

A BILL

*i n t i t u l e d*

An Act to amend the Capital Markets and Services Act 2007.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Capital Markets and Services (Amendment) Act 2012.

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

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

**Amendment of section 2**

**2.** The Capital Markets and Services Act 2007 [*Act 671*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

(a) by inserting after the definition of “borrower”, the following definition:

‘ “business trust” means a unit trust scheme where the operation or management of the scheme and the scheme’s property or asset is managed by a trustee-manager;’;

(b) by substituting for the definition of “capital market products” the following definition:

‘ “capital market products” means—

(a) securities;

(b) derivatives;

(c) a private retirement scheme;

(d) a unit trust scheme;

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

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

(c) by inserting after the definition of “capital market product” the following definition:

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

(d) in paragraph (b) of the definition of “Islamic capital market business or transaction” by substituting for the words “any proposal that falls within subsection 212(2)” the words “any proposal, scheme, transaction, arrangement, activity, product or matter under section 212”;

(e) in paragraph (c) of the definition of “securities” by substituting for the words “unit trusts” the words “units in a unit trust scheme”; and

(f) in paragraph (c) of the definition of “unit trust scheme” by inserting the words “or asset” after the word “property”.

### **Amendment of section 20**

3. Subsection 20(1) of the principal Act is amended by substituting for the words “section 212” the words “section 214”.

**Deletion of section 70**

4. The principal Act is amended by deleting section 70.

**Amendment of section 76**

5. Subsection 76(6) of the principal Act is amended in subparagraphs (c)(i) and (iv) by substituting for the words “and 97” the words “, 97 and 139ZN”.

**New section 76A**

6. The principal Act is amended by inserting after section 76 the following section:

**“Registration of persons providing capital market services**

**76A.** (1) The Commission may specify any service to be a capital market service.

(2) A person providing any capital market service shall apply to be registered under this section.

(3) The Commission may, on an application made under subsection (2), register such person subject to such terms and conditions as the Commission may impose, and the Commission may at any time, by notice in writing, amend or revoke any such term or condition or impose new terms or conditions.

(4) If the Commission, by notice in writing, amends or revokes any term or condition or imposes any new term or condition under subsection (3), the amendment, revocation or imposition shall take effect at the time of the service of the notice or at such time specified in the notice.

(5) The Commission may withdraw the registration accorded under subsection (3) if it is necessary for the protection of investors or in the public interest or if any term or condition imposed under subsection (3) or (4) has not been complied with.

(6) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (5).”.

### **Amendment to section 105**

7. Subsection 105(3) of the principal Act is amended by deleting the words “and section 106”.

### **Deletion of section 106**

8. The principal Act is amended by deleting section 106.

### **Amendment of section 139ZK**

9. Section 139ZK of the principal Act is amended in the shoulder note by inserting after the word “statement” the words “to the Commission”.

### **New sections 139ZN, 139ZO, 139ZP, 139ZQ and 139ZR**

10. Part IIIA of the principal Act is amended in Division 4 by inserting after section 139ZM the following sections:

#### **“Recommendations by licenced person**

**139ZN.** (1) A licenced person shall not make a recommendation with respect to any private retirement scheme to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), a licenced person does not have a reasonable basis for making a recommendation to a person unless—

- (a) the licenced person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licenced person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;

- (b) the licenced person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and
  - (c) the recommendation is based on such consideration and investigation.
- (3) If the licenced person contravenes subsection (1) and—
  - (a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;
  - (b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
  - (c) the person suffers loss or damage as a result of doing that act or refraining from doing that act,

the licenced person shall be liable to pay damages to the person in respect of that loss or damage.

(4) A licenced person shall not be liable under subsection (3) if it is proved that a reasonable person in the circumstances would have done or omitted to do that act in reliance on the recommendation even if a licenced person had complied with that subsection in relation to the recommendation.

(5) In the case of a contravention of subsection (1), a licenced person shall not be liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that the licenced person had about the client's investment objectives, financial situation and particular needs when the licenced person makes the recommendation.

### **False or misleading declaration or furnishing false documents to provider and administrator**

**139zo.** (1) A person shall not—

- (a) make, orally or in writing, or sign any declaration, return, certificate or other document required by this Act or the rules of a private retirement scheme administrator, which is false, misleading or from which there is a material omission; or

- (b) provide any information or furnish any document which is false, misleading or in which there is a material omission,

to a private retirement scheme administrator or an approved private retirement scheme provider.

(2) A person who contravenes subsection (1) with the intention to deceive a private retirement scheme administrator or an approved private retirement scheme provider commits an offence and shall, on conviction, be liable with imprisonment for a term not exceeding three years or to a fine not exceeding one million ringgit or to both.

(3) A person who is convicted of an offence under subsection (2) in relation to withdrawal of accrued benefits shall, within six months from the conviction date, return the entire amount withdrawn.

### **False or misleading statements, etc.**

**139zP.** A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce any person to make a contribution to a private retirement scheme if, when he makes the statement or disseminates the information—

- (a) he does not care whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

### **Use of manipulative and deceptive devices**

**139zQ.** It shall be unlawful for any person directly or indirectly to—

- (a) use any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

- (c) make any untrue statement of a material fact or to omit to state a material fact which is necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading,

in connection with the—

- (A) acquisition or disposal of beneficial interest under a private retirement scheme;
- (B) making of contributions to a private retirement scheme; or
- (C) withdrawal of any sum from a private retirement scheme.

**Penalty for offences under sections 139ZP and 139ZQ**

**139ZR.** A person who contravenes sections 139ZP and 139ZQ commits an offence and shall be punished, on conviction, with imprisonment for a term not exceeding ten years and a fine of not less than one million ringgit.”.

**Substitution of Part IV**

**11.** The principal Act is amended by substituting for Part IV the following part:

“PART IV

CAPITAL MARKET COMPENSATION FUND

DIVISION 1

Interpretation

**Interpretation for the purposes of Part IV**

**140.** In this Part—

“auditor” means an auditor registered with the Audit Oversight Board pursuant to section 310 of the Securities Commission Act 1993;

“Capital Market Compensation Fund” means the Capital Market Compensation Fund established under section 158;

“Corporation” means the Capital Market Compensation Fund Corporation established under section 141;

“event of default” means an event in which a relevant person is considered to be unable, or likely to be unable, to satisfy claims made against it in circumstances as may be determined by the Corporation;

“relevant authority” means the Commission, stock exchange, derivatives exchange or body established outside Malaysia that carries out similar functions to the Corporation and any other body as may be specified by the Commission;

“relevant person” means a holder of a Capital Markets Services Licence who carries on the business of—

- (a) dealing in securities;
- (b) dealing in derivatives and who is an affiliate of the relevant derivatives exchange; or
- (c) fund management;

“rules” means the memorandum of association, the articles of association, or any other rules or directions by whatever name called and wherever contained, governing the operation, management or procedures of the Corporation.

## DIVISION 2

### The Capital Market Compensation Fund Corporation

#### **The Corporation**

**141.** (1) A body corporate known as the “Capital Market Compensation Fund Corporation” is established.

(2) The Corporation shall have perpetual succession and a common seal.

(3) The Corporation may sue and be sued in its corporate name.



(4) Subject to and for the purposes of the administration and management of the Capital Market Compensation Fund, the Corporation may, upon such terms as it deems fit—

- (a) enter into contracts;
- (b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and
- (c) convey, assign, surrender, yield up, charge, mortgage, demise, lease, reassign, transfer, or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Corporation.

(5) The Corporation may from time to time employ such persons on the terms and conditions as the Corporation may determine.

### **Functions of the Corporation**

**142.** (1) The Corporation shall manage and administer the Capital Market Compensation Fund and process and handle claims for compensation under this Part.

(2) The Minister may, on the recommendation of the Commission, give his approval to the Corporation to borrow any sum of money as it thinks necessary for the purposes of discharging its functions.

### **Powers of the Corporation**

**143.** The Corporation shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions including to—

- (a) establish processes and procedures which are fair, reasonable and transparent to determine claims for compensation;
- (b) pay out compensation;
- (c) petition the winding up of a relevant person;
- (d) determine the financial and operational condition of a relevant person and the likelihood of the relevant person triggering an event of default;

- (e) determine, charge, collect and receive contributions, levies, fees and other payments from relevant persons or claimants and expend the same in furtherance of all or any of the functions of the Corporation; and
- (f) take any action in respect of its function in managing and administering the Capital Market Compensation Fund.

### **Duties and responsibilities of the Corporation**

**144.** The Corporation shall—

- (a) exercise its power in good faith in accordance with the provisions of this Act; and
- (b) comply with any direction or guidelines issued by the Commission.

### **Membership of the Corporation**

**145.** (1) The Corporation shall consist of the following members who shall be appointed by the Minister on the recommendation of the Chairman of the Commission:

- (a) a Chairman;
- (b) one representative from the Commission;
- (c) one representative from the exchange holding company; and
- (d) two other members who possess knowledge or experience in the capital market.

(2) Every member of the Corporation shall at all times exercise his duties in good faith.

(3) Subject to his instrument of appointment, a member of the Corporation shall hold office for a term not exceeding three years and is eligible for reappointment.

**Removal, resignation and vacation of office of any member of the Corporation**

**146.** (1) The Minister on the recommendation of the Chairman of the Commission may at any time revoke the appointment of any member of the Corporation if—

- (a) the member has failed to discharge his duties in a proper manner; or
- (b) the member absents himself from three consecutive meetings of the Corporation without leave of the Chairman of the Corporation and in the case of the Chairman of the Corporation, without leave of the Chairman of the Commission.

(2) A member may at any time resign his office by giving a written notice of not less than thirty days to the Minister.

(3) The office of a member of the Corporation shall be vacated if—

- (a) he dies;
- (b) he has been convicted under any law for an offence involving fraud, dishonesty or violence whether within or outside Malaysia;
- (c) he becomes a bankrupt; or
- (d) he is of unsound mind or is otherwise incapable of discharging his duties.

**Meetings**

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

(2) The Corporation may invite any person to attend any meeting for the purpose of advising it on any matter under discussion, but such person so attending shall not be entitled to vote at the meeting.

(3) Three members of the Corporation shall constitute a quorum at any meeting of the Corporation, one of whom shall be the representative of the Commission.

(4) Subject to the provisions of this Act, the Corporation shall determine its own procedures.

### **The Corporation may establish committee**

**148.** (1) The Corporation may establish any committee as it considers necessary or expedient to assist it in the performance of its functions under this Part.

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

(3) A committee established under subsection (1) may elect any of its members to be chairman and may regulate its own procedures.

(4) In the exercise of its duties under this section, such committee shall act in accordance with any direction given by the Corporation.

(5) The committee shall meet as often as may be determined by the chairman of the committee.

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

### **Delegation of the Corporation's functions and powers**

**149.** (1) The Corporation may delegate any of its functions and powers to—

(a) any member of the Corporation; or

(b) any committee established by the Corporation.

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

### **Remuneration, allowances or other expenses**

**150.** Members of the Corporation or a committee or any other person invited to attend any meeting of the Corporation or the committee under section 147 or 148 may be paid such remuneration, allowances or other expenses as determined by the Minister on the recommendation of the Chairman of the Commission.

### **Disclosure of interest**

**151.** (1) A member of the Corporation having directly or indirectly, by himself or a member of his family, any interest in any matter under discussion by the Corporation shall disclose to the Corporation the fact and nature of his interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting and after the disclosure, the member having an interest in the matter shall—

- (a) not participate or be present in any deliberation or decision of the Corporation on that matter; and
- (b) be disregarded for the purpose of constituting a quorum of the meeting for the deliberation and decision on that matter.

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

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

### **Power to engage persons to render assistance**

**152.** The Corporation may, either generally or in a particular manner, engage under such terms and conditions as the Corporation may determine from time to time, any person who is not an employee of the Corporation to render such assistance

as the Corporation may require or specify in connection with the performance of its functions or the discharge of its duties under this Part, or to perform or discharge the same on behalf of and in the name of the Corporation.

### **Duty to maintain secrecy**

**153.** (1) A member, employee or agent of the Corporation shall not give, divulge, reveal or otherwise disclose any information or document which has been obtained by him in the course of his duties except—

- (a) in the circumstance set out under section 154; or
- (b) to the Commission—
  - (i) for the purpose of enabling or assisting the Commission in the discharge of its functions under the securities laws or any other written law; and
  - (ii) if the Commission is of the view that such disclosure is necessary in the interest of the public or for the protection of investors.

(2) A person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall not in any manner disclose such information or document to any other person.

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

### **Permitted disclosure**

**154.** A person referred to in subsection 153(1) shall not refuse to disclose any information or document—

- (a) for the purpose of enabling or assisting auditors of the Corporation to discharge their functions;
- (b) for the purpose of instituting, or in the course of, any civil proceedings between the Corporation and a relevant person;

- (c) to any person duly authorized to investigate into any offence under any law, and such disclosure is limited to the affairs of the relevant person under investigation; or
- (d) in respect of a relevant person who is in receivership, or in the course of being wound up or otherwise dissolved within or outside Malaysia.

### **Powers of the Commission to issue directions**

**155.** The Commission may, from time to time, give the Corporation such general or specific directions consistent with the provisions of this Part or where the Commission thinks necessary in the public interest or for the protection of investors.

### **Cooperation and coordination**

**156.** (1) The Corporation shall provide assistance to the Commission or to any person acting on behalf of or with the authority of the Commission, as the Commission or such person requires, including the furnishing of information relating to the operations of the Corporation or any other information.

(2) The Corporation may enter into arrangements to cooperate with any relevant authority to obtain or share any information or document as it deems necessary in the interests of investors or in relation to any relevant person.

### **Act or omission done in good faith**

**157.** No action or other proceedings for damages shall be brought, instituted or maintained in any court against—

- (a) the Corporation;
- (b) any member of the Corporation;
- (c) any member of any committee established by the Corporation; or
- (d) the employee of the Corporation,

in respect of any act done or statement made or omitted to be done or made, in good faith in the execution of any functions, powers and responsibilities under this Part.

### DIVISION 3

#### The Capital Market Compensation Fund

#### **Establishment of the Capital Market Compensation Fund**

**158.** (1) A fund to be known as the Capital Market Compensation Fund is established which shall be administered by the Corporation.

(2) The Corporation shall hold the assets of the Capital Market Compensation Fund in trust for the purposes as provided under this Part.

#### **Assets constituting the Capital Market Compensation Fund**

**159.** (1) The Capital Market Compensation Fund shall consist of the following:

- (a) monies provided to the Capital Market Compensation Fund by the Commission;
- (b) monies provided to the Capital Market Compensation Fund by the relevant stock exchange and derivatives exchange;
- (c) contributions made by the Capital Market Development Fund;
- (d) contributions made by a relevant person as provided for under section 160;
- (e) interest and profits accruing from time to time from the investment of the Capital Market Compensation Fund;
- (f) any sum of money borrowed by the Corporation pursuant to subsection 142(2);



- (g) monies recovered by or on behalf of the Corporation in the exercise of a right of action conferred by this Part;
- (h) monies paid by an insurer under a contract of insurance or indemnity entered into by the Corporation under section 170 of this Part; and
- (i) all other monies lawfully paid into the Capital Market Compensation Fund pursuant to this Act or any other guidelines issued by the Commission.

(2) The Corporation is empowered to credit all direct operating income to the fund, and charge against the Fund, all expenses and costs incurred by the Corporation in managing the Fund.

### **Contribution and levies**

**160.** (1) A participating organization, an affiliate, a holder of a Capital Markets Services Licence for dealing in securities other than a participating organization and a holder of a Capital Markets Services Licence for fund management shall upon being licenced under this Act pay a contribution at a rate to be prescribed by the Minister to the Capital Market Compensation Fund.

(2) All contributions made under this section shall not be refundable.

(3) In addition to the contributions under this section, the Commission may impose a levy of an amount to be prescribed by the Minister on any category of relevant persons to sustain the operation of the Capital Market Compensation Fund.

### **Conservation of the Capital Market Compensation Fund**

**161.** (1) It shall be the duty of the Corporation to conserve the Capital Market Compensation Fund consistent with the provisions of this Part or any regulations made under this Part.

(2) The Corporation may invest the monies of the Capital Market Compensation Fund available for investment in such manner as may be specified by the Commission.

### **Financial year**

**162.** For the purposes of this Part, the financial year of the Capital Market Compensation Fund shall commence on 1 January and ends on 31 December of each year.

### **Accounts and audit**

**163.** (1) The Corporation shall keep or cause to be kept proper accounts and other records in respect of the operations of the Corporation and shall prepare statements of accounts for each financial year.

(2) At the end of each financial year, within three months after the close of the financial year or as soon as the accounts of the Corporation have been audited, the Corporation shall cause a copy of the statement of accounts to be submitted to the Commission.

(3) Within three months after the close of each financial year, the Corporation shall prepare and submit a regulatory report to the Commission on the extent to which it has complied with the requirements under this Part and its rules during the financial year.

(4) Upon receipt of the report under subsection (3), the Commission may at any time if it deems it necessary to do so, conduct a regulatory audit on the Corporation.

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

### **Annual report**

**164.** (1) The Corporation shall, within three months after the close of each financial year, prepare a report of its activities for that financial year and send a copy of the report to the Commission.

(2) The report under subsection (1) shall include the following:

- (a) claims referred to the Corporation and the compensation paid out;
- (b) audited annual accounts of the Corporation; and
- (c) any other matters as may be directed by the Commission.

#### DIVISION 4

Provisions relating to claims

### **Rules of the Corporation**

**165.** (1) The Corporation shall make rules to be approved by the Commission governing the proper administration of the Corporation and the Capital Market Compensation Fund.

(2) The Corporation shall not amend its rules without the prior approval of the Commission.

(3) The rules of the Corporation may include—

- (a) the scope and category of claimants who are eligible to make a claim from the Capital Market Compensation Fund;
- (b) the manner in which claims are to be made;
- (c) the manner in which claims are to be determined and awarded by the Corporation;
- (d) the processing or administrative fees;
- (e) the circumstances in which the Corporation may make an interim payment prior to a final determination of a claim;
- (f) the circumstances in which the Corporation may make a payment to a person other than the claimant;
- (g) the circumstances in which a claim may be refused by the Corporation; and

- (h) the manner in which the outcome of a claim may be notified to the claimant and the relevant person.

### **Appeal to the Commission**

**166.** (1) Any claimant who is aggrieved by a determination of the Corporation in relation to a claim, may appeal in writing to the Commission within thirty days from the date on which the claimant is notified of the determination of the Corporation.

(2) The Commission shall decide on an appeal within a period of three months from the date the appeal is made.

### **Assistance to the Corporation**

**167.** (1) A relevant person shall provide such assistance to the Corporation, or to a person acting on behalf of or with the authority of the Corporation, as the Corporation or such person reasonably requires, including the furnishing of such returns, and the provision of such information or documents relating to the operations of the relevant person or any other information or documents as the Corporation or such person may require for the purpose of determination of a claim under this Part.

(2) The Corporation may, whether on its own motion or on application made by any claimant, summon and examine witnesses whom it considers to be material to its inquiry into a claim.

(3) A person who refuses or fails, without lawful excuse, to assist the Corporation or a person acting on behalf of, or authorized by, the Corporation, in accordance with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Subrogation of the Corporation to rights and remedies of claimant upon payment from the Capital Market Compensation Fund**

**168.** If the Corporation makes a payment out of the Capital Market Compensation Fund in respect of a claim from the Capital Market Compensation Fund under this Act—

- (a) the Corporation is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
- (b) the claimant shall not make any claim or have any right under bankruptcy or legal proceeding or otherwise to receive in respect of the loss—
  - (i) any sum out of the assets of the relevant person concerned; or
  - (ii) any sum if the loss was caused by an act or omission of a director, officer, representative or employee of the relevant person,

until the Corporation has been reimbursed the full amount of the payment made by it out of the Capital Market Compensation Fund, including any interest paid thereof.

**Power of the court to make certain orders**

**169.** (1) Notwithstanding the provisions of the Companies Act 1965, the court may on the petition of the Corporation, order the winding up of a relevant person in accordance with the provisions of the Companies Act 1965.

(2) Without prejudice to subsection (1), the court may, on an application by the Corporation, make the following orders:

- (a) an order vesting securities or such other property in the Corporation or a trustee appointed by the court; and

- (b) an order appointing a receiver in respect of the property of a relevant person or the property that is held by such relevant person or his appointed custodian for or on behalf of another person whether on trust or otherwise.

(3) A trustee appointed by an order of the court under paragraph (2)(a)—

- (a) may require any person to deliver to him any securities or such other property or to give to him all information concerning the securities or derivatives contracts that may reasonably be required;
- (b) may acquire and take possession of the securities or such other property;
- (c) may deal with the securities or such other property in any manner as he thinks fit; and
- (d) shall have such other powers in respect of the securities or such other property as may be specified by the court.

(4) A person appointed by order of the court under paragraph (2)(b) as a receiver of the property of a relevant person—

- (a) may require the relevant person to deliver to him any property of which he has been appointed receiver or to give to him all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the relevant person might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the court may specify.

(5) The proceeds of the dealing in or disposal of securities or derivatives contracts under paragraph (2)(a) shall be paid into the court and the Corporation may apply to the court for payment out of the proceeds for settling the claims pursuant to this Part.

(6) For the purposes of this section, the Corporation may, with the consent of the Commission, make an application to the court to be joined as a party in any action brought by the Commission under section 360 or 361 of this Act.

(7) For the purposes of this section—

- (a) “property held by a relevant person” includes such property held by the relevant person through his appointed custodian; and
- (b) “property”, in relation to a relevant person, includes monies, securities, or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the relevant person or another person in the course of or in connection with the business of the relevant person.

### **Power of the Corporation to enter into contract of insurance**

**170.** The Corporation may enter into a contract of insurance under which the Corporation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Act, the rules of the Corporation or any guidelines issued by the Commission.

### **Application of insurance money**

**171.** A claimant against the Capital Market Compensation Fund shall not have—

- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this Act in respect of such contract; or
- (b) a right or claim with respect to any monies paid by the insurer in accordance with such contract.

### **Monies in the Capital Market Compensation Fund upon winding up of the relevant stock exchange**

**172.** In the event of a relevant stock exchange being wound up under the Companies Act 1965, the Corporation shall make available to the liquidator of the relevant stock exchange any remaining contribution of the stock exchange in the Capital Market Compensation Fund, which shall then form part of the assets of the relevant stock exchange and be available to the liquidator for distribution in accordance with the Companies Act 1965.”.

### **Amendment of section 200**

**12.** Section 200 of the principal Act is amended by substituting for subsection (5) the following subsection:

“(5) To the extent that any of the amount obtained in a civil proceeding under subsection (1) has not been distributed pursuant to paragraph (3)(b), it shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission may determine, with the approval of the Minister.”.

### **Amendment of section 201**

**13.** Section 201 of the principal Act is amended by substituting for subsection (9) the following subsection:

“(9) To the extent that any of the amount recovered or obtained in a civil action under subsection (5) or (6) has not been distributed pursuant to subsection (7), it shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or



- (b) retained by the Commission to defray—
- (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
  - (ii) the cost of regulating the capital market,
- as the Commission may determine, with the approval of the Minister.”.

### **Amendment of section 211**

**14.** Section 211 of the principal Act is amended by substituting for subsection (4) the following subsection:

“(4) To the extent that any of the amount obtained in a civil action under subsection (1) has not been distributed pursuant to paragraph (2)(b), it shall be—

- (a) paid to the Capital Market Compensation Fund maintained under Part IV; or
- (b) retained by the Commission to defray—
  - (i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or
  - (ii) the cost of regulating the capital market,as the Commission may determine, with the approval of the Minister.”.

### **Substitution of Division 1 of Part VI**

**15.** Part VI of the principal Act is amended by substituting for Division 1 the following divisions:

“DIVISION 1

Listed and Unlisted Capital Market Product

#### **Requirement for approval, registration, authorization or recognition**

**212.** (1) This Part does not apply to a private retirement scheme.

(2) A person who proposes to undertake a proposal, scheme, transaction, an arrangement or activity, or issue securities or offer for subscription or purchase of securities, or issue an invitation to subscribe for or purchase securities, in relation to—

- (a) the listing and quotation of securities of a corporation on a stock market;
- (b) the transfer of a listing and quotation of securities of a corporation from an alternative market to the main market;
- (c) the listing or quotation of securities other than securities in paragraph (a), including units of a business trust or Islamic securities on a stock market;
- (d) an acquisition or disposal of asset which results in a significant change in the business direction or policy of a listed corporation, listed unit trust scheme or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity, under paragraphs (a) and (b),

shall seek the approval of the Commission under Division 1A.

(3) A person who proposes to effect a compromise, arrangement or scheme by way of issue of securities for the amalgamation of two or more listed corporations, shall seek the approval of the Commission under Division 1A.

(4) A person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company or listed corporation, or to list such securities on a securities exchange outside Malaysia shall seek the approval of the Commission under Division 1A.

(5) A person who intends to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase unlisted capital market products including unlisted Islamic securities but excluding units in a unit trust scheme, shall—

- (a) seek authorization of the Commission or in the case of a foreign securities or capital market product, recognition by the Commission, under Division 3A; and

(b) register with the Commission, a disclosure document containing information and particulars as may be specified by the Commission under section 92A.

(6) Notwithstanding subsection (5) or any other written law, a person shall register a business trust with the Commission, or in the case of a foreign business trust, seek recognition by the Commission, under Division 3B, if the person intends to—

(a) establish, operate, or assist in establishing or operating the business trust;

(b) hold himself out as operating the business trust; or

(c) offer or make available units in the business trust.

(7) The Commission may specify—

(a) any other proposal, scheme, transaction, arrangement or activity; or

(b) the originating, offering or making available of any other capital market product,

that must comply with the requirements under this Part.

(8) The requirements under subsections (2), (3), (4), (5) and (6) shall not apply to any proposal, scheme, transaction, arrangement, activity, product or matter specified under Schedule 5 or as may be prescribed by the Minister.

(9) A person who contravenes this section commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and be liable to a fine not exceeding three million ringgit.

#### DIVISION 1A

##### Application for Approval

### **Application for approval**

**213.** (1) In this Division and Schedule 5, unless the context otherwise requires—

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

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

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

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

“private company” and “public company” have the meaning assigned to them in subsection 4(1) of the Companies Act 1965;

“proposal” means a proposal referred to in subsection 212(2).

(2) An applicant seeking approval for matters provided under section 212 shall make an application to the Commission for approval and shall submit documents and information to the Commission in the form and manner as the Commission may specify.

(3) Notwithstanding subsection (2), the Commission may require an applicant to furnish it with additional information or document as the Commission considers necessary in relation to the application.

### **Grant of approval**

**214.** (1) The Commission may in relation to an application for an approval made under subsection 213(2)—

- (a) approve the application; or
- (b) approve the application—
  - (i) subject to such terms and conditions;
  - (ii) with such revision; or

- (iii) with such revision and subject to such terms and conditions,

as the Commission deems fit or necessary.

(2) The Commission may vary, add to or remove any term and condition imposed under subsection (1) at any time.

(3) No person can effect, carry out or implement any of the proposal in the application made under subsection 213(2) unless—

- (a) the Commission has approved the application under this section; or
- (b) the applicant has obtained the prior approval of the Commission to effect, carry out or implement any part of the proposal in the application.

(4) A person shall not be deemed to have taken any step to effect, carry out or implement a proposal in an application under subsection 213(2), if—

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

(5) A person who contravenes any term or condition imposed under subsections (1) or (2) commits an offence.

### **Refusal of an application**

**214A.** (1) The Commission may refuse to approve an application made under subsection 213(2) if—

- (a) the applicant has failed to comply with any requirement of this Act or any guidelines issued by the Commission;
- (b) the application contains any statement or information that is false or misleading or from which there is a material omission;

- (c) the Commission is not satisfied with an issuer's corporate governance record or is concerned with the integrity of any of the issuer's directors;
  - (d) the Commission has reason to believe that the approval of the application would be detrimental to the interest of investors;
  - (e) the Commission has reason to believe that the approval of the application would be contrary to public interest; or
  - (f) in the case of an application for the listing or quotation of a business trust, the business trust has not been registered with or recognized by the Commission under Division 3B.
- (2) If the Commission is satisfied that—
- (a) there is a contravention of subsection 215(1);
  - (b) there is a breach of any term or condition imposed under section 214; or
  - (c) there is any change or development in the circumstances relating to the application occurring subsequent to the Commission giving its approval under this section, and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the application,

the Commission may—

- (A) revoke an approval given under section 214;
- (B) revise an approval; or
- (C) impose such further terms or conditions as the Commission deems fit or necessary,

provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by, or arising from, the carrying out or implementation of a proposal in the application in accordance with an approval given under section 214.

(3) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (2).

(4) In respect of an application made under subsection 213(2)—

(a) any person may make an announcement of an application before submitting such application to the Commission for its approval; or

(b) the Commission may direct an applicant to make an announcement in relation to the application or any matter under this Division in accordance with the rules of the stock exchange, where the Commission deems necessary.

(5) For the purposes of subsection (4), an “announcement” includes any publication by press notice or in any other form of a firm intention to make an offer for any securities.

(6) Any person who contravenes subsection 214(3) or paragraph 214A(4)(b) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

**False or misleading statements, etc.**

**215.** (1) If any statement or information is required to be submitted to the Commission under this Division—

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

(b) financial adviser or an expert; or

(c) any other person,

shall not—

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

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

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

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

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

(3) If—

- (a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and
- (b) a person referred to in that subsection knows or becomes aware before the proposal in the application has been fully effected, carried out or implemented—
  - (i) that the statement or information may be false or misleading or materially incomplete; or
  - (ii) that the conduct may tend to mislead or deceive,

the person shall forthwith inform the Commission of the facts referred to in subparagraph (b)(i) or (ii), where applicable, and shall take such action as the Commission may require pursuant to subsection 214A(2).

(4) For the purposes of paragraph (3)(b), a person who knows or becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.



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

**Application monies to be paid into a trust account where no prospectus is required**

**215A.** (1) Any monies received from any person in relation to an application that has been approved by the Commission under section 214 and for which prospectus is not required, shall be paid into a trust account established and kept in a licenced institution by the issuer for such person until permission for the listing or quotation on the official list of a stock exchange or other similar exchange outside Malaysia is granted.

(2) If the permission referred to in subsection (1) is refused, the issuer shall forthwith repay without interest all monies referred to in subsection (1) and if any such monies are not repaid within fourteen days after the issuer becomes liable to repay it, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period.

(3) Monies paid into a trust account under this section shall not be available for payment of the debts of the issuer, or be paid or taken in execution under an order or process of any court.

(4) Any condition imposed by an issuer requiring or binding any person to waive compliance with this section or purporting to do so shall be void.

(5) The Commission may specify such categories of applicants that shall not be subject to this section.

(6) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

**Amendment to section 220**

**16.** Section 220 of the principal Act is amended by substituting for subsection (7) the following subsection:

“(7) To the extent that any of the amount obtained under paragraph (1)(h) or subsection (6) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital markets investors and professionals; or

(ii) the cost of regulating the capital markets, as the Commission may determine, with the approval of the Minister.”.

**Amendment of section 233**

**17.** Section 233 of the principal Act is amended in paragraph (1)(d)—

(a) in subparagraph (i), by substituting for the words “section 212” the words “section 214”; and

(b) in subparagraph (ii), by substituting for the words “subsection 212(5)” the words “section 214”.

**Amendment of section 237**

**18.** Section 237 of the principal Act is amended in subsection (1) by substituting for the words “A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation” the words “A corporation

or a unit trust scheme shall not issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation or unit holders of the unit trust scheme”.

### **Amendment of section 245**

**19.** Section 245 of the principal Act is amended in subsection (7) by substituting for the words “section 215” the words “section 215A”.

### **New Divisions 3A, 3B and 3C of Part VI**

**20.** Part VI of the principal Act is amended by inserting after Division 3 the following divisions:

#### “DIVISION 3A

Application for authorization or recognition

#### **Interpretation**

**256A.** For the purposes of this Division, unless the context otherwise requires—

“unlisted product” means unlisted capital market product including unlisted Islamic securities but excluding units in a unit trust scheme.

#### **Application for authorization or recognition**

**256B.** (1) An applicant making an application for authorization or recognition under subsection 212(5) shall submit documents and information to the Commission in the form and manner as the Commission may specify.

(2) The Commission may require an applicant to furnish it with additional information or document as the Commission considers necessary in relation to the application.

(3) Such application shall be submitted together with the prescribed application fee.

### **Grant of authorization or recognition**

**256c.** (1) The Commission may, in relation to an application for authorization or recognition made under subsection 256B(1), grant—

- (a) an authorization or recognition; or
- (b) an authorization or recognition—
  - (i) subject to such terms and conditions;
  - (ii) with such revision; or
  - (iii) with such revision and subject to such terms and conditions,

as the Commission deems fit or necessary.

(2) The Commission may vary, add to or remove any term and condition imposed under subsection (1) at any time as the Commission considers necessary.

(3) A person who contravenes any term or condition imposed under subsection (1) or (2) commits an offence.

### **Refusal of authorization or recognition**

**256d.** The Commission may refuse to grant an authorization or recognition under section 256c if—

- (a) the application is not made in accordance with this Division;
- (b) the applicant has failed to comply with any requirement of this Act or any guidelines issued by the Commission;
- (c) any information or document furnished to the Commission in respect of the application is false or misleading or from which there is a material omission;

- (d) the Commission has reason to believe that the authorization or recognition would be detrimental to the interest of investors; or
- (e) the Commission has reason to believe that the authorization or recognition would be contrary to public interest.

### **Withdrawal of authorization or recognition**

**256E.** (1) The Commission may withdraw an authorization or recognition granted under section 256c if the Commission is satisfied that—

- (a) an applicant or any of its officers has failed to comply with or has breached—
  - (i) any term or condition imposed by the Commission;
  - (ii) any guidelines or direction issued by the Commission; or
  - (iii) any requirements under this Act;
- (b) any information or document furnished to the Commission under this Division is false or misleading or from which there is a material omission; or
- (c) it is in the interest of investors or public interest to withdraw the authorization or recognition granted under section 256c.

(2) The Commission may, upon a request in writing made to the Commission by the applicant, withdraw an authorization or recognition granted under section 256c.

(3) If a request in writing is made to the Commission under subsection (2), the Commission may refuse to withdraw the authorization or recognition granted under section 256c, if the Commission considers that—

- (a) it is in the interest of investors or public interest, that any matter regarding the unlisted product should be investigated before the authorization or recognition is withdrawn under subsection (2); or

- (b) the withdrawal of the authorization or recognition would not be in the interest of investors or public interest.

(4) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (1).

### **Effect of withdrawal**

**256F.** Any withdrawal issued under section 256E shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to the unlisted product entered into before the withdrawal of the authorization or recognition; or
- (b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph (a).

### **Power to issue directions, etc.**

**256G.** (1) Without prejudice to sections 125, 354, 355 and 356, if the Commission—

- (a) exercises its power to withdraw an authorization or recognition under this Division;
- (b) becomes aware that a statement or information provided or submitted to it under this Division is false or misleading or from which there is a material omission; or
- (c) is satisfied that the interest of investors or public interest is jeopardized or is likely to be jeopardized,

the Commission may issue a direction in writing to a person on whom an obligation to comply with any requirement imposed under this Division or regulation or any guidelines issued by the Commission to take such steps as may be specified in the direction to—

- (A) comply with, observe, enforce or give effect to—
  - (i) any requirement or provision of this Act or any securities laws;

- (ii) any guidelines or written notice issued by the Commission; or
  - (iii) any term, condition or restriction imposed under or pursuant to this Act; or
- (B) take such steps to remedy the breach in respect of which the Commission is exercising its powers to withdraw authorization or recognition under paragraph 256E(1)(a) or to mitigate the effect of such breach.

(2) Any person referred to under this Division shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns and the provision of such information relating to its operations or any other information as the Commission or the person acting on behalf of or with the authority of the Commission may require for the proper administration of securities laws.

(3) A person who fails to comply with any direction issued under subsection (1) or fails to provide assistance under subsection (2) commits an offence.

#### DIVISION 3B

#### Business Trust

### **Interpretation and application**

**256H.** (1) Sections 122 and 123 shall not apply to a business trust.

(2) For the purposes of this Division, unless the context otherwise requires—

“deed” means any deed which creates a business trust and provides for the governance of its affairs and the conduct of its business and includes any instrument amending or affecting the deed;

“trustee-manager” means a person who—

- (a) holds property or asset on trust for unit holders of the business trust; and
- (b) manages and operates such property or asset;

“director” includes a person who is a chief executive officer.

### **Application for registration or recognition**

**256i.** (1) An application for registration of a business trust shall only be made by a trustee-manager and in the case of an application for recognition of a business trust, by any other person as may be specified by the Commission.

(2) An application for registration or recognition of a business trust shall be submitted together with documents and information in the form and manner as the Commission may specify.

(3) The Commission may require additional information or document as the Commission considers necessary in relation to the application.

(4) An application made under subsection (2) shall be submitted together with the prescribed application fee.

### **Registration of disclosure document**

**256j.** Any person who intends to offer or make available units in an unlisted business trust shall register with the Commission a disclosure document containing information and particulars as may be specified by the Commission under section 92A.

### **Registration or recognition of a business trust**

**256k.** (1) The Commission may in relation to an application made under section 256i, register or recognize the business trust.



(2) The Commission may—

- (a) register or recognize the business trust under subsection (1); or
- (b) register or recognize the business trust under subsection (1)—
  - (i) subject to such terms and conditions;
  - (ii) with such revision; or
  - (iii) with such revision and subject to such terms and conditions,

as the Commission deems fit or necessary.

(3) The Commission may vary, add to or remove any term or condition imposed under subsection (2) at any time as the Commission considers necessary.

(4) A person who contravenes any term or condition imposed under subsection (2) or (3) commits an offence.

(5) No person shall take or use or adopt the name, title or description of the words “business trust” or “business trust scheme” in relation to its business or make any representation to such effect in any manner whatsoever unless the business trust is registered or recognized under this Division.

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

### **Refusal to register or recognize a business trust**

**256L.** The Commission may refuse an application under section 256I if—

- (a) the trustee-manager does not hold a Capital Markets Services Licence to carry on the business of fund management;
- (b) the application is not made in accordance with this Division;

- (c) the trustee-manager has failed to comply with any requirement of this Act or any guidelines issued by the Commission;
- (d) any information or document furnished to the Commission in respect of the application is false or misleading or from which there is a material omission;
- (e) the Commission has reason to believe that the registration or recognition would not be in the interest of investors; or
- (f) the Commission has reason to believe that the registration or recognition would be contrary to public interest.

### **Withdrawal of registration or recognition**

**256m.** (1) The Commission may withdraw a registration or recognition granted if the Commission is satisfied that—

- (a) the trustee-manager or any of its officers has failed to comply with or has breached—
  - (i) any terms or conditions imposed by the Commission;
  - (ii) any guidelines or direction issued by the Commission; or
  - (iii) any requirements under this Act;
- (b) any information or document furnished to the Commission under this Division is false or misleading or from which there is a material omission; or
- (c) it is in the interest of unit holders or public interest to withdraw the registration or recognition.

(2) The Commission shall give the person an opportunity to be heard before any decision is made under subsection (1).

### **Effect of withdrawal of registration or recognition**

**256N.** Any withdrawal issued under section 256M shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to the business trust entered into before the withdrawal of the registration or recognition; or
- (b) affect any right, obligation or liability arising under the agreement, transaction or arrangement referred to in paragraph (a).

### **Trustee-manager**

**256o.** (1) A business trust shall be managed and operated only by the trustee-manager of the business trust.

(2) A trustee-manager of a business trust must be a corporation other than an exempt private company.

(3) A trustee-manager of a business trust shall not carry on any business other than the management and operation of the business trust for which it is the trustee-manager.

(4) Subject to the deed and with the approval of the Commission, a trustee-manager may appoint an agent to carry out or perform any function in connection with the management and operation of the business trust.

(5) Any person who contravenes this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

### **Duties and responsibilities of a trustee-manager**

**256p.** (1) A trustee-manager shall in the performance of its duties—

- (a) exercise its powers for a proper purpose and in good faith in the best interest of the unit holders as a whole;
- (b) exercise reasonable care and diligence;

- (c) act in accordance with the requirements of this Act, guidelines issued by the Commission and the deed;
- (d) give priority to the interest of unit holders as a whole over its own interest if there is a conflict between the interest of unit holders as a whole and its own interest;
- (e) ensure that the property or assets of the business trust are valued at regular intervals appropriate to the nature of the property or assets;
- (f) ensure that all payments out of the property or assets of the business trust are made in accordance with the deed and any guidelines issued by the Commission; and
- (g) carry out any other duties or responsibilities as may be specified by the Commission.

(2) A trustee-manager shall not use any property or asset of the business trust or any information acquired by virtue of its position as the trustee-manager to gain, directly or indirectly, an advantage for itself or for any other person to the detriment of the unit holders as a whole.

(3) A trustee-manager who contravenes this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit.

(4) A trustee-manager shall be liable to all the unit holders as a whole for any profit or financial gain directly or indirectly made by the trustee-manager or any of its related corporation or for any damage suffered by the unit holders as a whole, as a result of the contravention of this section.

### **Duties and responsibilities of officers and agents**

**256Q.** (1) An officer of a trustee-manager shall at all times—

- (a) exercise his powers for a proper purpose and in good faith in the best interest of the unit holders as a whole and shall take all reasonable steps to ensure that the trustee-manager discharges its duties under section 256P;

- (b) give priority to the interests of the unit holders as a whole over the interests of the trustee-manager if there is a conflict between the interests of the unit holders as a whole and the interests of the trustee-manager; and
- (c) carry out any other duties or responsibilities as may be specified by the Commission.

(2) An officer or an agent of a trustee-manager shall not—

- (a) use any property or asset of the business trust;
- (b) use any information acquired by virtue of his position as an officer or agent of the trustee-manager;
- (c) use his position as an officer or agent of the trustee-manager;
- (d) use any opportunity which he became aware of in the performance of his functions as an officer or agent of the trustee-manager; or
- (e) engage in any business which is in competition with the business trust,

to make any gain directly or indirectly, or to cause detriment to the unit holders as a whole.

(3) The duties of an officer of the trustee-manager of a business trust under subsection (1) shall prevail over any conflicting duty of such officer under section 132 of the Companies Act 1965.

(4) No civil or criminal proceedings shall be brought or instituted against an officer of the trustee-manager of a business trust for a breach of section 132 of the Companies Act 1965, any fiduciary duty or any other duty under common law in relation to any act or omission to act if such act or omission was required by subsection (1).

(5) An officer or an agent of the trustee-manager of a business trust who contravenes subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

(6) An officer or an agent of the trustee-manager shall be liable to the unit holders as a whole for any profit or financial gain directly or indirectly made by the trustee-manager or any of its related corporation, or for any damage suffered by the unit holder of the business trust as a whole, as a result of the contravention of subsection (1) or (2).

(7) No action or proceedings whatsoever may be brought by or on behalf of all or any of the unit holders of a business trust against an officer of the trustee-manager of that business trust for any breach or alleged breach of the duties imposed by subsections (1) and (2), except as provided for under section 256ZF.

(8) In this section—

“agent” means a banker, an advocate and solicitor or an auditor of the trustee-manager and for the purposes of paragraphs 256Q(2)(b), (c) and (d), includes a person who has previously been a banker, an advocate and solicitor or an auditor of the trustee-manager.

### **Acquisition of interest in a business trust**

**256R.** (1) A trustee-manager shall not, whether directly or indirectly, acquire or hold any unit or derivative of any unit in the business trust unless it acquires or holds the unit or derivative—

- (a) for not less than the consideration that would be payable if the unit or derivative of the unit were acquired by another person; and
- (b) subject to terms and conditions that would not disadvantage other unit holders of the business trust.

(2) A trustee-manager who contravenes this section commits an offence.

### **Disclosure of interest in a transaction**

**256s.** (1) A director of a trustee-manager who is, whether directly or indirectly, interested in a transaction or proposed transaction entered or to be entered into by the trustee-

manager for or on behalf of the business trust shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the trustee-manager, in such manner as may be specified by the Commission.

(2) A director of a trustee-manager who holds any office or possesses any property where his duties or interests in respect of that office or property may be in conflict with his duties or responsibilities under section 256Q shall declare the nature and extent of the conflict at a meeting of the directors of the trustee-manager.

### **Register of interest**

**256r.** A trustee-manager shall keep a register in the manner and form as may be specified by the Commission showing in respect of each director of the trustee-manager, particulars of—

- (a) units or derivatives of units in the business trust, being units or derivatives of units in which the director has an interest and the nature and extent of that interest; and
- (b) debentures of the business trust in which the director has an interest and the nature and extent of that interest.

### **Certification by chief executive officer and board of directors of trustee-manager**

**256u.** (1) Subject to subsection (2), the board of directors of a trustee-manager shall make a written statement to be attached to the income statement of the business trust, in accordance with a resolution of the board of directors of the trustee-manager and signed by not less than two directors on behalf of the board of directors, certifying that—

- (a) fees or charges paid or payable out of the property or assets of the business trust to the trustee-manager are in accordance with the deed;

- (b) related party transactions are not detrimental to the interests of the unit holders of the business trust as a whole based on the circumstances at the time of the transaction; and
- (c) the board of directors of the trustee-manager is not aware of any violation of duties of the trustee-manager which would have a materially adverse effect on the business of the business trust or on the interests of the unit holders as a whole.

(2) If the board of directors of the trustee-manager of a business trust is unable to provide a written statement in accordance with subsection (1), for the reason that—

- (a) the board of directors is of the opinion that the assertions referred to in subsection (1) are not true; or
- (b) there is a divergence of views among the directors of the trustee-manager as to the accuracy of the assertions referred to in subsection (1),

the board of directors shall provide an explanation, including the important factors for the inability to provide such a written statement.

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

(4) If the board of directors of the trustee-manager of a business trust makes a written statement referred to in subsection (1) without any reasonable basis for arriving at the conclusions stated in the statement, any director of the trustee-manager who permits or authorizes the statement to be made shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

### **Disclosure of policies and practices**

**256v.** A trustee-manager shall attach a statement of its policies and practices in relation to its management and governance of the business trust containing such information as may be specified by the Commission to the income statement.



### **Removal of a trustee-manager**

**256w.** Notwithstanding any provision in this Division or the deed, a trustee-manager shall remain as the trustee-manager unless he is removed by the unit holders of the business trust in the manner as may be specified by the Commission or he resigns in accordance with section 256x.

### **Resignation of a trustee-manager**

**256x.** Notwithstanding anything in the deed or in any agreement between the trustee-manager and the unit holders, a trustee-manager may resign only in accordance with the requirements and in the manner as may be specified by the Commission.

### **Replacement of a trustee-manager**

**256y.** (1) Where the trustee-manager has been removed under section 256w or has resigned under section 256x, the unit holders shall appoint a new trustee-manager in the manner specified by the Commission.

(2) Notwithstanding anything in the deed or in any agreement between the trustee-manager and the unit holders, the Commission may remove the trustee-manager and appoint in his place another trustee-manager or a holder of a Capital Market Services Licence who carries on the business of fund management.

### **Requirement for a deed**

**256z.** (1) A trustee-manager shall ensure that a deed is entered into and is contained in a document that is legally enforceable between the unit holders and the trustee-manager.

(2) The Commission may specify the contents of the deed.

(3) Any provision of a deed that has the effect of providing for the business trust to be wound up if the trustee-manager ceases to be the trustee-manager of the business trust shall be void.

(4) A deed may be amended in the manner and form as may be specified by the Commission.

### **Exemption and indemnification of a trustee-manager from liability**

**256ZA.** (1) Subject to subsection (2), a provision or covenant contained in a deed or a term of a contract that would have the effect of exempting or indemnifying a trustee-manager, officers and agents of the trustee-manager from liability for—

- (a) contravention of any provision of this Act;
- (b) breach of trust; or
- (c) failure to show the degree of care and diligence required of a trustee-manager,

shall be void.

(2) Subsection (1) shall not apply if the provision, covenant or term—

- (a) releases the trustee-manager from liability for anything done or omitted to be done before the release is given; or
- (b) enables unit holders in a general meeting, to approve the release of a trustee-manager from liability for anything done or omitted to be done before the release is given and the resolution is passed by not less than seventy five per centum of unit holders present and voting.

### **Annual general meeting**

**256ZB.** A trustee-manager shall call a general meeting of the unit holders of the business trust, to be called “annual general meeting”, within eighteen months of the registration

of the business trust and thereafter once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.

### **Duty of a trustee-manager to call for meeting**

**256zc.** (1) A trustee-manager shall call for a meeting of unit holders if—

- (a) not less than fifty unit holders or unit holders holding not less than ten per centum of total voting rights of all unit holders of a business trust direct the trustee-manager to do so;
- (b) the direction is given to the trustee-manager in writing at its registered office; and
- (c) the purpose of the meeting is to consider any matter raised by the unit holders in relation to the business trust or the deed.

(2) If a trustee-manager is required to call a meeting under subsection (1), the trustee-manager shall convene the meeting within twenty-one days after the direction is given to the trustee-manager in writing at its registered office.

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

- (a) by sending by post or by electronic communication, a notice of the proposed meeting at least seven days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the trustee-manager at such joint unit holder's last known address; and
- (b) by publishing at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language daily newspaper and in one other newspaper.

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

(a) be chaired by a person who is appointed by the unit holders that are present at the meeting or, if no such appointment is made, by a nominee of the trustee-manager; and

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

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

(6) If a trustee-manager fails to convene a meeting as required under subsection (2), the unit holders or any of them representing more than fifty per centum of the total voting rights of the unit holders under paragraph (1)(a), may themselves convene a meeting and any such meeting so convened shall be held within three months from the date of the direction under subsection (1) to the trustee-manager.

(7) A trustee-manager shall pay to the unit holders any reasonable expenses incurred by the unit holders in convening the meeting by reason of the failure of the trustee-manager to convene the meeting.

### **Power of court to order meeting of unit holders**

**256ZD.** (1) The court may, on the application of any unit holder of a business trust, make an order a general meeting to be held.

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

(a) place before the unit holders any information concerning the interest of the unit holders;

- (b) place before the unit holders any proposal to protect the interests of the unit holders that the court directs or the trustee-manager considers appropriate; and
- (c) obtain the unit holders' direction concerning the protection of the interest of the unit holders.

(3) The court may, in addition to an order made under subsection (2), make any other order that it considers appropriate to protect the interests of existing or prospective unit holders.

### **Unit holders' rights at meeting**

**256ZE.** (1) Every unit holder shall have a right to attend any general meeting of unit holders and to speak and vote on any resolution at the meeting.

(2) Any provision in the deed that has the effect of excluding the right to demand a poll at the general meeting of unit holders, other than the election of the chairman of the meeting or the adjournment of the meeting, shall be void.

### **Action by unit holders**

**256ZF.** (1) Any unit holder or any holder of a debenture of a business trust may apply to the court for an order under this section on the ground—

- (a) that the affairs of the business trust are being conducted by the trustee-manager, or the powers of the directors of the trustee-manager are being exercised, in a manner oppressive to one or more of the unit holders or holders of debentures of the business trust including himself or without regard of his or their interests as unit holders or holders of debentures of the business trust; or
- (b) that some act of the trustee-manager, carried out in its capacity as trustee-manager of the business trust, which is threatening or that some resolution of the unit holders or holders of debentures of the business trust or any class of them has been passed

or is proposed, unfairly discriminates against or is otherwise prejudicial to one or more of the unit holders or holders of debentures of the business trust.

(2) If on such application, the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may—

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the trustee-manager in relation to the business trust in future;
- (c) authorize civil proceedings against the directors of the trustee-manager be brought in the name of or on behalf of all the unit holders of the business trust as a whole by any person and on terms as the court may direct;
- (d) provide for the purchase of the units in or debentures of the business trust by other unit holders or holders of debentures of the business trust;
- (e) provide that the business trust be wound up; or
- (f) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the trust property or asset of the business trust or to be borne and paid in the manner and by any person as the court deems fit.

(3) Where an order under this section makes any alteration in or addition to the deed of any business trust, then, notwithstanding anything in any other provision of this Act, the trustee-manager of the business trust concerned shall not have power, without the leave of the court, to make any further alteration in or addition to the deed that is inconsistent with the provisions of the order.

(4) An applicant shall notify the Commission of the court's order within seven days after the issuance of the order.

(5) For the purposes of this section, a reference to a unit holder includes a person who is not a unit holder of a business trust but to whom units in the business trust have been transmitted by operation of law.

### **Winding up**

**256zG.** (1) A business trust may be wound up—

(a) under an order of the court—

- (i) on the application of the trustee-manager, a unit holder or a creditor of the business trust; or
- (ii) on the application of the Commission when the Commission deregisters a business trust; or

(b) by the trustee-manager—

- (i) upon the passing of a special resolution by the unit holders at a general meeting; or
- (ii) pursuant to the deed.

(2) If an application is made to the court under subparagraph (1)(a)(i), the court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section make an order compelling the trustee-manager to wind up the business trust if—

- (a) the court thinks it is just and equitable to make the order; or
- (b) within three months before the making of the application for the order, execution was issued on a judgment, a decree or an order obtained in court, whether in Malaysia or elsewhere, in favour of a creditor of the business trust and the execution has been returned unsatisfied,

and upon such order, the trustee-manager shall wind up the business trust.

(3) On the making of a winding up order by the court under subsection (2), the applicant shall notify the Commission of the court's order within seven days after the issuance of the order.

### **Limitation of liability of unit holders**

**256ZH.** (1) A unit holder shall not be liable to contribute to the business trust or in respect of any debts, liabilities or obligations incurred by the trustee-manager in its capacity as trustee-manager for the business trust, other than any outstanding amount of money which the unit holder has expressly agreed to contribute to the business trust.

(2) The limitation of the liability of a unit holder of a business trust referred to in subsection (1) shall apply notwithstanding—

- (a) any provision to the contrary in the deed of the business trust; or
- (b) the winding up of the business trust.

### **Creditors of unit holders to have no rights to obtain possession of trust property or asset**

**256ZI.** No creditor of a unit holder of a business trust shall have any right to obtain possession of, or otherwise exercise any legal or equitable remedy with respect to the trust property or asset of the business trust.

### **Voluntary deregistration by a trustee-manager**

**256ZJ.** (1) A trustee-manager may apply to the Commission for deregistration of the business trust if the deregistration is approved by a majority of unit holders holding in the aggregate not less than seventy five per centum of the value of the units held by the unit holders voting at the meeting, who, being entitled to do so, vote in person or, where proxies are allowed, by proxy on a poll at a general meeting of which not less than twenty one days written notice specifying the intention to propose the resolution to deregister the business trust has been duly given.



(2) The Commission may refuse to deregister the business trust if the Commission considers that—

- (a) it is in the interest of the unit holders that any matter concerning the business trust should be investigated before the registration is withdrawn under subsection (1); or
- (b) the withdrawal of the registration would not be in the interest of the unit holders.

### **Power of Commission to deregister defunct business trust**

**256ZK.** (1) If the Commission has reasons to believe that the trustee-manager is not managing or operating the business of the business trust, the Commission may take the necessary action to deregister or derecognize the business trust.

(2) The Commission shall give the trustee-manager an opportunity to be heard before any power is exercised under subsection (1).

(3) If the Commission exercises its power under subsection (1), it shall publish a notice to that effect and the business trust shall be deregistered or derecognized upon publication of the notice.

(4) Upon deregistration or derecognition under subsection (1) by the Commission, the Commission may apply to the court to appoint a liquidator with respect to the business trust.

### **Reporting to Commission**

**256ZL.** (1) A trustee-manager shall report to the Commission any breach of this Act or guidelines issued by the Commission that relates to the business trust and has had or is likely to have, a material adverse effect on the interests of unit holders of the business trust, as soon as practicable after it becomes aware of the breach.

(2) A trustee-manager who contravenes subsection (1) commits an offence.

### **Powers of Commission to issue directions**

**256zm.** (1) Without prejudice to sections 125, 354, 355 and 356, where the Commission—

- (a) exercises its power to withdraw a registration or recognition under this Division;
- (b) becomes aware that a statement or information provided or submitted to it under this Division is false or misleading or from which there is a material omission;
- (c) for the effective administration of a business trust;
- (d) for ensuring compliance with any conditions or restrictions imposed on the business trust; or
- (e) is satisfied that the interest of the unit holders or public interest is likely to be jeopardized, or is jeopardized,

the Commission may issue a direction in writing to a trustee-manager, its officers or any person on whom an obligation to comply with any requirement imposed under this Division, regulation or under any guidelines issued by the Commission to take such steps as may be specified in the direction to—

- (A) comply with, observe, enforce or give effect to—
  - (i) any requirement or provision of this Act or any securities laws;
  - (ii) any guidelines or written notice issued by the Commission; or
  - (iii) any term, condition or restriction imposed under or pursuant to this Act; or
- (B) take such steps to remedy a breach or to mitigate the effect of such breach.

(2) Any person referred to under this section shall provide assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, including the furnishing of such returns, and the provision of any other information as the Commission or the person acting on behalf of or with the authority of the Commission may require.

(3) A person who fails to comply with any direction given under subsection (1) or fails to provide assistance under subsection (2) commits an offence.

### **Power to make regulations**

**256zN.** The Commission may, with the approval of the Minister, make any regulations relating to—

- (a) duties, standards and conduct of persons involved in a business trust; or
- (b) all other matters in respect of a business trust.

### **Duty of a trustee-manager to lodge returns, etc.**

**256zo.** (1) A trustee-manager—

- (a) shall lodge with the Commission—
  - (i) the annual report of the business trust within two months after the end of each financial year of the business trust; and
  - (ii) the annual report of the trustee-manager within six months after the end of each financial year of the trustee-manager; and
- (b) shall deliver to the Commission any other statements, documents, books and other particulars as may be required by the Commission.

(2) Any document required to be lodged with or delivered to the Commission by a trustee-manager under subsection (1) shall be signed by not less than two of the directors of the trustee-manager on behalf of the board of directors.

(3) A trustee-manager shall—

- (a) send to every unit holder without charge a copy of the document referred to in subparagraph (1)(a)(i) within two months after the end of each financial year of the business trust; and
- (b) if a unit holder requests for the document referred to in subparagraph (1)(a)(ii) and any additional copies of the document referred to in subparagraph (1)(a)(i), send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the trustee-manager.

(4) A trustee-manager shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the business trust shall comply with approved accounting standards.

(5) A trustee-manager who contravenes this section commits an offence.

#### DIVISION 3c

False or misleading statement or information under  
Divisions 3A and 3B

#### **False or misleading statements or information to the Commission**

**256zP.** (1) If any statement or information is required to be submitted to the Commission under Divisions 3A and 3B—

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

shall not—

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

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

(2) If—

- (a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and
- (b) a person referred to in that subsection knows or becomes aware before the proposal in the application has been fully effected, carried out or implemented—
  - (i) that the statement or information may be false or misleading or materially incomplete; or
  - (ii) that the conduct may tend to mislead or deceive,

the person shall forthwith inform the Commission of the facts referred to in subparagraph (b)(i) or (ii), where applicable, and shall take such action as the Commission may direct.

(3) For the purposes of paragraph (2)(b), a person who knows or becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.

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

### **Amendment of section 268**

**21.** Subsection 268(4) of the principal Act is amended by substituting for the words “approval granted under subsection 212(5)” the words “approval granted under section 214 or authorization or recognition by the Commission under section 256c”.

**Amendment of section 273**

22. Subsection 273(2) of the principal Act is amended by substituting for the words “approved by the Commission under section 212” the words “approved under section 214 or authorized or recognized by the Commission under section 256c”.

**Amendment of section 293**

23. Section 293 of the principal Act is amended in subsection (4) by substituting for paragraph (b) the following paragraph:

“(b) the unit trust scheme to which the deed relates has not been approved under section 214 or authorized or recognized by the Commission under section 256c; or”.

**Amendment of section 354**

24. Section 354 of the principal Act is amended by substituting for subsection 354(10) the following subsection:

“(10) To the extent that any of the amount obtained under paragraph (3)(d) or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission, with the approval of the Minister, may determine.”.

**Amendment of section 355**

**25.** Section 355 of the principal Act is amended by substituting for subsection 355(10) the following subsection:

“ (10) To the extent that any of the amount obtained under paragraph (3)(e) or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission, with the approval of the Minister, may determine.”.

**Amendment of section 356**

**26.** Section 356 of the principal Act is amended by substituting for subsection 356(9) the following subsection:

“ (9) To the extent that any of the amount obtained under paragraph (2)(d) or subsection (8) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the Capital Market Compensation Fund maintained under Part IV; or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital market investors and professionals; or

(ii) the cost of regulating the capital market,

as the Commission, with the approval of the Minister, may determine.”.

**Savings and transitional**

27. (1) For the purposes of this section—

“Corporation” means the Capital Market Compensation Fund Corporation established under this Act;

“effective date” means the relevant date of coming into operation of this Act or the respective provisions of this Act;

“Capital Market Compensation Fund” means the Capital Market Compensation Fund established under this Act;

“relevant funds” means the compensation fund and the fidelity fund established and maintained under the substituted Part;

“relevant deposits” means any deposit or payment made under sections 70 and 106 of the principal Act before the effective date;

“relevant person” means a holder of Capital Markets Services Licence who carries on the business of—

- (a) dealing in securities;
- (b) dealing in derivatives and who is an affiliate of the relevant derivatives exchange; or
- (c) fund management;

“substituted Part” means Part IV of the principal Act before the effective date.

(2) The relevant stock exchange and the relevant derivatives exchange shall, within three months from the effective date, transfer to the Corporation all monies constituting the relevant funds and the sums transferred to the Corporation shall be part of the Capital Market Compensation Fund.

(3) Any—

- (a) deposit which has been lodged or paid to the Commission pursuant to section 70 of the principal Act before the effective date; or



- (b) payment which has been made to the Commission pursuant to section 106 of the principal Act before the effective date,

shall, within three months from the effective date, be paid over to the Corporation and shall be deemed to be a contribution to the Capital Market Compensation Fund.

(4) Unless the contrary intention appears in this Act, in respect of claims made against relevant funds or relevant deposits—

- (a) any decision made by the relevant stock exchange, relevant derivatives exchange or the Commission before the effective date in relation to any claim made against the relevant funds or the relevant deposits shall continue to be valid after the effective date as if it is made by the Corporation;

- (b) any claims made against the relevant funds or the relevant deposits prior to the effective date but has not been decided by the relevant stock exchange, relevant derivatives exchange or the Commission, by the effective date, shall continue to be considered and decided by the relevant stock exchange, relevant derivatives exchange or the Commission;

- (c) any appeal to the Commission against the decision made by the relevant stock exchange or relevant derivatives exchange prior to the effective date shall continue to remain valid;

- (d) any payment for a successful claim—

- (i) decided by the relevant stock exchange, relevant derivatives exchange or the Commission under paragraph (a) or (b); or

- (ii) pursuant to the Commission's decision on an appeal under paragraph (c),

shall be made from the Capital Market Compensation Fund by the Corporation;

- (e) a person aggrieved by a decision of the relevant stock exchange or relevant derivatives exchange in paragraph (a) or (b) may appeal to the Commission and the decision of the Commission shall be final; and

(f) if the Corporation makes a payment under paragraph (d)—

(i) the Corporation is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and

(ii) the claimant shall not have any claim or right under bankruptcy or legal proceeding or otherwise—

(A) to any sum out of the assets of the relevant person concerned in respect of the loss; or

(B) to any sum in respect of the loss caused by an act or omission of a director, officer, representative or employee of a relevant person,

until the Corporation has been reimbursed the full amount of the payment made by it out of the Capital Market Compensation Fund, including any interest paid.

(5) In respect of the continuance of other rights and liabilities—

(a) nothing in this Act shall affect any person's liability to be prosecuted or punished for any offence or breach committed under the principal Act before the effective date or any proceeding brought, sentence imposed or action taken before the effective date in respect of such offence or breach; and

(b) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

(6) In respect of corporate proposals—

(a) any action, rules, regulation, order, direction, notification, approvals, decision and other executive act howsoever called, made, given or done under, or in accordance with, or by virtue of Division 1 of Part VI of the principal Act

before the effective date, shall in so far as it is consistent with the provisions of this Act, be deemed to have been made, given or done under or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in force and have effect in relation to the persons, activities or transactions to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of this Act; and

- (b) any application for an approval, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission by virtue of Division 1 of Part VI of the principal Act before the effective date, and pending immediately before the effective date, shall be deemed to be made under the corresponding provision in this Act.

### **Prevention of anomalies**

**28.** (1) If any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in any one or more of those provisions as may appear to him to be necessary to give full effect to the provisions of this Act or to prevent anomalies.

(2) The Minister shall not exercise the power conferred under subsection (1) after the expiration of two years from the effective date.

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### EXPLANATORY STATEMENT

This Bill seeks to amend the Capital Markets and Services Act 2007 (“Act 671”). The proposed amendments seek to provide for the registration of persons providing capital market services, to establish the Capital Market Compensation Fund, to clarify the approval regime for listing of securities, to introduce an authorization and recognition regime for unlisted capital market product, to provide a new regulatory framework for business trusts, to introduce offences in respect of private retirement schemes and to provide for other miscellaneous and consequential matters.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 671 to introduce new definitions and to amend existing definitions used in Act 671.
4. *Clauses 4* and *8* seek to delete sections 70 and 106 of Act 671 as a consequence of the establishment of the Capital Market Compensation Fund.
5. *Clause 5* seeks to amend subsection 76(6) of Act 671 to require registered persons under Part 1 of Schedule 4 who deal in private retirement schemes to comply with the new section 139ZN introduced by this Act.
6. *Clause 6* seeks to introduce a new section 76A into Act 671 to provide for registration of persons providing capital market services which are specified by the Commission.
7. *Clause 9* seeks to amend the shoulder note of section 139ZK of Act 671 to clarify that the statement referred to in that section refers to a statement made to the Commission.
8. *Clause 10* seeks to introduce new sections 139ZN, 139ZO, 139ZP, 139ZQ and 139ZR into Act 671 to require licenced persons who deal in private retirement schemes to have reasonable basis for making any recommendation in respect of the private retirement schemes and to provide for offences provisions in respect of private retirement schemes.
9. *Clause 11* seeks to substitute Part IV of Act 671 with a new Part IV. The new Part IV provides for the establishment of the Capital Market Compensation Fund and the Capital Market Compensation Fund Corporation which shall administer the said fund. This *clause* also provides for the composition of the said fund as well as the duties and responsibilities of the Corporation and its governance.
10. *Clauses 12, 13* and *14* seek to amend sections 200, 201 and 211 of Act 671 to enable the Commission to retain and utilise the monies obtained pursuant to these sections that has not been distributed, to defray the cost of developing and facilitating educational programmes for capital market investors and professionals, subject to the approval of Minister.
11. *Clause 15* seeks to substitute Division 1 of Part VI of Act 671 with new Divisions 1 and 1A of Part VI. The new Division 1 provides for the delineation of the regulatory framework of the approval of listing of securities, the authorization or recognition of unlisted capital market product, and the registration or recognition of business trusts. The new Division 1A provides for the approval framework for listing of securities.
12. *Clause 18* seeks to amend subsection 237(1) to specify circumstances when an abridged prospectus is required that is where the rights issue of securities or a unit trust scheme is offered for subscription or purchase to persons other than the existing members or debenture holders of a corporation or unit holders of the unit trust scheme.

13. *Clause 20* seeks to introduce new Divisions 3A, 3B and 3C of Part IV into Act 671 which will provide for the authorization and recognition framework for unlisted capital market product, the registration and recognition framework and the governance provisions for business trusts and the offence of false or misleading statement or information under Divisions 3A and 3B.

14. *Clauses 16, 24, 25 and 26* seek to amend sections 220, 354, 355 and 356 of Act 671 to enable the Commission to retain monies pursuant to these sections to defray the cost of developing and facilitating educational programmes for capital market investors and professionals, subject to the Minister's approval.

15. *Clause 27* provides for the savings and transitional provisions such as the transfer of the compensation and fidelity funds under Act 671 to the Capital Market Compensation Fund Corporation and continuance of other rights, liabilities, *etc.* under Act 671 in relation to any offence or breach committed under Part IV of Act 671.

16. *Clause 28* provides for the prevention of anomalies in relation to the amendments proposed by the proposed Act.

17. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

The Bill will not involve the Government in any extra financial expenditure.

[PN(U<sup>2</sup>)2818]