

# 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 2023.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

### **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 “regulated activity” the following definition:

‘ “regulatory subsidiary” means a body corporate which is a subsidiary of an exchange holding company established under section 21A;’;

(b) in the definition of “rules”—

- (i) in paragraph (f), by deleting the word “and” at the end of that paragraph;
- (ii) in paragraph (g), by inserting the word “and” at the end of that paragraph; and
- (iii) by inserting after paragraph (g) the following paragraph:

“(h) a regulatory subsidiary, means the constitution, or the rules or directions, by whatever name called and wherever contained, governing the management, operations or procedures of the regulatory subsidiary;”.

### **Amendment of section 21**

3. Section 21 of the principal Act is amended—

(a) by inserting after subsection (8) the following subsection:

“(8A) The arrangement referred to in section 20 and this section includes the establishment of a regulatory subsidiary.”;

(b) in subsection (9), by inserting after the words “to take any action, the exchange holding company” the words “or the regulatory subsidiary”;

(c) in subsection (10), by inserting after the words “in the event the exchange holding company” the words “or the regulatory subsidiary”; and

(d) by inserting after subsection (10) the following subsection:

“(10A) The Commission may, if it is satisfied that it is appropriate to do so—

(a) in the public interest;

(b) for the protection of investors;

(c) for ensuring the integrity of the capital markets;  
or

(d) for the proper regulation of the markets,

vary, add to or revoke any arrangement entered into under this section and section 20 in such manner as the Commission thinks fit.”.

#### **New section 21A**

**4.** The principal Act is amended by inserting after section 21 the following section:

#### **“Establishment of regulatory subsidiary by exchange holding company**

**21A.** (1) The Commission may direct an exchange holding company to establish a regulatory subsidiary if the arrangement under sections 20 and 21 requires a regulatory subsidiary to be established.

(2) Notwithstanding any provision of the securities laws, the regulatory subsidiary established under subsection (1) shall carry out the duties under the Act as determined by the Commission.

(3) Where the duties of the exchange holding company, stock exchange, derivatives exchange, approved clearing house or central depository are discharged by a regulatory subsidiary under subsection (2), such duties shall be deemed to have been satisfied by the exchange holding company, stock exchange, derivatives exchange, approved clearing house or central depository, as the case may be.

(4) The regulatory subsidiary shall make rules to be approved by the Commission.

(5) The rules for the regulatory subsidiary must provide for—

- (a) the governance structure of the regulatory subsidiary which shall include a board comprising of—
  - (i) a majority of independent directors, including an independent chairman who shall be selected from among the independent directors; and
  - (ii) non-independent directors;
- (b) the qualification requirements of the independent directors; and
- (c) any other matters the Commission considers appropriate for the regulatory subsidiary to carry out its duties.

(6) The regulatory subsidiary shall not amend its rules without prior approval of the Commission.

(7) For the purposes of this section, “non-independent director” means a public interest director nominated by the exchange holding company to be a member of the board.”.

### **Amendment of section 26**

**5.** Subsection 26(1) of the principal Act is amended by inserting after the words “central depository” wherever appearing the words “, a regulatory subsidiary”.

### **Amendment of section 369**

**6.** Section 369 of the principal Act is amended by substituting for the words “to the Commission, a stock exchange, a derivatives exchange or an approved clearing house” the words “to the Commission, a stock exchange, a derivatives exchange, an approved clearing house or a regulatory subsidiary”.

**Amendment of section 376**

7. Section 376 of the principal Act is amended by substituting for the words “or a central depository” wherever appearing the words “, a central depository or a regulatory subsidiary”.

**Savings and transitional**

8. (1) Any right, remedy, privilege, obligation, liability or interest acquired, accrued or incurred before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be continued in accordance with the principal Act as if the principal Act had not been amended by this Act.

(2) Any investigation, action, inquiry, trial, prosecution, proceedings or appeal done, taken or commenced under the principal Act before the date of coming into operation of this Act shall, on the date of coming into operation of this Act be dealt with, continued and concluded under and in accordance with the provisions of the principal Act as if the principal Act had not been amended by this Act.

(3) 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 date of coming into operation of this Act.

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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 enable the establishment of regulatory subsidiary to carry out the duties under Act 671 as determined by the Commission.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* seeks to introduce new definition for regulatory subsidiary and amend the definition of rules.

4. *Clause 3* seeks to amend section 21 of Act 671 to clarify that reference made to an arrangement under sections 20 and 21 of Act 671 may include the establishment of a regulatory subsidiary. It also seeks to empower the regulatory subsidiary to take actions without precluding other subsidiaries to take actions when necessary. Furthermore, it also seeks to empower the Commission to vary, add to or revoke the arrangement made.
5. *Clause 4* seeks to introduce a new section 21A into Act 671 to empower the Commission to direct the exchange holding company to establish a regulatory subsidiary if the arrangement under sections 20 and 21 of Act 671 requires a regulatory subsidiary to be established. It also seeks to provide that the regulatory subsidiary shall carry out the duties under Act 671 as determined by the Commission. The duties discharged by the regulatory subsidiary under the proposed new section 21A shall be deemed to have been satisfied by the exchange holding company and its subsidiaries. In addition, subsections 21A(4) to (6) seek to require the regulatory subsidiary to make rules to be approved by the Commission to govern its proper administration.
6. *Clause 5* seeks to amend section 26 of Act 671 to extend the power of the Commission to issue direction to the regulatory subsidiary.
7. *Clause 6* seeks to amend section 369 of Act 671 to make the act of giving any false or misleading statement to the regulatory subsidiary as an offence.
8. *Clause 7* seeks to amend section 376 of Act 671 to extend the scope of indemnity to a regulatory subsidiary and any person acting on behalf of the regulatory subsidiary.
9. *Clause 8* seeks to provide for saving and transitional provisions.

#### *FINANCIAL IMPLICATIONS*

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

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