to attend any meeting or deliberation of the Commission for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

12. Common seal.

- (1) The Commission shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Commission may think fit.
- (2) Until a seal is provided by the Commission, a stamp bearing the words "Securities Commission" may be used and shall be deemed to be the common seal of the Commission.
- (3) The common seal shall be kept in the custody of the Chairman or such other person as may be 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.

13. Disclosure of interest.

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

[Am. Act A926:s.4]

- (2) *[Repealed by Act A926:s.4]*

- (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.

[Am. Act A926:s.4]

- (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) *[Repealed by Act A926:s.4]*

14. Minutes.

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

15. Functions of the Commission.

- (1) The Commission shall have the following functions:
- (a) to advise the Minister on all matters relating to securities and futures industries;
 - (b) to regulate all matters relating to securities and futures contracts;

- (c) to ensure that the provisions of the securities laws are complied with;
 - (d) to regulate the take-overs and mergers of companies;
 - (e) to regulate all matters relating to unit trust schemes;
 - (f) to be responsible for supervising and monitoring the activities of any exchange holding company, exchange, clearing house and central depository;
[Am. Act A1217:s.6]
 - (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 organisations, participants, affiliates, depository participants and all licensed or registered persons of an exchange, clearing house and central depository, as the case may be;
[Subs. Act A1217:s.6]
 - (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) *[Repealed by Act A987:s.2]*
- (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.

[Subs. Act A926:s.5]

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

[Ins. Act A1217:s.6]

16. Powers of the Commission.

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

[Subs. Act A926:s.6]

17. Delegation of Commission's functions or powers.

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

[Am. Act A1149:s.2]

- (a) any of the members of the Commission;
- (b) any committee established by the Commission; or
- (c) any employee of the Commission.
- (2) A delegation under this section shall not prevent the concurrent performance or exercise by the Commission of the functions or powers delegated.

18. Commission may establish committee.

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

[Am. Act A1305:s.5]

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

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

- (4) Meetings of a committee established under this section shall be held at such times and places as the chairman of the committee may, subject to subsection (3), determine.
- (5) A committee may invite any person for the purpose of advising it on any matter under discussion to attend any meeting of the committee but the person so invited shall not be entitled to vote at any such meeting.
- (6) The members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Commission may determine.
- (7) Section 5 shall apply to a member of a committee established under this section in the same manner as it applies to a member of the Commission.

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

- (1) The Minister may, from time to time, give to the Commission directions of a general character not inconsistent with this Act relating to the Commission's functions and such directions shall be binding on the Commission.
- (2) The Commission shall furnish the Minister with such returns, accounts and information with respect to the performance of any of its functions under the securities laws as the Minister may from time to time require.

[Subs. Act A926:s.7]

20. Appointment of officers and servants of the Commission.

- (1) The Commission may from time to time employ persons who shall be paid such remuneration and allowances and shall hold their employment on such other terms and conditions as the Commission shall determine.
- (2) The Commission may make arrangements for the payment to its officers and servants and their dependants of such retirement benefits, gratuities or other allowances as it may determine.

21. Regulations with respect to discipline.

- (1) The Commission may from time to time, make regulations with respect to the discipline of its officers and servants.
- (2) The regulations made under this section may include provisions for -
 - (a) the interdiction with reduction in salary or in other remuneration;
and

- (b) the suspension without salary or other remuneration, of an officer or servant of the Commission during the pendency of disciplinary proceedings against him.
- (3) The regulations made under this section shall, in prescribing the procedure for disciplinary proceedings, provide for an opportunity for representations to be made by the person against whom the disciplinary proceedings are taken before a decision is arrived at by the Commission on the disciplinary charge laid against such person.

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

- (1) The Commission may grant loans and grant 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.

[Subs. Act A926:s.8; Am. Act A1217:s.7]

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

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

[Ins. Act A926:s.9]

PART III - FINANCE

23. The Fund.

- (1) There is hereby established, for the purposes of this Act, a fund to be administered and controlled by the Commission.
- (2) The Fund shall consist of -
 - (a) such sums as may be provided from time to time for the purposes of this Act by Parliament;
 - (b) sums borrowed by the Commission for the purposes of meeting any of its obligations or discharging any of its duties;
 - (c) levies payable under section 24;

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

24. Levies.

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

[Subs. Act A926:s.10][(2) Am. Act A1305:s.6]

- (2A) In the case of every purchase and sale of securities or every futures contract effected on an electronic facility registered under section 34 of the Capital Markets and Services Act 2007, the Commission may impose a levy at such rate as may be specified by the Minister, by order published in the *Gazette*;

[Ins. Act A1305:s.6]

- (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 meanings assigned to them in the Capital Markets and Services Act 2007;

[Subs. Act A1305:s.6]

25. Conservation of the Fund.

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

26. Expenditure to be charged on the Fund.

The Fund shall be expended for the purpose of -

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

27. Commission's financial year.

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

28. Annual report.

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

29. Accounts.

- (1) The Commission shall cause proper accounts of the funds to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.
- (2) The Commission shall cause the statement of accounts to be audited by auditors appointed by the Commission.
- (3) The Commission shall as soon as possible send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause 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.

30. Power to borrow.

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

31. Investment.

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

PART IV - ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

DIVISION 1 - PROPOSALS IN RELATION TO SECURITIES

- 32. [Deleted].** *[Deleted by Act A1305:s.7]*
- 32A. [Deleted].** *[Deleted by Act A1305:s.7]*
- 32B. [Deleted].** *[Deleted by Act A1305:s.7]*

DIVISION 2 - TAKE-OVERS, MERGERS AND COMPULSORY ACQUISITIONS

33. Definition.

(1) In this Division –

"acquirer" means –

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

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

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

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

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

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

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

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

"officer", in relation to a corporation, includes

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

- (ii) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation;
- (iii) a liquidator of the corporation appointed in a voluntary winding up of the corporation, but does not include a receiver who is not also a manager, a receiver and manager appointed by a Court and a liquidator appointed by a Court;

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

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

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

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

- (2) For the purposes of this Division, a reference to "persons acting in concert" shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to-
 - (a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or
 - (b) act jointly or severally for the purpose of exercising control over a company.
- (3) Without prejudice to the generality of subsection (2), the following persons shall be presumed to be persons acting in concert unless the contrary is established:
 - (a) a corporation and its related and associate corporations;
 - (b) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;
 - (c) a corporation and any pension fund established by it;
 - (d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis;

- (e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation's funds and has ten per centum or more of the voting shares in that corporation; and
 - (f) a person who owns or controls twenty per centum or more of the voting shares of a corporation falling within paragraph (a) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within paragraph (a).
- (4) For the purposes of subsection (2), an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.
 - (5) For the purposes of paragraph (3)(a), an associated corporation means a corporation in respect of which not less than twenty per centum of the voting shares of that corporation are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation.

[Subs. Act A926:s.11]

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

- (1) The Minister may, on the recommendation of the Commission, prescribe a Code which shall be published in the *Gazette*.
- (2) The Minister may, from time to time on the recommendation of the Commission, amend any of the provisions of the Code and any amendment thereto shall be published in the *Gazette*.
- (3) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.
- (4) The Commission shall administer the Code according to the objectives specified in subsection (5) and may do all such things as may be necessary or expedient to give full effect to the provisions of this Division and the Code; and without limiting the generality of the foregoing, may-
 - (a) issue rulings from time to time, interpreting the Code;
 - (b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and

- (c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission deems fit with respect thereto.
- (5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure -
- (a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer
 - (i) are aware of the identity of the acquirer and offeror;
 - (ii) have reasonable time in which to consider a take-over offer; and
 - (iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;
 - (b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control;
 - (c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and
 - (d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

[Subs. Act A926:s.11]

33B. Compliance with Code and rulings.

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

- (2) Subject to section 33C, an acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise, in accordance with the provisions of the Code and any ruling made under subsection 33A(4).
- (3) Subject to section 33C, an acquirer who has obtained more than thirty-three per centum of the voting shares in a company but less than fifty per centum of voting shares in that company, shall not acquire any additional voting shares in that company, except in accordance with the provisions of the Code and any ruling made under subsection 33A(4).
- (4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall on conviction be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or both.

[Subs. Act A926:s.11, Am. Act A1074:s.7]

33C. Exemptions.

- (1) Subject to subsection 33A(5), the Commission may grant exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of this Division, the Code and any ruling made under subsection 33A(4).
- (2) Any exemption granted under subsection (1) may be subject to any conditions, restrictions or limitations as may be imposed by the Commission.

[Subs. Act A926:s.11]

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

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

[Am. Act A1217:s.8]

- (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;

[Subs. Act A1217:s.8]

- (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 in a corporation that is not listed, direct any stock exchange to prohibit the listing of any on its securities;

[Am. Act A1217:s.8]
 - (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

[Am. Act A1217:s.8]
 - (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.

[Ins. Act A1217:s.8]
- (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).

[Am. Act A1217:s.8]
- (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.

[Subs. Act A926:s.11; Am. Act A1217:s.8]
- (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.

[Ins. Act A1217:s.8]

- (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.

[Ins. Act A1217:s.8]

- (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.

[Ins. Act A1217:s.8]

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

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

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

[Subs. Act A926:s. 11, Am. Act A1074:s.8]

34. Compulsory acquisitions.

- (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.

[Subs. Act A926:s.11]

34A. Right of minority shareholder.

- (1) Subject to section 34B, if a take-over offer relates to all-the shares or to all shares in any class or classes in an offeree and, at any time before the end of the period within which the take-over offer can be accepted -
- (a) the offeror has, by virtue of the acceptances of the take-over offer, acquired some (but not all) of the shares to which the take-over offer relates or shares of any class or classes to which the take-over offer relates; and
 - (b) those shares, with or without any other shares or any other shares of that class or classes to which the take-over offer relates, as the case may be, which the offeror or any nominee or related corporation of the offeror has acquired amounts to not less than nine-tenths in value of all the shares in the offeree or of that class in the offeree, the holder of any shares or any class or classes of shares to which the take-over offer relates may, by notice to the

offeror, require him to acquire those shares, and the offeror shall be bound to acquire those shares on the terms of the take-over offer or such other terms as may be agreed.

- (2) Within one month of the time specified in subsection (1), the offeror shall give any shareholder who has not accepted the take-over offer, notice in the manner prescribed under the Code of the rights that are exercisable by him under subsection (1) and, if the notice is given before the period mentioned in subsection (1), it shall state that the take-over offer is still open for acceptance.
- (3) A notice under subsection (2) may specify the period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the take-over offer can be accepted.
- (4) Subsection (2) shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under subsection 34(1).
- (5) Any person who fails to comply with subsection (2) shall be guilty of an offence.

[Subs. Act A926:s.11]

34B. Application to Court.

- (1) Where a notice is given under subsection 34(1), the Court may, on an application made by any dissenting shareholder within one month from the date on which the notice was given-
 - (a) order that the offeror shall not be entitled and shall not be bound to acquire those shares; or
 - (b) specify terms of acquisition that are different from the terms of the take-over offer.
- (2) If an application to Court is pending at the end of the period mentioned in subsection 34(2), that subsection shall not have effect until the application has been disposed of.
- (3) When the holder of any shares exercises his rights under subsection 34A(1), the Court may, on an application made by such holder of shares or the offeror, order that the terms on which the offeror shall acquire the shares shall be as the Court thinks fit.
- (4) No order for costs shall be made against a shareholder making an application under subsection (1) or (3) unless the Court considers

- (a) that the application was unnecessary, improper or vexatious; or
 - (b) that there has been unreasonable delay in making the application or unreasonable conduct on the part of the shareholder in conducting the proceeding on the application.
- (5) Subject to subsection (6), the Court may, on an application made by an offeror who has not obtained acceptances to the extent necessary for entitling him to give 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.

[Subs. Act A926:s.11]

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

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

[Subs. Act A926:s.11]

DIVISION 3 - PROSPECTUS

35. [Deleted]. *[Deleted by Act A1305:s.7]*

36. [Deleted]. *[Deleted by Act A1305:s.7]*

37. [Deleted]. *[Deleted by Act A1305:s.7]*
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DIVISION 4 - DEBENTURES

Subdivision 1 - Trust deeds, duties of trustees, borrowers, etc. [Deleted]

- 66. [Deleted]. *[Deleted by Act A1305:s.7]*
- 67. [Deleted]. *[Deleted by Act A1305:s.7]*
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Subdivision 2 – General [Deleted]

92. [Deleted]. *[Deleted by Act A1305:s.7]*
93. [Deleted]. *[Deleted by Act A1305:s.7]*
94. [Deleted]. *[Deleted by Act A1305:s.7]*
95. [Deleted]. *[Deleted by Act A1305:s.7]*

DIVISION 5 – UNIT TRUST SCHEMES AND PRESCRIBED INVESTMENT SCHEMES [Deleted]

96. [Deleted]. *[Deleted by Act A1305:s.7]*
97. [Deleted]. *[Deleted by Act A1305:s.7]*
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**PART IVA – AGREEMENT OR ARRANGEMENT FOR TRANSFER OF BUSINESS
[DELETED]**

124. [Deleted]. *[Deleted by Act A1305:s.7]*

124A. [Deleted]. *[Deleted by Act A1305:s.7]*

124B. [Deleted]. *[Deleted by Act A1305:s.7]*

PART V - ENFORCEMENT AND INVESTIGATION

125. Appointment of Investigating Officers of the Commission.

[Am. Act A1074:s.10]

- (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 the securities laws.

[Am. Act A1041:s.3] [Am. Act A1305:s.8]

- (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 the securities law.

[Am. Act A1041:s.3][Am. Act A1305:s.8]

126. Examination by Commission.

[Am. Act A1074:s.11][Am. Act A1305:s.9]

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

- (a) an exchange holding company;
- (b) a stock exchange;
- (c) an approved clearing house;
- (d) a futures exchange; and

(e) a licensed person;

[Subs. Act A1305:s.9]

(2) Any person and any of the servants or agents of such person shall, on being required by the Commission so to do, produce any documents, records or matter referred to in subsection (1);

[Subs. Act A1305:s.9]

(3) For the purposes of this section and section 127, "person" means any person listed under paragraphs (1)(a) to (e).

[Ins. Act A1305:s.9]

127. Production of books, etc.

[Am. Act A1074:s.12] [Am. Act A1305:s.10]

(1) For the purposes of an examination under section 126, a person under examination, 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 who carries out the examination, and shall produce to that person who carries out the examination 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 person;

[Subs. Act A1305:s.10]

(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 person and no director or officer of the 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).

[Ins. Act A1041:s.4] [Am. Act A1305:s.10]

128. Powers of the Investigating Officers of the Commission.

[Am. Act A1074:s.13]

- (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;

[Am. Act A1305:s.11]

- (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; and

[Am. Act A1305:s.11]

- (d) detain all or any persons found on the premises searched under this subsection until such premises have been searched;

[Ins. Act A1305:s.11]

- (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 the securities laws.

[Am. Act A1305:s.11]

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

[Subs. Act A1074:s.13]

129. Procedure by Investigating Officer on seizure property.

[Am. Act A1074:s.14]

- (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.

[Am. Act A1074:s.14]

- (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.

[Am. Act A1074:s.14]

- (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.

[Am. Act A1074:s.14]

- (6) For the purpose of this section and of sections 130 and 131, "property" includes books and other documents.

[Ins. Act A1041:s.6, Am. Act A1074:s.14]

130. Procedure by Magistrate in respect of property seized.

[Am. Act A1074:s.15]

- (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.

[Am. Act A1074:s.15]

- (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.

[Am. Act A1074:s.15]

- (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.

[Ins. Act A1041:s.6, Am. Act A1074:s.15]

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

[Am. Act A1074:s.16]

- (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.

[Am. Act A1074:s.15]

- (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.

[Ins. Act A1041:s.6]

132. Surrender of travel documents.

[Am. Act A1074:s.17]

- (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.

[Subs. Act A1074:s.17]

- (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.

[Subs. Act A1074:s.17]

- (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.

[Ins. Act A1074:s.17]

- (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 1959/63 *[Act 155]*.

[Ins. Act A1074:s.17]

- (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.

[Ins. Act A1074:s.17]

133. Forcible entry.

[Am. Act A1074:s.18]

- (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.

[Am. Act A1074:s.18]

134. Power to call for examination.

[Am. Act A1074:s.19]

- (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.

[Subs. Act A1041:s.7]

- (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).

[Ins. Act A1041:s.7]

- (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.

[Am. Act A1074:s.19]

- (3) A statement made by any person under this section shall be taken down in writing or recorded and subsequently 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:

[Am. Act A1305:s.12]

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.

[Ins. Act A1041:s.7, Subs Act A1074:s.19]

(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;

[Am Act A1074:s.19][Am. Act A1305:s.12]

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

[Am. Act A1305:s.12]

(d) obstructs an Investigating Officer of the Commission in carrying out an investigation under this section,

[Ins. Act A1305:s.12]

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.

[Am. Act A1041:s.7, Am Act A1074:s.19]

(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.

[Ins. Act A1074:s.19]

(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.

[Ins. Act A1074:s.19]

- (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.

[Ins. Act A1074:s.19]

- (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.

[Ins. Act A1074:s.19]

- (10) If upon an investigation made under the securities laws 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.

[Ins. Act A1074:s.19][Am. Act A1305:s.12]

- (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.

[Ins. Act A1074:s.19]

135. Destruction, concealment, mutilation and alteration of records.

[Am. Act A1074:s.20]

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 a fine not exceeding ten million ringgit or imprisonment for a term not exceeding ten years or both.

[Ins. Act A1041:s.8, Am. Act A1074:s.20]

136. Conduct of prosecution.

[Am. Act A1074:s.21]

- (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:s.9]*

137. General penalty.

[Am. Act A1074:s.22]

- (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.

[Ins. Act A926:s.13, Am. Act A1074:s.22]

138. Offences by bodies corporate.

[Am. Act A1074:s.23]

- (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.

[Ins. Act A926:s.13, Subs. Act A1074:s.23]

139. Compounding of offences.

[Am. Act A1074:s.24]

- (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 compound.

[Am. Act A1074:s.24][Am. Act A1305:s.13]

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

[Ins. Act A1041:s.10]

140. Protection of informers and information.

[Am. Act A1074:s.25]

- (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).

[Ins. Act A1041:s.10]

141. Offences under securities law are seizable offences.

[Am. Act A1074:s.26]

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.

[Ins. Act A1041:s.10, Am Act A1074:s.26]

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

[Am. Act A1074:s.27]

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.

[Ins. Act A1041:s.10, Am Act A1074:s.27]

143. Detention of arrested person.

[Am. Act A1074:s.28]

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.

[Ins. Act A1041:s.10, Am. Act A1074:s.28]

144. Public servants and public officers.

[Am. Act A1074:s.29]

- (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 *[Act 574]*, and a public officer for the purposes of the Criminal Procedure Code *[Act 593]* and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Public Prosecutor, prescribe.

[Subs. Act A1074:s.29]

145. Power to engage persons to render assistance.

[Am. Act A1074:s.30]

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.

[Subs. Act A926:s.14]

146. Power to review.

[Am. Act A1074:s.31]

- (1) The Commission may review its own decision under the securities laws upon an application made by any person who is aggrieved by such decision.

[Am. Act A1305:s.14]

- (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.

147. Decision of Commission shall be final.

[Am. Act A1074:s.32]

Except as otherwise provided in the securities laws, any decision made by the Commission under the securities laws, whether an original decision by it or a decision upon being reviewed under subsection 146(1), shall be final.

[Ins. Act A926:s.15, Am. Act A1074:s.32] [Am. Act A1305:s.15]

148. Obligation of secrecy.

[Am. Act A1074:s.33]

- (1) Except for any of the purposes of the securities law 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 the securities laws.

[Am. Act A1074:s.33][Am. Act A1305:s.16]

- (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.

[Am. Act A1041:s.11]

149. Assistance to police or other public officer.

[Am. Act A1074:s.34]

Notwithstanding section 148, the Commission may, at its own initiative, or at the request of a public officer-

[Am. Act A1074:s.34]

- (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

[Am. Act A1074:s.34]

- (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 the securities laws, 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.

[Ins. Act A926:s.16][Am. Act A1305:s.17]

150. Assistance to and co-operation with foreign supervisory authorities.

[Am. Act A1074:s.35]

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

[Subs. Act A1041:s.12][Am. Act A1305:s.18]

- (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.

[Am. Act A1041:s.12]

- (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.

[Ins. Act A1041:s.12]

- (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.

[Ins. Act A926:s.16, Ins. Act A1041:s.12]

150A. Admissibility of evidence obtained through assistance from a foreign supervisory authority.

- (1) If an Investigating Officer of the Commission in the course of his investigation obtains evidence, oral or documentary, through assistance

obtained from a foreign supervisory authority, such evidence shall be admissible as *prima facie evidence*.

- (2) In this section, a copy of a documentary evidence shall not be admissible in evidence unless the person who has custody or control of the document affirms that he has examined and verified the copy of that document with the original.
- (3) Notwithstanding subsection (2), where the original document is not found or is lost, it shall be sufficient for the person who has custody or control of the document to state orally or in an affidavit given under this section that he had made reasonable efforts to locate the original documents and thereafter the copy of such documents shall be admissible as *prima facie* evidence of such documents in any legal proceedings.
- (4) The oral evidence referred to in subsection (1) shall be admissible as *prima facie* evidence if a person authorized by the foreign supervisory authority records the oral evidence in writing, affirms in an affidavit that the statement attached to the affidavit has been recorded from a person acquainted with the circumstances of the case and the recording of the oral evidence was made in accordance with the laws enforced or administered by the foreign supervisory authority.
- (5) An affidavit under this section shall not be admissible as *prima facie* evidence unless it is sworn—
 - (a) in the Republic of Singapore, before any Judge, District Judge, Assistant District Judge, Registrar, Deputy Registrar, police, Magistrate or before any person authorized to take affidavits by any written law in force in the Republic of Singapore;
 - (b) in England, Scotland, Ireland or the Channel Islands or in any colony, island or place under the dominion or jurisdiction or protection of Her Britannic Majesty, before any Judge, Court, Notary Public or other person lawfully authorized to administer oaths; or
 - (c) in any other place, before any officer exercising consular functions on behalf of Malaysia.
- (6) The court shall take judicial notice of the seal or signature, as the case may be, of any Judge, Court, Notary Public, Consul, Vice Consul, or other person whose seal or signature is appended or subscribed to any affidavit.

[Am. Act A1305:s.19]

151. Power of Commission to require information. *[Am. Act A1074:s.36]*

Where under the securities laws, power is given to the Commission to require any person, or where any person is required under the securities law, 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.

[Ins. Act A926:s.16] [Am. Act A1305:s.20]

151A. Evidential provision.

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.

[Ins. Act A1217:s.10]

152. Disclosure of information to Commission.

- (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.

[Am. Act A1217:s.11]

- (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.

[Ins. Act A1074:s.37]

152A. Power of Commission to publish information.

The Commission may, where it thinks necessary or expedient in the interest of the public or for the protection of investors and in such form or manner as it thinks fit, publish any information in relation to—

- (a) the grant of, lapsing, revocation or suspension of an approval, licence or exemption granted under the securities laws to any person;
- (b) the issuance of any rulings under subsection 217(4) of the Capital Markets and Services Act 2007;
- (c) any action taken under section 354, 355 or 356 of the Capital Markets and Services Act 2007;
- (d) an order by the court under section 360 of the Capital Markets and Services Act 2007;
- (e) the compounding of any offence—
 - (i) under the securities laws; or
 - (ii) under any other law, whether the law of Malaysia or any territory or country outside Malaysia;
- (f) any civil or criminal proceedings brought—
 - (i) under the securities laws against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or

- (ii) under any other law, whether the law of Malaysia or any territory or country outside Malaysia, against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
- (g) any other action as may be taken by the Minister, the Commission, a stock exchange, a futures exchange or an approved clearing house against any person.

[Ins. Act A1305:s.21]

153. [Deleted].

[Deleted by Act A1305:s.22]

154. Officers of Commission may represent Commission in civil proceedings.

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.

[Ins. Act A1074:s.37]

155. [Deleted].

[Deleted by Act A1305:s.23]

156. [Deleted].

[Deleted by Act A1305:s.24]

157. Attempts, abetments and conspiracies.

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.

[Ins. Act A1074:s.37]

158. Written notices circulars, conditions or guidelines.

- (1) The Commission may, generally in respect of any securities law or in respect of any particular provision of any securities law, issue such written notices, circulars or guidelines as the Commission considers desirable.

[Am. Act A1305:s.25]

- (2) Subject to this Act or unless the contrary intention is expressly stated, the Commission may require a person to whom any written notices, circulars, conditions or guidelines 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.

[Am. Act A1217:s.12][Am. Act A1305:s.25]

- (3) *[Deleted Act A1305:s.25]*

- (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) *[Deleted Act A1305:s.25]*

- (6) *[Deleted Act A1305:s.25]*

- (7) *[Deleted Act A1305:s.25]*

- (8) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under any of the provisions of the securities laws against the person failing to give effect to any written notice, circular, condition or guideline.

[Ins. Act A1217:s.12] [Am. Act A1305:s.25]

159. Power to make regulations.

[Am. Act A1074:s.38]

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

- (2) Without prejudice to the generality of subsection (1), regulations may be made for-
- (a) prescribing forms for the purposes of this Act;
 - (b) prescribing fees to be paid in respect of any matter required for the purposes of this Act;
 - (c) *[Deleted Act A1305:s.25];*
 - (d) *[Deleted Act A1305:s.25] ;*
 - (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.

[Subs. Act A926:s.17]

- (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.

[Ins. Act A1074:s.38]

160. Indemnity.

[Am. Act A1074:s.39]

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.

[Ins. Act A926:s.18]

PART VII - REPEAL AND TRANSITIONAL PROVISIONS

161. Repeal.

[Am. Act A1074:s.40]

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.

162. Saving.

[Am. Act A1074:s.41]

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.

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

[Am. Act A1074:s.42]

- (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.

164. Continuance of criminal and civil proceedings.

[Am. Act A1074:s.43]

- (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.

165. Transitional and savings.

- (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) 439/96*] 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.

[Am. Act A1149:s.7]

- (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.

[Ins. P.U. (A) 354/2000]

- (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.

[Ins. Act A1074:s.44]

166. Prevention of anomalies.

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.

[Ins. Act A1074:s.44]

SCHEDULE 1. [Deleted].

[Deleted Act A1305:s.27]

SCHEDULE 2. [Deleted].

[Deleted Act A1305:s.27]

SCHEDULE 3. [Deleted].

[Deleted Act A1305:s.27]

SCHEDULE 4. [Deleted].

[Deleted Act A1305:s.27]

SCHEDULE 5. [Deleted].

[Deleted Act A1305:s.27]

NOTE: TRANSITIONAL AND SAVINGS. [ACT A1217.]

- (1) All actions, rules, regulations, orders, directions, notifications, approvals, decisions, guidelines and other executive acts howsoever called, made, given or done under, or in accordance with, or by virtue of the principal Act before the commencement of this Act, to the extent that they are affected by this Act shall be deemed to have been made, given or done under, or in accordance with, or by virtue of, the corresponding provisions introduced or amended by this Act, and shall continue to remain in full force and effect in relation to whom they

- apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provisions introduced or amended by this Act.
- (2) Nothing in the principal Act or the provisions introduced or amended by this Act shall affect any person's liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.
- (3) Nothing in this Act shall—
- (a) affect the validity of any securities issued before the commencement of this Act; or
 - (b) apply in relation to an issuer 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.
- (4) If any difficulty arises with respect to the provisions introduced or amended by this Act and its transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in these provisions as may appear to him necessary for preventing anomalies.

[Act A1217:s.16]

LIST OF AMENDMENTS

Particulars under section 7(ii) and (iii) of the Revision of Laws Act 1968 (Act 1)

Amending law	Short title	In force from
Act A926	Securities Commission (Amendment) Act 1995	25-11-1995 : except s.11 DIVISION 2; 1-1-1999: DIVISION 2 of PART IV into the Principal Act [P.U.(B) 549/98]
Act A987	Futures Industry (Amendment and Consolidation Act) 1997	16-4-1997 [P.U.(B) 131/97]
Act A1041	Securities Commission (Amendment) Act 1998	1-11-1998 [P.U.(B) 448/98]
Act A1074	Securities Commission (Amendment) Act 2000	1-7-2000 [P.U. (B) 233/2000]
P.U. (A) 354/2000	Securities Commission (Modification) Order 2000	1-7-2000
P.U.(A) 238/2001	Securities Commission (Amendment of Schedule 2 and Schedule 3) Order 2001	3-8-2001
P.U.(A) 239/2001	Securities Commission (Amendment of Schedule 4) Order 2001	1-3-2001 : Subparagraph 2(c); 3-8-2001 : Remaining paragraphs.
Act A1149	Securities Commission (Amendment) Act 2002	12-6-2002 [P.U.(B) 182/2002]

Amending law	Short title	In force from
Act A1217	Securities Commission (Amendment) Act 2003	5-1-2004 [P.U.(B) 2/2004]
P.U.(A) 373/2004	Securities Commission (Amendment of Schedule 4) Order 2004	4-11-2004
P.U.(A) 343/2005	Securities Commission (Amendment of Schedule 1) Order 2005	16-9-2005
P.U.(A) 344/2005	Securities Commission (Amendment of Schedule 2 and Schedule 3) Order 2005	16-9-2005
P.U.(A) 69/2006	Securities Commission (Amendment of Schedule 4) Order 2006	24-2-2006
Act A1305	Securities Commission (Amendment) Act 2007	28-9-2007 All the provisions of the Act comes into operation except for section 7 of the Act in respect of the deletion of Division 2 of Part IV of the Securities Commission Act 1993 [Act 498].

RULES, REGULATIONS & ORDERS

No	Amending law	Short title
1.	P.U.(A) 469/2005	Securities Commission (Disapplication of Division 5 of Part IV) Order 2005
2.	P.U.(A) 230/2004	Securities Commission (Prescription of Islamic Securities) Order 2004
3.	P.U. (A) 237/2001	Securities Commission (Non-Application Of The Definition Of Debenture) Order 2001
4.	P.U. (A) 354/2000	Securities Commission (Modification) Order 2000
5.	P.U.(A) 244/2000	Securities Commission (Shelf Registration Scheme For Debentures) Regulations 2000
6.	P.U.(A) 239/2000	Securities Commission (Fees) Regulations 2000
7.	P.U.(A) 503/98 (UnAmended)	Securities Commission (Compoundable Offences) Regulations 1998
8.	P.U. (A) 336/97	Securities Commission (Non-Application of subsection 32 (4) of the Act) (No. 2)
9.	P.U. (A) 249/97	Securities Commission (Non-Application of subsection 32 (4) of the Act) Order 1997
10.	P.U.(A) 439/96	Securities Commission (Unit Trust Scheme) Regulations 1996
11.	P.U.(A) 19/96	Securities Commission (Criteria for Exercise of Powers under Section 32) Order 1996
12.	P.U.(A) 281/95	Securities Commission (Levy on Securities Transaction) Order 1995
13.	P.U.(A) 431/93	Securities Commission (Collection of Levies) Rules 1993

No	Amending law	Short title
14.	P.U.(A) 422/93	Securities Commission (Fees and Charges) Regulations 1993
15.	P.U. (A) 430/93	Securities Commission (Levy in Securities Transactions) Order 1993