THE STATUTES OF THE REPUBLIC OF SINGAPORE

COMPANIES ACT 1967

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Companies Act 1967

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

PART 2

ADMINISTRATION OF THIS ACT

Section

Section

Section

Section

Section

Section

Section

Section

Section

Section

PART 7

ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

PART 8

PART 8A

Section

PART 9

INVESTIGATIONS

PART 10

DISSOLUTION

Division 1 — [Repealed by Act 40 of 2018]

Division 2 — [Repealed by Act 40 of 2018]

Subdivision (1) — [Repealed by Act 40 of 2018]

Subdivision (4) — [Repealed by Act 40 of 2018]

Subdivision (5) — Dissolution

Division 5 — [Repealed by Act 40 of 2018]

Division 6 — [Repealed by Act 40 of 2018]

PART 10A

TRANSFER OF REGISTRATION

PART 11

VARIOUS TYPES OF COMPANIES, ETC.

Division 1 — [Repealed by Act 8 of 2003]

Division 2 — Foreign companies

Section

Section

PART 11A

REGISTER OF CONTROLLERS, NOMINEE DIRECTORS AND NOMINEE SHAREHOLDERS OF COMPANIES

PART 12

GENERAL

Division 1 — Enforcement of this Act

Division 2 — Offences

An Act relating to companies.

[29 December 1967]

PART 1

PRELIMINARY

Short title

1. This Act is the Companies Act 1967.

Division into Parts

2. This Act is divided into Parts and Divisions as follows:

Part 1 sections 1-7A	...	Preliminary sections 1-7A.
Part 2 sections 8-15	...	Administration of this Act sections 8-8H, 10, 12-15.
Part 3 Constitution of Companies sections 17-42A	...	Division 1 — Incorporation sections 17-22. Division 2 — Powers sections 23-41C, 42A.
Part 4 Shares, Debentures and Charges sections 59-141	...	Division 2 — Restrictions on allotment and commencement of business sections 59-62.
	...	Division 3 — Shares sections 62A-68, 70-78.
	...	Division 3A — Reduction of share capital sections 78A-78K.
	...	Division 4 — Substantial shareholdings sections 79-91.
	...	Division 5 — Debentures sections 93-96, 100.
	...	Division 7 — Title and transfers sections 121-128, 129-130AE.
	...	Division 8 — Registration of charges sections 131-141.
Part 5 Management and Administration sections 142-198	...	Division 1 — Office and name sections 142-144.
	...	

Part 11A sections 386AA-386AP	...	Register of Controllers and Nominee Director of Companies sections 386AA-386AP.
Part 12 General sections 387-411	...	Division 1 — Enforcement of this Act sections 386A-399.
	...	Division 2 — Offences sections 401-409B.
	...	Division 3 — Miscellaneous sections 409C-411.

Repeals

3.—(1) The written laws mentioned in the First Schedule to the extent to which they are therein expressed to be repealed or amended are repealed or amended accordingly.

Transitory provisions

(2) Unless the contrary intention appears in this Act —

(*a*) all persons, things and circumstances appointed or created under any of the repealed or amended written laws or existing or continuing under any of such written laws immediately before 29 December 1967 continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if such written laws had not been so repealed or amended; and

(*b*) in particular and without limiting paragraph (*a*), such repeal does not disturb the continuity of status, operation or effect of any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done,

effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired under any of such written laws before that date.

(3) Nothing in this Act affects the Table in any repealed written law corresponding to Table A in the repealed Fourth Schedule in force immediately before 3 January 2016 or any part thereof (either as originally enacted or as altered pursuant to any statutory power) or the corresponding Table in any former written law relating to companies (either as originally enacted or as so altered) so far as the same applies to any company existing on 29 December 1967.

[36/2014]

Interpretation

4.—(1) In this Act, unless the contrary intention appears —

"accounting corporation" means a company approved or deemed to be approved as an accounting corporation under the Accountants Act 2004;

"accounting entity" means a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership;

"accounting firm" means a firm approved or deemed to be approved as an accounting firm under the Accountants Act 2004;

"accounting limited liability partnership" means a limited liability partnership approved as an accounting limited liability partnership under the Accountants Act 2004;

"accounting records", in relation to a corporation, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the corporation are made up;

"Accounting Standards" means the accounting standards made or formulated by the Accounting Standards Committee under Part 3 of the Accounting Standards Act 2007 and applicable

to companies and to foreign companies in respect of their operations in Singapore for the purposes of this Act;

[Act 36 of 2022 wef 01/04/2023]

"accounts" means profit and loss accounts and balance sheets and includes notes (other than auditors' reports or directors' reports) attached or intended to be read with any of those profit and loss accounts or balance sheets;

"ACRA administered Act" means the Accounting and Corporate Regulatory Authority Act 2004 or any of the written laws specified in the Second Schedule to that Act;

[Act 21 of 2024 wef 09/12/2024]

"Act" includes any regulations;

[*Deleted by Act 21 of 2024 wef 09/12/2024*]

"annual general meeting", in relation to a company, means a meeting of the company required to be held by section 175;

"annual return" means the return required to be lodged under section 197(1);

"approved exchange in Singapore" means an approved exchange as defined in section 2(1) of the Securities and Futures Act 2001;

"audit requirements" means the requirements of sections 201(8) and (9) and 207;

"Authority" means the Accounting and Corporate Regulatory Authority established under the Accounting and Corporate Regulatory Authority Act 2004;

"Authority's website" means the Authority's Internet website;

"banking corporation" means a bank or merchant bank licensed under the Banking Act 1970;

"book-entry securities" has the meaning given by section 81SF of the Securities and Futures Act 2001;

"books" includes any account, deed, writing or document and any other record of information, however compiled, recorded

or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

"borrowing corporation" means a corporation that is or will be under a liability (whether or not such liability is present or future) to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation;

"branch register", in relation to a company, means —

(*a*) a branch register of members of the company kept pursuant to section 196; or

(*b*) a branch register of holders of debentures kept pursuant to section 93,

as the case may require;

"business day" means any day other than a Saturday, Sunday or public holiday;

"certified", in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

"charge" includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

"chief executive officer", in relation to a company, means any one or more persons, by whatever name described, who —

(*a*) is in direct employment of, or acting for or by arrangement with, the company; and

(*b*) is principally responsible for the management and conduct of the business of the company, or part of the business of the company, as the case may be;

"commencement of winding up" —

(*a*) in a winding up by the Court, has the meaning given by section 126 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) in a voluntary winding up, has the meaning given by section 161(6) of the Insolvency, Restructuring and Dissolution Act 2018;

"company" means a company incorporated under this Act or under any corresponding previous written law;

"company having a share capital" includes an unlimited company with a share capital;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by the constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by shares" means a company formed on the principle of having the liability of its members limited by the constitution to the amount (if any) unpaid on the shares respectively held by them;

"constitution", in relation to a company, means —

(*a*) the constitution of the company which is registered with the Registrar under section 19, as may be amended from time to time; and

(*b*) in the case of a company incorporated before 3 January 2016, the memorandum of association of the company, the articles of association of the company, or both, in force immediately before that date;

"contact address", in relation to an individual, means an address that meets all of the following conditions:

(*a*) it is a physical address at which the individual can be physically found or contacted by post;

(*b*) it is not a post office box number;

(*c*) it is located in the same jurisdiction as the individual's residential address;

[Act 21 of 2024 wef 09/12/2024]

"contributory", in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

"corporation" means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes any foreign company but does not include —

(*a*) any body corporate that is incorporated in Singapore and is by notification of the Minister in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government or to be a body corporate which is not incorporated for commercial purposes;

(*b*) any corporation sole;

(*c*) any cooperative society;

(*d*) any registered trade union;

[Act 30 of 2024 wef 01/11/2024]

(*da*) any platform work association registered under the Platform Workers Act 2024; or

[Act 30 of 2024 wef 01/11/2024]

(*e*) any limited liability partnership;

"Court" means the General Division of the High Court;

"corresponding previous written law" means any written law relating to companies which has been at any time in force in Singapore and which corresponds with any provision in this Act;

"debenture" includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a

charge on the assets of the corporation or not, but does not include —

(*a*) a cheque, letter of credit, order for the payment of money or bill of exchange;

(*b*) subject to the regulations, a promissory note having a face value of not less than $100,000 and having a maturity period of not more than 12 months;

(*c*) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

"default penalty" means a default penalty within the meaning of section 408;

"Depository" has the meaning given by section 81SF of the Securities and Futures Act 2001;

"director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act and an alternate or substitute director;

"document" includes summons, order and other legal process, and notice and register;

"electronic communication" means communication transmitted (whether from one person to another, from one device to another, from a person to a device or from a device to a person) —

(*a*) by means of a telecommunication system; or

(*b*) by other means but while in an electronic form,

such that it can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form;

"electronic transaction system" means the electronic transaction system mentioned in section 12A(1);

[Act 21 of 2024 wef 09/12/2024]

"emoluments", in relation to a director or auditor of a company, includes any fees, percentages and other payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that company or by a holding company or a subsidiary of that company, whether made or given to the director or auditor in the director's or auditor's capacity as such or otherwise in connection with the affairs of that company or of the holding company or the subsidiary;

"exempt private company" means —

(*a*) a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members; or

(*b*) any private company, being a private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the *Gazette* to be an exempt private company;

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

"filed" means filed under this Act or any corresponding previous written law;

"financial year" —

(*a*) in relation to a corporation — means the period in respect of which the financial statements of the

corporation is made up, whether that period is a year or not; and

(*b*) in relation to a company — is also to be determined in accordance with section 198;

"foreign company" means —

(*a*) a company, corporation, society, association or other body incorporated outside Singapore; or

(*b*) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore;

"full name" or "name" means —

(*a*) in the case of an individual registered under the National Registration Act 1965 — the name as it appears in the latest identity card issued to that individual under section 9 of that Act; or

(*b*) in the case of an individual not registered under the National Registration Act 1965 — the name as it appears in the latest passport issued to that individual or such other similar evidence of identification as is available;

[Act 21 of 2024 wef 09/12/2024]

"identification" means —

(*a*) in the case of an individual issued with an identity card under the National Registration Act 1965 — the number of the individual's identity card; and

(*b*) in the case of an individual not issued with an identity card under that Act — particulars of the individual's passport or such other similar evidence of identity as is acceptable to the Registrar;

"liquidator" includes the Official Receiver when acting as the liquidator of a corporation;

"limited company" means a company limited by shares or by guarantee or, prior to the expiry of the period of 2 years as specified in section 17(6), a company limited both by shares and guarantee;

"limited liability partnership" has the meaning given by section 2(1) of the Limited Liability Partnerships Act 2005;

"listed", in relation to a company or corporation, means a company or corporation that has been admitted to the official list of an approved exchange in Singapore and has not been removed from that official list;

"lodged" means lodged under this Act or any corresponding previous written law;

"marketable securities" means debentures, funds, stocks, shares or bonds of any government or of any local authority or of any corporation or society and includes any right or option in respect of shares in any corporation and units in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001;

"minimum subscription", in relation to any shares offered to the public for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which in the opinion of the directors must be raised by the issue of the shares so offered;

"office copy", in relation to any Court order or other Court document, means a copy authenticated under the hand or seal of the Registrar or other proper officer of the Court;

"officer", in relation to a corporation, includes —

(*a*) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

(*b*) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(*c*) any liquidator of a company appointed in a voluntary winding up,

but does not include —

(*d*) any receiver who is not also a manager;

(*e*) any receiver and manager appointed by the Court;

(*f*) any liquidator appointed by the Court or by the creditors; or

(*g*) a judicial manager appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018;

"Official Assignee" means the Official Assignee appointed under section 16(1) of the Insolvency, Restructuring and Dissolution Act 2018 and includes a Deputy Official Assignee, a Senior Assistant Official Assignee and an Assistant Official Assignee;

"Official Receiver" means the Official Receiver appointed under section 17(1) of the Insolvency, Restructuring and Dissolution Act 2018 and includes a Deputy Official Receiver, a Senior Assistant Official Receiver and an Assistant Official Receiver;

"prescribed" means prescribed under this Act or by the rules;

"principal register", in relation to a company, means the register of members of the company kept pursuant to section 190;

"printed" includes typewritten or lithographed or reproduced by any mechanical means;

"private company" means —

(*a*) any company which immediately prior to 29 December 1967 was a private company under the provisions of the repealed written laws;

(*b*) any company incorporated as a private company by virtue of section 18; or

(*c*) any company converted into a private company pursuant to section 31(1),

being a company which has not ceased to be a private company under section 31 or 32;

"profit and loss account" includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document —

(*a*) inviting applications or offers from the public to subscribe for or purchase; or

(*b*) offering to the public for subscription or purchase,

any shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation, and includes any document deemed to be a prospectus under section 257 of the Securities and Futures Act 2001, but does not include —

(*c*) a profile statement; or

(*d*) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)) of that Act;

"public accountant" means a person who is registered or deemed to be registered under the Accountants Act 2004 as a public accountant;

"public company" means a company other than a private company;

"registered" means registered under this Act or any corresponding previous enactment;

"registered corporate service provider" and "registered qualified individual" have the meanings given by section 2(1) of the Corporate Service Providers Act 2024;

[Act 22 of 2024 wef 09/06/2025]

"Registrar" means the Registrar of Companies appointed under this Act and includes any Deputy or Assistant Registrar of Companies;

"regulations" means regulations made under this Act;

"related corporation", in relation to a corporation, means a corporation that is deemed to be related to the firstmentioned corporation by virtue of section 6;

"repealed written laws" means the written laws repealed by this Act;

"residential address" means —

(*a*) in the case of a person registered under the National Registration Act 1965 — the place of residence of that person as registered under that Act; or

(*b*) in the case of a person not registered under the National Registration Act 1965 — the usual residential address of that person;

"Rules" means Rules of Court;

"share" means share in the share capital of a corporation and includes stock except where a distinction between stocks and shares is expressed or implied;

"solicitor" means an advocate and solicitor of the Supreme Court;

"statutory meeting" means the meeting mentioned in section 174;

"statutory report" means the report mentioned in section 174;

"summary financial statement" means a summary financial statement referred to in section 203A;

"telecommunication system" has the meaning given by the Telecommunications Act 1999;

"treasury share" means a share which —

(*a*) was (or is treated as having been) purchased by a company in circumstances in which section 76H applies; and

(*b*) has been held by the company continuously since the treasury share was so purchased;

"unit", in relation to a share, debenture or other interest, means any right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever name called and includes any option to acquire any such right or interest in the share, debenture or other interest;

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its members;

"VCC" means a VCC or variable capital company as defined in section 2(1) of the VCC Act;

"VCC Act" means the Variable Capital Companies Act 2018;

"virtual meeting technology" means any technology that allows a person to participate in a meeting without being physically present at the place of meeting;

[Act 17 of 2023 wef 01/07/2023]

"voting share", in relation to a body corporate, means an issued share in the body corporate, not being —

(*a*) a share to which, in no circumstances, is there attached a right to vote; or

(*b*) a share to which there is attached a right to vote only in one or more of the following circumstances:

(i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;

(ii) upon a proposal to reduce the share capital of the body corporate;

(iii) upon a proposal that affects rights attached to the share;

(iv) upon a proposal to wind up the body corporate;

(v) upon a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;

(vi) during the winding up of the body corporate.

[39/2007; 36/2014; 4/2017; 15/2017; 40/2018; 44/2018; 40/2019; 1/2020]

Directors

(2) For the purposes of this Act, a person (*A*) is not regarded as a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act by reason only that the directors or the majority of the directors act on advice given by *A* in a professional capacity.

[36/2014]

When statement untrue

(3) For the purposes of this Act, a statement included in a statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included.

When statement included in statement in lieu of prospectus

(4) For the purposes of this Act, a statement is deemed to be included in a statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Invitation to lend money deemed invitation to purchase debentures

(5) For the purposes of this Act, any invitation to the public to deposit money with or lend money to a corporation (other than a corporation that is a prescribed entity mentioned in section 239(4) of the Securities and Futures Act 2001 is deemed to be an invitation to subscribe for or purchase debentures of the corporation.

(5A) For the purposes of this Act, any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation is deemed to be a debenture.

(6) [*Deleted by Act 42 of 2001*]

(7) Unless the contrary intention appears, any reference in this Act to a person being or becoming bankrupt or to a person assigning the person's estate for the benefit of the person's creditors or making an arrangement with the person's creditors under any written law relating to bankruptcy or to a person being an undischarged bankrupt or to any status, condition, act, matter or thing under or in relation to the law of bankruptcy is to be construed as including a reference to a person being or becoming bankrupt or insolvent or to a person making any such assignment or arrangement or to a person being an undischarged bankrupt or insolvent or to the corresponding status, condition, act, matter or thing (as the case requires) under any written law relating to bankruptcy or insolvency.

As to what constitutes affairs of a corporation

(8) A reference in section 8A, 8C, 8D, 216, Part 9 or section 402 to the affairs of a corporation is, unless the contrary intention appears, to be construed as including a reference to —

(*a*) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

(*b*) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting

paragraph (*a*)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(*c*) the internal management and proceeding of the corporation;

(*d*) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;

(ii) the corporation is under judicial management;

(iii) a compromise or an arrangement made between the corporation and another person or other persons is being administered; or

(iv) the corporation is being wound up,

and, without limiting the foregoing, any conduct of such a receiver or such a receiver and manager, or such a judicial manager, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;

(*e*) the ownership of shares in, debentures of, and interests issued by, the corporation;

(*f*) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

(*g*) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;

(*h*) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the corporation;

(*i*) where the corporation has issued interests, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and

(*j*) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

[40/2018]

(9) For the purposes of this Act, wherever a reference to the affairs of a company or a foreign company appears it is to be construed as including a reference to the affairs of a corporation as defined in subsection (8).

(10) A reference in this Act to the directors of a company is, in the case of a company which has only one director, to be construed as a reference to that director.

(11) A reference in this Act to the doing of any act by 2 or more directors of a company is, in the case of a company which has only one director, to be construed as the doing of that act by that director.

(12) For the purposes of section 20(3), 27(2), (5), (5AA), (5A) or (12C), 28(3), (3D), (3DA) or (3E), 29(8A), 155B(8), 359(9), 360(3), 369(2), 377(13) or 378(5), (9) or (16), any reference to the Minister includes a reference to a Minister of State for his or her Ministry who is authorised by the Minister for the purposes of hearing an appeal under that section.

[36/2014; 15/2017; 40/2018]

(13) With effect from 3 January 2016 —

(*a*) the memorandum of association and the articles of association of a company that are in force for the company immediately before that date —

(i) are collectively deemed to constitute, and have effect as, that company's constitution; and

(ii) may be amended by the company from time to time in the same manner as the constitution of a company; and

(*b*) any reference in any written law and in any contract or other document having legal effect to the memorandum of association, or the articles of association, or both, of a company is deemed to refer to the company's constitution.

[36/2014]

Definition of subsidiary and holding company

5.—(1) For the purposes of this Act, a corporation is, subject to subsection (3), deemed to be a subsidiary of another corporation, if —

(*a*) that other corporation —

(i) controls the composition of the board of directors of the firstmentioned corporation; or

(ii) controls more than half of the voting power of the firstmentioned corporation; or

(*b*) the firstmentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

[36/2014]

(2) For the purposes of subsection (1), the composition of a corporation's board of directors is deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation is deemed to have power to make such an appointment if —

(*a*) a person cannot be appointed as a director without the exercise in his or her favour by that other corporation of such a power; or

(*b*) a person's appointment as a director follows necessarily from his or her being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation —

(*a*) any shares held or power exercisable by that other corporation in a fiduciary capacity is to be treated as not held or exercisable by it;

(*b*) subject to paragraphs (*c*) and (*d*), any shares held or power exercisable —

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

is to be treated as held or exercisable by that other corporation;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the firstmentioned corporation or of a trust deed for securing any issue of such debentures is to be disregarded; and

(*d*) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (*c*)) is to be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation is a reference to a corporation of which that last mentioned company or corporation is a subsidiary.

(5) For the purposes of this Act, the Depository is not to be regarded as a holding company of a corporation by reason only of the shares it holds in that corporation as a bare trustee.

[36/2014]

Definition of ultimate holding company

5A. For the purposes of this Act, a corporation is the ultimate holding company of another corporation if —

(*a*) the other corporation is a subsidiary of the firstmentioned corporation; and

(*b*) the firstmentioned corporation is not itself a subsidiary of any corporation.

Definition of wholly owned subsidiary

5B. For the purposes of this Act, a corporation is a wholly owned subsidiary of another corporation if none of the members of the firstmentioned corporation is a person other than —

(*a*) that other corporation;

(*b*) a nominee of that other corporation;

(*c*) a subsidiary of that other corporation being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or

(*d*) a nominee of such subsidiary.

When corporations deemed to be related to each other

6. Where a corporation —

(*a*) is the holding company of another corporation;

(*b*) is a subsidiary of another corporation; or

(*c*) is a subsidiary of the holding company of another corporation,

that firstmentioned corporation and that other corporation are for the purposes of this Act deemed to be related to each other.

Interests in shares

7.—(1) The following subsections have effect for the purposes of Division 4 of Part 4 and sections 163, 164 and 165 and

subsection (6A), in addition, also has effect for the purposes of section 244.

[36/2014]

(1A) Subject to this section, a person has an interest in shares if the person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares.

[36/2014]

(1B) For the purposes of subsection (1A), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction.

[36/2014]

(2) Where any property held in trust consists of or includes shares and a person knows, or has reasonable grounds for believing, that the person has an interest under the trust, the person is deemed to have an interest in those shares.

[36/2014]

(3) A unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001 —

(*a*) that is the subject of an offer of units within the meaning of section 283 of that Act and that has been so subscribed or purchased; or

(*b*) that is issued for the purpose of an offer of units within the meaning of section 283 of that Act and is held by the manager of the collective investment scheme concerned,

does not constitute an interest in a share.

(4) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

(*a*) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or

(*b*) a person has a controlling interest in the body corporate,

that person is deemed to have an interest in that share.

(4A) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

(*a*) a person is;

(*b*) the associates of a person are; or

(*c*) a person and the person's associates are,

entitled to exercise or control the exercise of not less than 20% of the voting power in the body corporate, that person is deemed to have an interest in that share.

[36/2014]

(5) For the purposes of subsection (4A), a person is an associate of another person if the firstmentioned person is —

(*a*) a subsidiary of that other person;

(*b*) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share mentioned in subsection (4A); or

(*c*) a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share mentioned in subsection (4A).

[36/2014]

(6) Where a person —

(*a*) has entered into a contract to purchase a share;

(*b*) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to the person or to the person's order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(*c*) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(*d*) is entitled (otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which the person is the registered holder,

that person is deemed to have an interest in that share.

(6A) For the purposes of Division 4 of Part 4 and sections 163 to 165 and 244, a book-entry security is to be treated as if it were an interest in a share.

[36/2014]

(7) A person is not to be deemed not to have an interest in a share by reason only that the person has the interest in the share jointly with another person.

(8) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(9) There is to be disregarded —

(*a*) an interest in a share if the interest is that of a person who holds the share as bare trustee;

(*b*) an interest in a share if the interest is that of a person whose ordinary business includes the lending of money if the person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(*c*) an interest of a person in a share, if that interest is an interest held by the person by reason of the person holding a prescribed office;

(*ca*) an interest of a company in its own shares if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G (including treasury shares); and

(*d*) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

[36/2014]

(10) An interest in a share is not to be disregarded by reason only of —

(*a*) its remoteness;

(*b*) the manner in which it arose; or

(*c*) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

Solvency statement and offence for making false statement

7A.—(1) In this Act, unless the context otherwise requires, "solvency statement", in relation to a proposed redemption of preference shares by a company out of its capital under section 70, a proposed giving of financial assistance by a company under section 76(9A) or (9B) or a proposed reduction by a company of its share capital under section 78B or 78C, means a statement by the directors of the company that they have formed the opinion —

(*a*) that, as regards the company's situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts;

(*b*) where —

(i) it is intended to commence winding up of the company within the period of 12 months immediately after the date of the statement, that the company will be able to pay its debts in full within the period of 12 months after the date of commencement of the winding up; or

(ii) it is not intended so to commence winding up, that the company will be able to pay its debts as they fall due during the period of 12 months immediately after the date of the statement; and

(*c*) that the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed redemption, giving of financial assistance or reduction (as the case may be), become less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

[36/2014]

(2) The solvency statement —

(*a*) if the company is exempt from audit requirements under section 205B or 205C, must be in the form of a written declaration signed by every director; or

(*b*) if the company is not such a company, must be in the form of a written declaration signed by every director or must be accompanied by a report from its auditor that the auditor has inquired into the affairs of the company and is of the opinion that the statement is not unreasonable given all the circumstances.

[36/2014]

(3) In forming an opinion for the purposes of subsection (1)(*a*) and (*b*), the directors of the company must take into account all liabilities of the company (including contingent liabilities).

(4) In determining, for the purposes of subsection (1)(*c*), whether the value of the company's assets is or will become less than the value of its liabilities (including contingent liabilities) the directors of the company —

(*a*) must have regard to —

(i) the most recent financial statements of the company that comply with section 201(2) and (5), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of its liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[36/2014]

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the directors of a company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(6) A director of a company who makes a solvency statement without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both.

PART 2

ADMINISTRATION OF THIS ACT

Administration of Act and appointment of Registrar of Companies, etc.

8.—(1) The Authority is responsible for the administration of this Act, subject to the general or special directions of the Minister.

(1A) The Minister may, after consultation with the Authority —

(*a*) appoint an officer of the Authority to be the Registrar of Companies; and

(*b*) from among the officers of the Authority, public officers and the officers of any other statutory board, appoint such number of Deputy Registrars and Assistant Registrars of Companies as the Minister considers necessary,

for the proper administration of this Act.

(1B) The Authority may give to the Registrar such directions, not inconsistent with the provisions of this Act, as to the exercise of the

Registrar's powers, functions or duties under this Act, and the Registrar must give effect to such directions.

(2) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any such Deputy or Assistant Registrar and is as valid and effectual as if done or signed by the Registrar.

(3) No person dealing with any Deputy or Assistant Registrar needs to be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Deputy or Assistant Registrar so far as it affects any such person is as valid and effectual as if done or omitted by the Registrar.

Certain signatures to be judicially noticed

(4) All courts, judges and persons acting judicially are to take judicial notice of the seal and signature of the Registrar and of any Deputy or Assistant Registrar.

(5) [*Deleted by Act 36 of 2014*]

(6) [*Deleted by Act 36 of 2014*]

(6A) [*Deleted by Act 36 of 2014*]

(7) The Minister may, by notification in the *Gazette*, add to, vary or amend —

(*a*) the Twelfth Schedule in relation to the contents of the directors' statement which is required to accompany the financial statements under section 201(16);

(*b*) the Thirteenth Schedule in relation to the criteria for determining whether a company is a small company for the purposes of section 205C;

(*c*) the Fourteenth Schedule in relation to the list of companies to which Part 11A does not apply;

(*d*) the Fifteenth Schedule in relation to the list of foreign companies registered under Division 2 of Part 11 to which Part 11A does not apply; and

(*e*) the Sixteenth Schedule in relation to the meanings of "significant control" and "significant interest".

[36/2014; 15/2017]

Inspection of books of corporation

8A.—(1) Where the Minister is satisfied that there is good reason for so doing, the Minister may at any time —

(*a*) give directions to a corporation requiring that corporation at such place and time as may be specified in the directions to produce such books relating to the affairs of a corporation as may be so specified; or

(*b*) authorise any person (called in this section and section 8B an authorised person), on producing (if required to do so) evidence of his or her authority, to require that corporation to produce to him or her any books relating to the affairs of a corporation which the authorised person may specify.

(2) Where by virtue of subsection (1) the Minister or an authorised person has power to require the production of any books from a corporation relating to the affairs of a corporation, the Minister or that authorised person has the like power to require production of those books from any person who appears to the Minister or authorised person to be in possession of them; but where any such person claims a lien on any books produced by the person, the production is without prejudice to the lien.

(3) Any power conferred by this section to require a corporation or other person to produce books relating to the affairs of a corporation includes power —

(*a*) if the books are produced —

(i) to make copies of, or take extracts from, them; and

(ii) to require that person who is a present or past officer of, or who is or was at any time employed by the corporation to provide an explanation of any of them; and

(*b*) if the books are not produced, to require the person required to produce them to state, to the best of the person's knowledge and belief, where they are.

(4) A statement made by a person in compliance with a requirement imposed by this section may be used in evidence against the person.

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate (including a body corporate that is in the course of being wound up) or was a body corporate (being a body corporate that has been dissolved) to making that requirement of any person who is or has been an officer of the body corporate.

(6) If a requirement to produce books relating to the affairs of a corporation or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the corporation or other person on whom the requirement was imposed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months or to both.

(7) Where a person is charged with an offence under subsection (6) in respect of a requirement to produce any books relating to the affairs of a corporation, it is a defence to prove that they were not in the person's possession or under the person's control or that it was not reasonably practicable for the person to comply with the requirement.

(8) A person, who in purported compliance with a requirement imposed by this section, provides an explanation or statement which the person knows to be false or misleading in a material particular or recklessly provides or makes an explanation or a statement which is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years or to both.

Power of Magistrate to issue warrant to seize books

8B.—(1) If a Magistrate is satisfied, on information on oath or affirmation laid by an authorised person, that there are reasonable grounds for suspecting that there are on any premises any books of

which production has been required by virtue of section 8A and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books appearing to be such books or papers as are referred to in this subsection, or to take, in relation to any books so appearing, any other steps which may appear necessary for preserving them and preventing interference with them and to deliver any books, possession of which is so taken, to an authorised person.

(2) Every warrant issued under this section continues in force until the end of the period of one month after the date on which it was issued.

(3) Where under this section a person takes possession of, or secures against interference, any books, and a person has a lien on the books, the taking of possession of the books or the securing of the books against interference does not prejudice the lien.

(4) Where, under this section, a person takes possession of, or secures against interference, any books, that person or any authorised person to whose possession the books were delivered —

(*a*) may make copies of, or take extracts from, the books;

(*b*) may require any person who was party to the compilation of the books to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;

(*c*) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Minister; and

(*d*) during that period must permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the firstmentioned person to

inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(5) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months or to both.

(6) The powers conferred by this section are in addition to, and not in derogation of, any other power conferred by law.

Copies of or extracts from books to be admitted in evidence

8C.—(1) Subject to this section, in any legal proceedings, whether proceedings under this Act or otherwise, a copy of or extract from a book relating to the affairs of a corporation is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Destruction, mutilation, etc., of company documents

8D.—(1) An officer of a corporation to which section 8A(1) applies, who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the property or affairs of the corporation, or makes or is privy to the making of a false entry in such a document, shall, unless the officer proves that he or she had no intention to conceal the affairs of the corporation or to defeat the law, be guilty of an offence.

(2) A person to whom subsection (1) applies who fraudulently either parts with, alters or makes an omission in any such document,

or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) In this section, "officer of a corporation" includes a person who —

(*a*) was at any time an officer of the corporation; or

(*b*) has, or had, a financial or other interest in the affairs of the corporation.

Saving for advocates and solicitors

8E. Nothing in sections 8A and 8B compels the production by an advocate and solicitor of a document containing a privileged communication made by or to him or her in that capacity or authorises the taking of possession of any such document which is in his or her possession but if the advocate and solicitor refuses to produce the document he or she is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom or by or on behalf of whom the communication was made.

Investigation of certain matters

8F. Without limiting the powers conferred upon the Minister under section 8A, where the Minister has reason to suspect that a person has committed an offence under this Act, the Minister may make such investigation as he or she thinks expedient for the due administration of this Act.

Saving for banks, insurance companies and certain financial institutions

8G. Nothing in section 8A authorises the Minister to call for the production of books of a banking corporation or of any company carrying on insurance business or of any financial institution that is subject to control by the Monetary Authority of Singapore under sections 3 and 4 of the Financial Services and Markets Act 2022 and

nothing in section 8F authorises the Minister to conduct an investigation into any such corporation, company or financial institution.

[Act 18 of 2022 wef 28/04/2023]

Security of information

8H.—(1) No information or document relating to the affairs of a corporation which has been obtained under section 8A or 8B may, without the previous consent in writing of that corporation, be published or disclosed, except to the Minister, the Registrar of Companies and their officers or to an inspector appointed under Part 9, unless the publication or disclosure is required —

(*a*) with a view to the institution of or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of this Act or any criminal proceedings for an offence entailing misconduct in connection with the management of the corporation's affairs or misapplication or wrongful retention of its property;

(*b*) for the purpose of complying with any requirement or exercising any power imposed or conferred by this Act in connection with reports made by inspectors appointed under Part 9;

(*c*) with a view to the institution by the Minister of proceedings for the winding up of companies under this Act of the corporation; or

(*d*) for the purpose of proceedings under section 8A or 8B.

(2) A person who publishes or discloses any information or document in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

9. [*Repealed by Act 40 of 2018*]

Company auditors

10.—(1) No person other than an accounting entity may —

(*a*) knowingly consent to be appointed as auditor for a company; or

(*b*) knowingly act as an auditor for a company.

[36/2014]

(2) Without limiting subsection (1)(*b*), a person acts as an auditor for a company if the person prepares any report required by this Act to be prepared by an auditor of the company.

[36/2014]

(3) No company or person may appoint an accounting entity as an auditor of a company without obtaining the accounting entity's prior consent.

[36/2014]

(4) For the purposes of subsection (3), the consent —

(*a*) of a public accountant must be in writing signed by the public accountant;

(*b*) of an accounting firm, or an accounting limited liability partnership, must be in writing signed by at least one partner of the firm or limited liability partnership; and

(*c*) of an accounting corporation must be in writing signed by at least one director of the corporation.

[36/2014]

(5) Where an accounting firm is appointed as auditor of the company in the name of the accounting firm, the appointment takes effect and operates as if the partners of the firm at the time of the appointment, who are public accountants at that time, are appointed as auditors of the company.

[36/2014]

(6) Where an accounting corporation is appointed as auditor of the company in the name of the corporation, the appointment takes effect and operates as if —

(*a*) the directors of the corporation who are practising as public accountants in the corporation (whether directors at the

time the accounting corporation was appointed as auditor or later); and

(*b*) the employees of the corporation who are practising as public accountants in the corporation (whether employed at the time the accounting corporation was appointed as auditor or later),

are appointed as auditors of the company.

[36/2014]

11. [*Repealed by Act 40 of 2018*]

Registers

12.—(1) The Registrar is, subject to this Act, to keep such registers as the Registrar considers necessary in such form as he or she thinks fit.

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

(*a*) inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar;

(*b*) subject to subsection (2AA), require a copy of the notice of incorporation of a company, any certificate issued under this Act, any document or extract from any document kept by the Registrar to be given or certified by the Registrar;

(*c*) inspect any register of directors, chief executive officers, secretaries or auditors kept by the Registrar under section 173(1) or require a copy of or an extract from any such register; or

(*d*) inspect the register of members of any private company kept by the Registrar under section 196A or require a copy of or an extract from any such register.

[36/2014]

(2AA) A certificate of confirmation of incorporation mentioned in section 17(9) or 19(7) may only be issued to the company upon an application made in accordance with those provisions.

[36/2014]

(2AB) Subsection (2)(*a*) and (*b*) does not apply to any document prescribed as an excluded document for the purposes of this subsection.

[Act 21 of 2024 wef 09/12/2024]

(2AC) Where a document is submitted on or after the date of commencement of section 28 of the ACRA (Registry and Regulatory Enhancements) Act 2024 using a form on the electronic transaction system, the references to the document in subsection (2)(*a*) and (*b*) exclude the following entries in the form:

(*a*) a means of notification provided by a person for the purposes of section 28A(1)(*b*) of the Accounting and Corporate Regulatory Authority Act 2004;

(*b*) an individual's date of birth obtained under this Act or section 28(1A) of the Accounting and Corporate Regulatory Authority Act 2004;

(*c*) any other prescribed information.

[Act 21 of 2024 wef 09/12/2024]

(2A) Subsection (2)(*a*), (*b*) and (*d*) does not apply to such exempt private company that is wholly owned by the Government as the Minister may, by notification in the *Gazette*, specify where the Minister considers that it would not be in the public interest for —

(*a*) any document relating to any such company maintained by the Registrar in whatever form to be inspected by any member of the public; and

(*b*) any certificate or copy of or extract from any document relating to any such company to be given or certified to any member of the public.

[36/2014]

(2B) Despite the cancellation of any notification mentioned in subsection (2A) in respect of a company, subsection (2)(*a*), (*b*) and (*d*) does not apply to any document or certificate relating to that company that is filed or lodged with the Registrar, or issued under the Act, before the date of such cancellation, whether or not that company remains an exempt private company wholly owned by the Government, and whether or not it has been wound up.

[36/2014]

(2C) Despite subsection (2), a director, chief executive officer, secretary, auditor or member of a company may, without charge —

(*a*) inspect the register of directors, register of chief executive officers, register of secretaries and register of auditors of that company kept by the Registrar under section 173(1); or

(*b*) obtain from the Registrar a copy of or an extract from the register of directors, register of chief executive officers, register of secretaries and register of auditors of that company kept by the Registrar under section 173(1).

[36/2014]

(2D) Despite subsection (2), a director, chief executive officer, secretary, auditor or member of a private company may, without charge —

(*a*) inspect the register of members of that company kept by the Registrar under section 196A; or

(*b*) obtain from the Registrar a copy of or an extract from the register of members of that company kept by the Registrar under section 196A.

[36/2014]

Evidentiary value of copies certified by Registrar

(3) A copy of or an extract from any document (including a copy produced by way of microfilm) filed or lodged with the Registrar using a non-electronic medium that is certified to be a true copy or extract by the Registrar is in any proceedings admissible in evidence as of equal validity with the original document.

[36/2014]

Evidence of statutory requirements

(4) In any legal proceedings, a certificate issued by the Registrar that a requirement of this Act specified in the certificate —

(*a*) had or had not been complied with at a date or within a period specified in the certificate; or

(*b*) had been complied with upon a date specified in the certificate but not before that date,

shall be received as prima facie evidence of the matters specified in the certificate.

[36/2014]

Registrar may refuse to register or receive document

(5) If the Registrar is of the opinion that any document submitted to him or her —

(*a*) contains any matter contrary to law;

(*b*) by reason of any omission or misdescription has not been duly completed;

(*c*) does not comply with the requirements of this Act; or

(*d*) contains any error, alteration or erasure,

he or she may refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

Destruction or transfer of old records

(6) If the Registrar is of the opinion that it is no longer necessary or desirable to retain any document lodged, filed or registered with the Registrar and which has been microfilmed or converted to electronic form, the Registrar may —

(*a*) destroy the document with the authorisation of the National Library Board under section 17 of the National Library Board Act 1995; or

(*b*) transfer the document to the National Archives of Singapore under section 16 of that Act.

[36/2014]

(7) In subsection (3), "non-electronic medium" means a medium other than the electronic transaction system established under Part 6A of the Accounting and Corporate Regulatory Authority Act 2004.

[36/2014]

Electronic transaction system

12A.—(1) The Registrar may —

(*a*) require or permit any person to carry out any transaction with the Registrar under this Act; and

(*b*) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction mentioned in paragraph (*a*),

using the electronic transaction system established under Part 6A of the Accounting and Corporate Regulatory Authority Act 2004.

[36/2014]

(2) If the Registrar is satisfied that a transaction should be treated as having been carried out at some date and time earlier than the date and time which is reflected in the electronic transaction system, the Registrar may cause the electronic transaction system and the registers kept by the Registrar to reflect such earlier date and time.

[36/2014]

(3) The Registrar must keep a record whenever the electronic transaction system or the registers are altered under subsection (2).

[36/2014]

(4) In this section —

"document" includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to, the Registrar;

"transaction", in relation to the Registrar, means —

(*a*) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;

(*b*) any making of any application, submission or request to the Registrar;

(*c*) any provision of any undertaking or declaration to the Registrar; and

(*d*) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.

[36/2014]

Rectification by Court

12B.—(1) Where it appears to the Court, as a result of evidence adduced before it by an applicant company, that any particular recorded in a register is erroneous or defective, the Court may, by order, direct the Registrar to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the Registrar must, upon receipt of the order, rectify the register accordingly.

[36/2014; 40/2019]

(2) An order of the Court made under subsection (1) may require that a fresh document, showing the rectification, must be filed by the applicant company with the Registrar together with a copy of the Court order, and a copy of the Court application.

Rectification by Registrar on application

12C.—(1) Despite section 12B, an officer of a company may notify the Registrar in the prescribed form of —

(*a*) any error contained in any document relating to the company filed or lodged with the Registrar; or

(*b*) any error in the filing or lodgment of any document relating to the company with the Registrar.

[36/2014]

(2) The Registrar may, upon receipt of any notification referred to in subsection (1) and if satisfied that —

(*a*) the error referred to in subsection (1)(*a*) is typographical or clerical in nature; or

(*b*) the error referred to in subsection (1)(*b*) is, in the Registrar's opinion, unintended and does not prejudice any person,

rectify the register accordingly.

[36/2014]

(3) In rectifying the register under subsection (2), the Registrar must not expunge any document from the register.

[36/2014]

(4) The decision made by the Registrar on whether to rectify the register under subsection (2) is final.

[36/2014]

Rectification or updating on Registrar's initiative

12D.—(1) The Registrar may rectify or update any particulars or document in a register kept by him or her, if the Registrar is satisfied that —

(*a*) there is a defect or error in the particulars or document arising from any grammatical, typographical or similar mistake;

[Act 21 of 2024 wef 09/12/2024]

(*aa*) the register is inaccurate in respect of the particulars or document, taking account of information given in, or in support of, a notice to the Registrar under section 173A(1) or 173E(1), (2) or (3); or

[Act 21 of 2024 wef 09/12/2024]

(*b*) there is evidence of a conflict between the particulars of a company or person and —

(i) other information in the register relating to that company or person; or

(ii) other information relating to that company or person obtained from such department or Ministry of the Government, or statutory body or other body corporate as may be prescribed, or the courts.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(1A) Subsections (2) to (5) do not apply where the Registrar rectifies or updates the register under subsection (1)(*aa*).

[Act 21 of 2024 wef 09/12/2024]

(2) Before the Registrar rectifies or updates the register under subsection (1), the Registrar must, except under prescribed circumstances, give written notice to the company or person whose

documents or particulars are to be rectified or updated of the Registrar's intention to do so, and state in the notice —

(*a*) the reasons for and details of the proposed rectification or updating to be made to the register; and

(*b*) the date by which any written objection to the proposed rectification or updating must be delivered to the Registrar, being a date at least 30 days after the date of the notice.

[36/2014]

(3) The company or person notified under subsection (2) may deliver to the Registrar, not later than the date specified under subsection (2)(*b*), a written objection to the proposed rectification or updating of the register.

[36/2014]

(4) The Registrar must not rectify or update the register if the Registrar receives a written objection under subsection (3) to the proposed rectification or updating by the date specified under subsection (2)(*b*), unless the Registrar is satisfied that the objection is frivolous or vexatious or has been withdrawn.

[36/2014]

(5) The Registrar may rectify or update the register if the Registrar does not receive a written objection under subsection (3) by the date specified under subsection (2)(*b*).

[36/2014]

(6) The Registrar may include such notation as the Registrar thinks fit on the register for the purposes of providing information relating to any error, defect or inaccuracy in any particulars or document in the register, and may remove such notation if the Registrar is satisfied that it no longer serves any useful purpose.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(7) Despite anything in this section, the Registrar may, if the Registrar is satisfied that there is any error, defect or inaccuracy in any particulars or document in a register, by written notice, request that the company to which the particulars or document relate, or its

officers take such steps within such time as the Registrar may specify to ensure that the error, defect or inaccuracy is rectified.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

Exclusion of residential address from public inspection or access if contact address is available

12E.—(1) The Registrar must cause —

(*a*) the residential address of a director, chief executive officer or secretary contained in the register of directors, register of chief executive officers or register of secretaries (as the case may be) kept by the Registrar under section 173(1) to be excluded from public inspection or access under section 12(2)(*c*); and

(*b*) the residential address of a member of a private company (who is an individual) contained in the electronic register of members kept by the Registrar under section 196A to be excluded from public inspection or access under section 12(2)(*d*).

(2) Where, pursuant to subsection (1) or (3), the residential address of a director, chief executive officer or secretary of a company or a member of a private company mentioned in subsection (1) (called in this section and section 12F the individual) is excluded from public inspection or access under section 12(2)(*c*) or (*d*) (as the case may be), the Registrar may cause the residential address to cease to be excluded from such public inspection or access in accordance with section 12F.

(3) Where, pursuant to subsection (2), the individual's residential address has ceased to be excluded from public inspection or access under section 12(2)(*c*) or (*d*) (as the case may be), the Registrar must cause the exclusion from public inspection or access to resume if —

(*a*) subject to section 12F(8) and the equivalent provisions in other ACRA administered Acts, notice of a change in the individual's contact address is lodged under any ACRA administered Act; or

(*b*) the Court so directs on an appeal under section 12F(7).

(4) Where —

(*a*) a document is filed or lodged with the Registrar under this Act by submitting a form on the electronic transaction system on or after the date of commencement of section 30 of the ACRA (Registry and Regulatory Enhancements) Act 2024; and

(*b*) an individual's residential address is entered in that form,

the Registrar must cause the individual's residential address to be excluded from public inspection or access in respect of that document under section 12(2)(*a*) or (*b*).

[Act 21 of 2024 wef 09/12/2024]

Cessation of exclusion of residential address from public inspection or access

12F.—(1) For the purposes of section 12E(2), the grounds for causing the individual's residential address to cease to be excluded from public inspection or access under section 12(2)(*c*) or (*d*) (as the case may be) are either that —

(*a*) communications sent by the Registrar under this Act, or by any officer of the Authority under any ACRA administered Act, to the individual at his or her contact address and requiring a response within a specified period remain unanswered; or

(*b*) there is evidence to show that service of any document under this Act or under any ACRA administered Act at the individual's contact address is not effective to bring it to the notice of the individual.

(2) Before causing the individual's residential address to cease to be excluded from public inspection or access pursuant to section 12E(2), the Registrar must give a notice under subsection (3) to —

(*a*) the individual;

(*b*) every company of which the Registrar has been notified under this Act that the individual is a director, chief executive officer or secretary; and

(*c*) every private company of which the Registrar has been notified under this Act that the individual is a member.

(3) The notice mentioned in subsection (2) must —

(*a*) state the grounds under subsection (1) on which the Registrar intends to cease the exclusion of the individual's residential address; and

(*b*) specify the period within which representations may be made to the Registrar.

(4) The Registrar must consider the representations (if any) given in response to the notice mentioned in subsection (2) and received within the period specified by the Registrar under subsection (3)(*b*).

(5) If the Registrar decides to cause the individual's residential address to cease being excluded from public inspection or access, the Registrar must before doing so give notice of the decision to —

(*a*) the individual; and

(*b*) every company mentioned in subsection (2)(*b*) and (*c*).

(6) A notice to the individual under subsection (2) or (5) must be sent to the individual's residential address unless it appears to the Registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any other last known address of that individual.

(7) Any individual aggrieved by the decision of the Registrar under section 12E(2) may, within 30 days after the date of receiving the notice under subsection (5), appeal to the Court which may confirm or reverse the Registrar's decision and make any directions in the matter.

(8) The individual is not allowed to provide a contact address within 3 years after the Registrar causes the individual's residential address to cease to be excluded from public inspection or access under section 12(2)(*c*) or (*d*) pursuant to section 12E(2), unless the Registrar is satisfied that there is good cause for allowing the individual to do so in a particular case.

(9) Subject to subsection (8), where an individual provides a new contact address under any ACRA administered Act, the Registrar

must replace the individual's contact address contained in each register kept by the Registrar under section 12(1) with the new contact address.

[Act 21 of 2024 wef 09/12/2024]

Enforcement of duty to make returns

13.—(1) If a corporation or person, having made default in complying with —

(*a*) any provision of this Act or of any other law (other than the Insolvency, Restructuring and Dissolution Act 2018) which requires the filing or lodging in any manner with the Registrar of any return, account or other document or the giving of notice to the Registrar of any matter;

(*b*) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document; or

(*c*) any request of the Registrar under section 12D(7) to rectify any error, defect or inaccuracy in any particulars or document in the register,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the corporation or by the Registrar, make an order directing the corporation and any officer of the corporation or such person to make good the default within such time as is specified in the order.

[36/2014; 40/2018]

[Act 21 of 2024 wef 09/12/2024]

(2) Any such order may provide that all costs of and incidental to the application must be borne by the corporation or by any officer of the corporation responsible for the default or by such person.

(3) Nothing in this section limits the operation of any written law imposing penalties on a corporation or its officers or such person in respect of any such default.

Relodging of lost registered documents

14.—(1) If in the case of any corporation incorporated or registered under this Act or any corresponding previous written law the

constitution or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for permission to lodge a copy of the document as originally filed or lodged.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as the Registrar thinks fit.

(3) The Registrar upon being satisfied —

(*a*) that the original document has been lost or destroyed;

(*b*) of the date of the filing or lodging thereof with the Registrar; and

(*c*) that a copy of such document produced to the Registrar is a correct copy,

may certify upon that copy that the Registrar is so satisfied and direct that that copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment, that copy for all purposes has, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and must be registered by the Registrar, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate are invalidated or affected by such variation or rescission.

(6) No fee is payable upon the lodging of a document under this section.

Size, durability and legibility of documents delivered to Registrar

15.—(1) For the purposes of securing that the documents delivered to the Registrar under the provisions of this Act are of a standard size, durable and easily legible, the Minister may by regulations prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as the Minister may consider appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) If under any such provision there is delivered to the Registrar a document (whether an original document or a copy) which in the opinion of the Registrar does not comply with such requirements prescribed under this section as are applicable to it, the Registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are 2 or more such persons, may serve on any of them) a notice stating the Registrar's opinion to that effect and indicating the requirements so prescribed with which in the Registrar's opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any written law which enables a penalty to be imposed in respect of any omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such law whereby such a penalty may be imposed by reference to each day during which the omission continues) —

(*a*) any duty imposed by that provision to deliver such a document to the Registrar is to be treated as not having been discharged by the delivery of that document; but

(*b*) no account is to be taken of any days falling within the period mentioned in subsection (4).

(4) The period referred to in subsection (3)(*b*) is the period beginning on the day on which the document was delivered to the Registrar as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.

(5) In this section, any reference to delivering a document is to be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.

16. [*Repealed by Act 36 of 2014*]

16A. [*Repealed by Act 36 of 2014*]

PART 3

CONSTITUTION OF COMPANIES

Division 1 — Incorporation

Formation of companies

17.—(1) Subject to the provisions of this Act, any person may, whether alone or together with another person, by subscribing the person's name or their names to a constitution and complying with the requirements as to registration, form an incorporated company.
[36/2014]

(2) A company may be —

(*a*) a company limited by shares;

(*b*) a company limited by guarantee; or

(*c*) an unlimited company.

(3) No company, association or partnership consisting of more than 20 persons may be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed pursuant to some other written law in Singapore or letters patent.

(4) So much of subsection (3) as prohibits the formation of an association or a partnership consisting of more than 20 persons does not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the qualifications laid down in such written law for the purpose of carrying on that profession or calling.

(5) As from 15 August 1984, no company limited by guarantee with a share capital may be registered under this Act.

(6) The prohibition referred to in subsection (5) does not affect a company limited by guarantee which has a share capital and is registered as such before 15 August 1984 and section 38(2) continues to apply to a company so registered; but any such company must, within 2 years of that date, elect to convert and re-register that company either as a company limited by shares or as a company limited by guarantee.

(7) The conversion of a company referred to in subsection (6) is effected by lodging with the Registrar a special resolution determining the conversion of the company from a company limited by guarantee with a share capital to a company limited by shares or to a company limited by guarantee (as the case may be) and altering its constitution to the extent that is necessary to bring them into conformity with the requirements of this Act relating to the constitution of a company limited by shares or of a company limited by guarantee, as the case may be.

[36/2014]

(8) On compliance by a company with subsection (7) and on the issue by the Registrar of a notice of incorporation of the company in accordance with the special resolution, the company becomes a company limited by shares or a company limited by guarantee, as the case may be.

(9) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate of confirmation of incorporation.

[36/2014]

Private company

18.—(1) A company having a share capital may be incorporated as a private company if its constitution —

(*a*) restricts the right to transfer its shares; and

(*b*) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or

of its subsidiary or any person who while previously in the employment of the company or of its subsidiary was and thereafter has continued to be a member of the company).

[36/2014]

(2) Where, on 29 December 1967, the constitution of a company that is a private company by virtue of paragraph (*a*) of the definition of "private company" in section 4(1) does not contain the restrictions and limitations required by subsection (1) to be included in the constitution of a company that may be incorporated as a private company, the constitution of the company is deemed to include each such restriction or limitation that is not so included and a restriction on the right to transfer its shares that is so deemed to be included in its constitution is deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

[36/2014]

(3) Where a restriction or limitation deemed to be included in the constitution of a company under subsection (2) is inconsistent with any provision already included in the constitution of the company, that restriction or limitation, to the extent of the inconsistency, prevails.

[36/2014]

(4) A private company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its constitution or any limitation on the number of its members included, or deemed to be included, in its constitution, but not so that the constitution of the company ceases to include the limitation required by subsection (1)(*b*) to be included in the constitution of a company that may be incorporated as a private company.

[36/2014]

Registration and incorporation

19.—(1) A person desiring the incorporation of a company must —

(*a*) submit to the Registrar the constitution of the proposed company and such other documents as may be prescribed;

(*b*) furnish the Registrar with the last day of the proposed company's first financial year and such other information as may be prescribed; and

(*c*) pay the Registrar the prescribed fee.

[36/2014; 15/2017]

(2) Either —

(*a*) a registered qualified individual engaged in the formation of the proposed company; or

(*b*) a person named in the constitution as a director or the secretary of the proposed company,

must make a declaration to the Registrar that —

(*c*) all of the requirements of this Act relating to the formation of the company have been complied with; and

(*d*) he or she has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the proposed company,

and the Registrar may accept such declaration as sufficient evidence of those matters.

[36/2014]

(3) Upon receipt of the documents, information and payment referred to in subsection (1) and declaration mentioned in subsection (2), the Registrar must, subject to this Act, register the company by registering its constitution.

[36/2014]

Notice of incorporation

(4) On the registration of the constitution the Registrar must issue in the prescribed manner a notice of incorporation in the prescribed form stating that the company is, on and from the date specified in the notice, incorporated, and that the company is —

(*a*) a company limited by shares;

(*b*) a company limited by guarantee; or

(*c*) an unlimited company,

as the case may be, and where applicable, that it is a private company.

[36/2014]

Effect of incorporation

(5) On and from the date of incorporation specified in the notice issued under subsection (4) but subject to this Act, the subscribers to the constitution, together with such other persons as may from time to time become members of the company, are a body corporate by the name contained in the constitution capable immediately of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

[36/2014; 15/2017]

Members of company

(6) The subscribers to the constitution are deemed to have agreed to become members of the company and on the incorporation of the company must be entered as members —

(*a*) in the case of a public company — in the register of members kept by the public company under section 190; or

(*b*) in the case of a private company — in the electronic register of members kept by the Registrar under section 196A.

[36/2014]

(6A) Apart from the subscribers mentioned in subsection (6), every other person who agrees to become a member of a company and whose name is entered —

(*a*) in the case of a public company — in the register of members kept by the public company under section 190; or

(*b*) in the case of a private company — in the electronic register of members kept by the Registrar under section 196A,

is a member of the company.

[36/2014]

(7) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate of confirmation of incorporation.

[36/2014]

Power to refuse registration

20.—(1) Without affecting the powers of the Registrar under section 12(5), where a constitution is delivered for registration under section 19, the Registrar must not register the constitution unless the Registrar is satisfied that all the requirements of this Act in respect of the registration and of all matters precedent and incidental thereto have been complied with.

[36/2014]

(2) Despite anything in this Act or any rule of law, the Registrar must refuse to register the constitution of a proposed company where the Registrar is satisfied that —

(*a*) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

(*b*) it would be contrary to the national security or interest for the proposed company to be registered.

[36/2014]

(3) Any person aggrieved by the decision of the Registrar under subsection (2) may, within 30 days of the date of the decision, appeal to the Minister whose decision is final.

Minimum of one member

20A. A company must have at least one member.

Membership of holding company

21.—(1) A corporation cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary is void.

(1A) Subsection (1), insofar as it provides that any transfer of shares in contravention of it is void, does not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition

of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1).

[36/2014]

(2) Subsection (1) does not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section does not prevent a subsidiary which, on 29 December 1967, is a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary has no right to vote at meetings of the holding company or any class of members thereof.

(4) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary of the holding company, it already holds shares in that holding company, but —

(*a*) subject to subsection (2), the subsidiary has no right to vote at meetings of the holding company or any class of members thereof; and

(*b*) subject to subsections (4A) and (4B), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

[36/2014]

(4A) To avoid doubt, subsection (4)(*b*) ceases to apply if, during the period referred to in that subsection, the subsidiary ceases to be a subsidiary of the holding company.

[36/2014]

(4B) Any shares in the holding company that are not disposed of in accordance with subsection (4)(*b*) may, subject to subsections (4C) and (6E), be held or continued to be held by the subsidiary.

[36/2014]

(4C) With respect to the shares referred to in subsection (4B) —

(*a*) subject to this subsection and subsection (6E), sections 76J(1), (2), (3), (5) and (6) and 76K apply with the necessary modifications, including the following modifications:

(i) a reference to treasury shares is a reference to shares referred to in subsection (4B);

(ii) a reference to a company holding treasury shares is a reference to a subsidiary holding shares referred to in subsection (4B);

(iii) the reference in section 76J(6) to "as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied" is a reference to "as if they were already held by the subsidiary at the time they were allotted, in circumstances in which section 21(4) applied"; and

(*b*) the holding company must, within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (4B), lodge with the Registrar a notice in the prescribed form.

[36/2014]

(5) Subject to subsection (2), subsections (1), (3), (4), (4B), (6A) and (6C) apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

[36/2014]

(6) This section does not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if the allotment is made by way of capitalisation of reserves of the holding company and is made to all

members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.

(6A) This section does not operate to prevent the transfer of shares in a holding company to a subsidiary by way of a distribution in specie, amalgamation or scheme of arrangement but —

(*a*) subject to subsection (2), the subsidiary has no right to vote at meetings of the holding company or any class of members thereof; and

(*b*) subject to subsections (6B) and (6C), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after the transfer to the subsidiary of the shares in the holding company, dispose of all of the shares in the holding company.

[36/2014]

(6B) To avoid doubt, subsection (6A)(*b*) ceases to apply if, during the period referred to in that subsection, the subsidiary ceases to be a subsidiary of the holding company.

[36/2014]

(6C) Any shares in the holding company that are not disposed of in accordance with subsection (6A)(*b*) may, subject to subsections (6D) and (6E), be held or continued to be held by the subsidiary.

[36/2014]

(6D) With respect to the shares referred to in subsection (6C) —

(*a*) subject to this subsection and subsection (6E), sections 76J(1), (2), (3), (5) and (6) and 76K apply with the necessary modifications, including the following modifications:

(i) a reference to treasury shares is a reference to shares referred to in subsection (6C);

(ii) a reference to a company holding treasury shares is a reference to a subsidiary holding shares referred to in subsection (6C);

(iii) the reference in section 76J(6) to "as if they were purchased by the company at the time they were

allotted, in circumstances in which section 76H applied" is a reference to "as if they were transferred to the subsidiary at the time they were allotted, in circumstances in which section 21(6A) applied"; and

(*b*) the holding company must, within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (6C), lodge with the Registrar a notice in the prescribed form.

[36/2014]

(6E) With respect to any share referred to in subsection (4B) or (6C) —

(*a*) where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company under subsection (4B) or (6C) or by the holding company as treasury shares, must not at any time exceed 10% of the total number of shares of the holding company at that time;

(*b*) where the share capital of the holding company is divided into shares of different classes, the aggregate number of the shares of any class held by all the subsidiaries of the holding company under subsection (4B) or (6C) or by the holding company as treasury shares, must not at any time exceed 10% of the total number of the shares in that class of the holding company at that time;

(*c*) where paragraph (*a*) or (*b*) is contravened, the holding company must dispose of or cancel the excess shares, or procure the disposal of the excess shares by its subsidiary, in accordance with section 76K before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow;

(*d*) where the subsidiary is a wholly-owned subsidiary of the holding company, no dividend may be paid, and no other distribution (whether in cash or otherwise) of the holding company's assets (including any distribution of assets to

members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (4B) or (6C); and

(*e*) where the subsidiary is not a wholly-owned subsidiary of the holding company, a dividend may be paid and other distribution (whether in cash or otherwise) of the holding company's assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (4B) or (6C).

[36/2014]

(6F) In subsection (6E)(*c*), "excess shares" means such number of the shares, held by any subsidiary under subsection (4B) or (6C) or by the holding company as treasury shares at the time in question, as resulted in the limit referred to in subsection (6E)(*a*) or (*b*) being exceeded.

[36/2014]

(6G) In sections 7(9)(*ca*), 33(5A), 63A(1)(*e*), 74(1A), 76B(3E), 78, 81(4), 164A(1), 176(1A), 177(1), 179(8), 184(4)(*b*)(i), 201A(4)(*b*), 205B(6), 206(1)(*b*), 215(1), (1C), (1D) and (3A) and 232(1)(*a*)(i) —

(*a*) a reference to "treasury shares" includes a reference to shares held by a subsidiary under subsection (4B) or (6C); and

(*b*) a reference to a company being registered as a member of itself or being a member of itself includes a reference to a subsidiary being registered as a member of its holding company.

[36/2014; 40/2018]

(7) Where but for this section a subsidiary would have been entitled to subscribe for shares in the holding company, the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

(8) In relation to a holding company that is a company limited by guarantee, the reference in this section to shares is to be read as including a reference to the interest of its members as such, whatever the form of that interest.

(9) For the purposes of this section, a company must inform the Registrar of the occurrence of any of the following events by lodging a notice in the prescribed form within 14 days after the date of occurrence:

(*a*) where a shareholder of a company that is a corporation becomes a subsidiary of the company;

(*b*) where shares of the company are held by a subsidiary of the company and there is a change in the number of shares held by the subsidiary.

[36/2014]

Requirements as to constitution

22.—(1) The constitution of every company must comply with such requirements as may be prescribed, must be dated and must state, in addition to other requirements —

(*a*) the name of the company;

(*b*) if the company is a company limited by shares — that the liability of the members is limited;

(*c*) if the company is a company limited by guarantee — that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount;

(*d*) if the company is an unlimited company — that the liability of the members is unlimited;

(*e*) if the company is an unlimited company or a company limited by guarantee — the number of members with which the company is applying to be registered;

(*f*) the full names, addresses and occupations of the subscribers to the constitution of the company; and

(*g*) that such subscribers are desirous of being formed into a company in pursuance of the constitution and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

[36/2014]

(1AA) Where a company to which subsection (1)(*e*) applies changes the number of its members with which it is registered, the company must, within 14 days after the occurrence of such change, lodge with the Registrar a notice of the change in the prescribed form.

[36/2014]

(1AB) If default is made by a company in complying with subsection (1AA), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[36/2014]

(1A) On 30 January 2006, any provision (or part thereof) then subsisting in the constitution of any company which states —

(*a*) the amount of share capital with which the company proposes to be or is registered; or

(*b*) the division of the share capital of the company into shares of a fixed amount,

is, insofar as it relates to the matters referred to in either or both of paragraphs (*a*) and (*b*), deemed to be deleted.

[36/2014]

(2) Each subscriber to the constitution must, if the company is to have a share capital, make a declaration to the Registrar, either personally or through a registered qualified individual authorised by the subscriber, as to the number of shares (not being less than one) that the subscriber agrees to take.

[36/2014]

(3) A statement in the constitution of a company limited by shares that the liability of members is limited means that the liability of the

members is limited to the amount (if any) unpaid on the shares respectively held by them.

[36/2014]

(4) A copy of the constitution, duly signed by the subscribers and stating, if the company is to have a share capital, the number of shares that each subscriber has agreed to take, must be kept at the registered office of the company.

[36/2014]

Division 2 — Powers

Capacity and powers of company

23.—(1) Subject to the provisions of this Act and any other written law and its constitution, a company has —

(*a*) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(*b*) for the purposes of paragraph (*a*), full rights, powers and privileges.

[36/2014]

(1A) A company may have the objects of the company included in its constitution.

[36/2014]

(1B) The constitution of a company may contain a provision restricting its capacity, rights, powers or privileges.

[36/2014]

(2) [*Deleted by Act 17 of 2023 wef 01/07/2023*]

(3) [*Deleted by Act 17 of 2023 wef 01/07/2023*]

(4) [*Deleted by Act 17 of 2023 wef 01/07/2023*]

(5) [*Deleted by Act 17 of 2023 wef 01/07/2023*]

Power of company to provide for employees on cessation of business

24.—(1) The powers of a company are, if they would not otherwise do so, deemed to include power to make provision, in connection with any cessation of the whole or any part of the business carried on by the company or any subsidiary of the company, for the benefit of

persons employed or formerly employed by the company or its subsidiary.

(2) Subsection (1) relates only to the capacity of a company as a body corporate and does not affect any provision in a company's constitution requiring any exercise of the power mentioned in that subsection to be approved by the company in general meeting or otherwise prescribing the manner in which that power is to be exercised.

[36/2014]

Ultra vires transactions

25.—(1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company is invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in —

(*a*) proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(*b*) any proceedings by the company or by any member of the company against the present or former officers of the company; or

(*c*) any application by the Minister to wind up the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(*a*) is being or is to be performed or made pursuant to any contract to which the company

is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract (as the case requires) compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract must not be awarded by the Court as a loss or damage sustained.

No constructive notice

25A. Despite anything in the constitution of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the constitution of, or any other document relating to, the company merely because —

(*a*) the constitution or document is registered by the Registrar; or

(*b*) the constitution or document is available for inspection at the registered office of the company.

[36/2014]

Power of directors to bind company

25B.—(1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.

[36/2014]

(2) For the purposes of subsection (1), a person dealing with a company —

(*a*) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so; and

(*b*) is presumed to have acted in good faith unless the contrary is proved.

[36/2014]

(3) The references in subsection (1) or (2) to limitations on the directors' powers under the company's constitution include limitations deriving —

(*a*) from a resolution of the company or of any class of shareholders; or

(*b*) from any agreement between the members of the company or of any class of shareholders.

[36/2014]

(4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors; but no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

[36/2014]

(5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors exceeding their powers.

[36/2014]

(6) This section has effect subject to section 25C.

[36/2014]

Constitutional limitations: transactions with directors or their associates

25C.—(1) This section applies to a transaction if or to the extent that its validity depends on section 25B.

[36/2014]

(2) Nothing in this section is to be construed as excluding the operation of any other written law or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

[36/2014]

(3) Where —

(*a*) a company enters into such a transaction; and

(*b*) the parties to the transaction include —

(i) a director of the company or of its holding company; or

(ii) a person connected with any such director,

the transaction is voidable at the instance of the company.

[36/2014]

(4) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (3)(*b*)(i) or (ii), and any director of the company who authorised the transaction, is liable —

(*a*) to account to the company for any gain the party or the director has made directly or indirectly by the transaction; and

(*b*) to indemnify the company for any loss or damage resulting from the transaction.

[36/2014]

(5) The transaction ceases to be voidable if —

(*a*) restitution of any money or other asset which was the subject matter of the transaction is no longer possible;

(*b*) the company is indemnified for any loss or damage resulting from the transaction;

(*c*) rights acquired bona fide for value and without actual notice of the directors exceeding their powers by a person who is not party to the transaction would be affected by the avoidance; or

(*d*) the transaction is affirmed by the company.

[36/2014]

(6) A person other than a director of the company is not liable under subsection (4) if the person shows that at the time the transaction was entered into the person did not know that the directors were exceeding their powers.

[36/2014]

(7) Nothing in subsections (1) to (6) affects the rights of any party to the transaction not within subsection (3)(*b*)(i) or (ii); but the court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the court to be just.

[36/2014]

(8) In this section, "transaction" includes any act.

[36/2014]

Persons connected with director in section 25C

25D.—(1) For the purposes of section 25C, a reference to a person connected with a director means —

(*a*) a member of the director's family;

(*b*) a body corporate with which the director is connected within the meaning of subsection (2)(*b*);

(*c*) a person acting in the person's capacity as trustee of a trust —

(i) the beneficiaries of which include the director or a person who by virtue of paragraph (*a*) or (*b*) is connected with the director; or

(ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any person mentioned in sub-paragraph (i),

other than a trust for the purposes of an employees' share scheme or on a pension scheme;

(*d*) a person acting in the person's capacity as partner —

(i) of the director; or

(ii) of a person who, by virtue of paragraph (*a*), (*b*) or (*c*), is connected with that director;

(*e*) a firm that is a legal person under the law by which it is governed and in which —

(i) the director is a partner;

(ii) a partner is a person who, by virtue of paragraph (*a*), (*b*) or (*c*), is connected with the director; or

(iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (*a*), (*b*) or (*c*), is connected with the director; and

(*f*) a reference to a person connected with a director of a company does not include a person who is himself or herself a director of the company.

[36/2014]

(2) For the purposes of this section —

(*a*) a member of a director's family includes the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter;

(*b*) a director is connected with a body corporate if, and only if, the director and the persons connected with the director together —

(i) are interested in at least 20% of the share capital of that body corporate; or

(ii) are entitled to exercise or control, directly or indirectly, the exercise of more than 20% of the voting power at any general meeting of that body corporate;

(*c*) a reference in paragraph (*b*)(ii) to voting power the exercise of which is controlled by a director includes voting power whose exercise is controlled by a body corporate controlled by the director;

(*d*) to avoid circularity in the application of subsection (1) —

(i) a body corporate with which a director is connected is not treated for the purposes of this subsection as connected with the director unless it is also connected with the director by virtue of subsection (1)(*c*) or (*d*); and

(ii) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this subsection as connected with a director by reason only of that fact; and

(*e*) "body corporate" includes a body incorporated outside Singapore, but does not include —

(i) a corporation sole; or

(ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed.

[36/2014]

General provisions as to alteration of constitution

26.—(1) Unless otherwise provided in this Act, the constitution of a company may be altered or added to by special resolution.

[36/2014]

(1AA) Any alteration or addition made to the constitution under subsection (1) is, subject to this Act, deemed to form part of the original constitution on and from the date of the special resolution or such later date as is specified in the resolution.

[36/2014]

(1AB) A special resolution adopting the whole or any part of the model constitution prescribed under section 36 for the description to which the company belongs may do so by reference to the title of the model constitution, or to the numbers of the particular regulations of the model constitution and need not set out the text of the whole or part of the model constitution to be adopted.

[36/2014]

(1A) Subsection (1) is subject to section 26A and to any provision included in the constitution of a company in accordance with that section.

[36/2014]

(1B) Despite subsection (1), a provision contained in the constitution of a company immediately before 1 April 2004 and which could not be altered under the provisions of this Act in force immediately before that date, may be altered only if all the members of the company agree.

[36/2014]

(2) In addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court or other document affecting the constitution of a company, the company must, within 14 days after the passing of any such resolution or the making of any such order, lodge

with the Registrar a copy of such resolution or other document or a copy of such order together with (unless the Registrar dispenses therewith) a copy of the constitution as adopted or altered, as the case may be.

[36/2014]

(2A) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

(3) The Registrar must register every resolution, order or other document lodged with the Registrar under this Act that affects the constitution of a company and, where an order is so registered, must issue to the company a notice of the registration of that order.

[36/2014]

(4) [*Deleted by Act 12 of 2002*]

(5) Notice of the registration must be published in such manner (if any) as the Court or the Registrar directs.

(6) The Registrar must, where appropriate, issue a notice of incorporation in accordance with the alteration made to the constitution.

[36/2014]

(7) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation in accordance with the alteration made to the constitution.

[36/2014]

Power to entrench provisions of constitution of company

26A.—(1) An entrenching provision may —

(*a*) be included in the constitution with which a company is formed; and

(*b*) at any time be inserted in the constitution of a company only if all the members of the company agree.

[36/2014]

(2) An entrenching provision may be removed or altered only if all the members of the company agree.

[36/2014]

(3) The provisions of this Act relating to the alteration of the constitution of a company are subject to any entrenching provision in the constitution of a company.

[36/2014]

(4) In this section, "entrenching provision" means a provision of the constitution of a company to the effect that other specified provisions of the constitution —

(*a*) may not be altered in the manner provided by this Act; or

(*b*) may not be so altered except —

(i) by a resolution passed by a specified majority greater than 75% (the minimum majority required by this Act for a special resolution); or

(ii) where other specified conditions are met.

[36/2014]

Names of companies

27.—(1) Except with the Minister's consent or as provided in subsection (1B), the Registrar must refuse to register a company under this Act under a name which, in the Registrar's opinion —

(*a*) is undesirable;

(*b*) is identical to the name of any other company, limited liability partnership, limited partnership or corporation or to any registered business name;

(*c*) is identical to a name reserved under subsection (12B), subsection (12B) as applied by section 357(2), or section 378(15), section 16 of the Business Names Registration Act 2014, section 23(4) of the Limited Liability Partnerships Act 2005, section 17(4) of the Limited Partnerships Act 2008, subsection (12B) as applied by section 21(8) of the VCC Act, or subsection (12B) as applied by section 133(2) of the VCC Act; or

(*d*) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

[36/2014; 15/2017; 44/2018]

(1A) In addition to subsection (1), the Registrar must, on or after 3 January 2016, except with the Minister's consent, refuse to register a company under a name, if —

(*a*) it is identical to the name of a company that was dissolved —

(i) unless, in a case where the company was dissolved following its winding up under the Insolvency, Restructuring and Dissolution Act 2018, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the company was dissolved following its name being struck off the register under section 344 or 344A, a period of at least 6 years has passed after the date of dissolution;

(*b*) it is identical to the business name of a person whose registration and registration of that business name has been cancelled under the Business Names Registration Act 2014 or had ceased under section 22 of that Act, unless a period of at least one year has passed after the date of cancellation or cessation;

(*c*) it is identical to the name of a foreign company notice of the dissolution of which has been given to the Registrar under section 377(2), unless a period of at least 2 years has passed after the date of dissolution;

(*d*) it is identical to the name of a limited liability partnership that was dissolved —

(i) unless, in a case where the limited liability partnership was dissolved following its winding up under section 39 of, and the Fifth Schedule to, the Limited Liability Partnerships Act 2005, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the limited liability partnership was dissolved following its name being struck off the register under section 63 of the Limited Liability Partnerships Act 2005, a period of at least 6 years has passed after the date of dissolution;

(*e*) it is identical to the name of a limited partnership that was cancelled or dissolved —

(i) unless, in a case where the registration of the limited partnership was cancelled under section 14(1) or 19(4) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of cancellation; or

(ii) unless, in a case where notice was lodged with the Registrar of Limited Partnerships that the limited partnership was dissolved under section 19(2) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of dissolution; or

(*f*) it is identical to the name of a VCC that was dissolved —

(i) unless, in a case where the VCC was dissolved following its winding up under Part 11 of the VCC Act, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the VCC was dissolved following its name being struck off the register under section 344 or 344A of this Act as applied by section 130 of the VCC Act, a period of at least 6 years has passed after the date of dissolution.

[36/2014; 40/2018; 44/2018]

(1B) Despite subsection (1), the Registrar may, on or after 3 January 2016, register a company under —

(*a*) a name that is identical to the name of a foreign company registered under Division 2 of Part 11 —

(i) in respect of which notice was lodged under section 377(1) that the foreign company has ceased to have a place of business in Singapore or ceased to

carry on business in Singapore, if a period of at least 3 months has passed after the date of cessation; and

(ii) the name of which was struck off the register under section 377(8), (9) or (10), if a period of at least 6 years has passed after the date the name was so struck off; or

(*b*) a name that is identical to the name of a limited partnership in respect of which notice was lodged under section 19(1) of the Limited Partnerships Act 2008 that the limited partnership ceased to carry on business in Singapore, if a period of at least one year has passed after the date of cessation.

[36/2014]

(2) Despite anything in this section and section 28 (other than section 28(4)), where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after 30 January 2006) by a name —

(*a*) which is one that is not permitted to be registered under subsection (1)(*a*), (*b*) or (*d*);

(*aa*) which is one that is not permitted to be registered under subsection (1A) until the expiry of the relevant period mentioned in that subsection;

(*ab*) which is one that is permitted to be registered under subsection (1B) only after the expiry of the relevant period mentioned in that subsection;

(*b*) which so nearly resembles the name of any other company, or any corporation, limited liability partnership, limited partnership or registered business name, as to be likely to be mistaken for it; or

(*c*) the use of which has been restrained by an injunction granted under the Trade Marks Act 1998,

the Registrar may direct the firstmentioned company to change its name, and the company must comply with the direction within

6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.
[36/2014]

(2A) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (2) on a ground referred to in that subsection; but the Registrar must not consider any application to give a direction to a company on the ground referred to in subsection (2)(*b*) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

(2B) If the company fails to comply with subsection (2), the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(2C) [*Deleted by Act 36 of 2014*]

(2D) [*Deleted by Act 36 of 2014*]

(3) [*Deleted by Act 36 of 2014*]

(4) [*Deleted by Act 36 of 2014*]

(5) An appeal to the Minister against the following decisions of the Registrar that are made on or after 3 January 2016 may be made by the following persons within the following times:

(*a*) in the case of the Registrar's decision under subsection (2) — by the company aggrieved by the decision within 30 days after the decision; and

(*b*) in the case of the Registrar's refusal to give a direction to a company under subsection (2) pursuant to an application under subsection (2A) — by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.
[36/2014]

(5AA) The decision of the Minister on an appeal made under subsection (5) is final.
[36/2014]

(5A) To avoid doubt, where the Registrar makes a decision under subsection (2) or the Minister makes a decision under subsection (5), he or she must accept as correct any decision of the Court to grant an injunction referred to in subsection (2)(*c*).

(6) The Minister must cause a direction given by him or her under subsection (1) to be published in the *Gazette*.

(7) Subject to section 29, a limited company must have either "Limited" or "Berhad" as part of and at the end of its name.

(8) A private company must have the word "Private" or "Sendirian" as part of its name, inserted immediately before the word "Limited" or "Berhad" or, in the case of an unlimited company, at the end of its name.

(9) It is lawful to use and no description of a company is deemed inadequate or incorrect by reason of the use of —

(*a*) the abbreviation "Pte." in lieu of the word "Private" or the abbreviation "Sdn." in lieu of the word "Sendirian" contained in the name of a company;

(*b*) the abbreviation "Ltd." in lieu of the word "Limited" or the abbreviation "Bhd." in lieu of the word "Berhad" contained in the name of a company; or

(*c*) any of such words in lieu of the corresponding abbreviation contained in the name of a company.

(10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as —

(*a*) the name of an intended company; or

(*b*) the name to which a company proposes to change its name.

[36/2014]

(11) A company must not be registered under section 19(3) and the Registrar must not approve the change of name of a company under section 28(2) unless the name which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under subsection (12).

(12) The Registrar may approve an application made under subsection (10) only if the Registrar is satisfied that —

(*a*) the application is made in good faith; and

(*b*) the name to be reserved is one in respect of which a company may be registered having regard to subsections (1), (1A) and (1B).

[36/2014]

(12A) The Registrar must refuse to approve an application to reserve a name under subsection (10) as the name of an intended company if the Registrar is satisfied that —

(*a*) the name is for a company that is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

(*b*) it would be contrary to the national security or interest for the company to be registered.

[36/2014]

(12B) Where an application for a reservation of a name is made under subsection (10), the Registrar must reserve the proposed name for a period starting at the time the Registrar receives the application and ending —

(*a*) if the Registrar approves the application — 60 days after the date on which the Registrar notifies the applicant that the application has been approved, or such further period of 60 days as the Registrar may, on application made in good faith, extend; or

(*b*) if the Registrar refuses to approve the application — on the date on which the Registrar notifies the applicant of the refusal.

[36/2014]

(12C) A person aggrieved by a decision of the Registrar —

(*a*) refusing to approve an application under subsection (10); or

(*b*) refusing an application under subsection (12B)(*a*) to extend the reservation period,

may, within 30 days after being informed of the Registrar's decision, appeal to the Minister whose decision is final.

[36/2014]

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, the Registrar may extend that period for a further period of 60 days.

[36/2014]

(14) [*Deleted by Act 36 of 2014*]

(15) The reservation of a name under this section in respect of an intended company or company does not in itself entitle the intended company or company to be registered by that name, either originally or upon change of name.

[36/2014]

(16) In this section and section 28, "registered business name" has the meaning given by section 2(1) of the Business Names Registration Act 2014.

[36/2014]

Change of name

28.—(1) A company may by special resolution resolve that its name should be changed to a name by which the company could be registered under section 27(1), (1A) or (1B).

[36/2014]

(2) If the Registrar approves the name which the company has resolved should be its new name, the Registrar must register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name becomes effective.

(3) Despite anything in this section and section 27, if the name of a company is, whether through inadvertence or otherwise or whether originally or by a change of name —

(*a*) a name that is not permitted to be registered under section 27(1)(*a*), (*b*) or (*d*);

(*b*) a name that is not permitted to be registered under section 27(1A) until the expiry of the relevant period mentioned in that section;

(*c*) a name that is permitted to be registered under section 27(1B) only after the expiry of the relevant period mentioned in that section;

(*d*) a name that so nearly resembles the name of another company, or a corporation, limited liability partnership, limited partnership or a registered business name of any person as to be likely to be mistaken for it; or

(*e*) a name the use of which has been restrained by an injunction granted under the Trade Marks Act 1998,

the company may by special resolution change its name to a name that is not referred to in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) and, if the Registrar so directs, must so change it within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

[36/2014]

(3AA) The Registrar must not direct a change of name under subsection (3) on the ground that the name of the company could not be registered without contravention of section 27(1)(*c*).

[36/2014]

(3A) Any person may apply in writing to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that subsection; but the Registrar must not consider any application to give a direction to a company on the ground referred to in subsection (3)(*d*) unless the Registrar receives the application within 12 months from the date of change of name of the company.

[36/2014]

(3B) If the company fails to comply with subsection (3), the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(3C) [*Deleted by Act 36 of 2014*]

(3D) An appeal to the Minister against the following decisions of the Registrar that are made on or after 3 January 2016 may be made by the following persons within the following times:

(*a*) in the case of the Registrar's decision under subsection (3) — by the company aggrieved by the decision within 30 days after the decision;

(*b*) in the case of the Registrar's refusal to give a direction to a company under subsection (3) pursuant to an application under subsection (3A) — by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

[36/2014]

(3DA) The decision of the Minister on an appeal made under subsection (3D) is final.

[36/2014]

(3E) To avoid doubt, where the Registrar makes a decision under subsection (3) or the Minister makes a decision under subsection (3DA), the Registrar or the Minister (as the case may be) must accept as correct any decision of the Court to grant an injunction referred to in subsection (3)(*e*).

[36/2014]

(4) Where the name of a company incorporated pursuant to any corresponding previous written law has not been changed since 29 December 1967, the Registrar must not, except with the Minister's approval, exercise the Registrar's power under subsection (3) to direct the company to change its name.

(5) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation of the company under the new name.

[36/2014]

(6) A change of name pursuant to this Act does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

Omission of "Limited" or "Berhad" in names of limited companies, other than companies registered under Charities Act 1994

29.—(1) Where it is proved to the satisfaction of the Registrar that a proposed limited company is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, that it has some basis of national or general public interest and that it is in a financial position to carry out the objects for which it is to be formed and will apply its profits (if any) or other income in promoting its objects and will prohibit the payment of any dividend to its members, the Registrar may (after requiring, if the Registrar thinks fit, the proposal to be advertised in such manner as the Registrar directs either generally or in a particular case) approve that it be registered as a company with limited liability without the addition of the word "Limited" or "Berhad" to its name, and the company may be registered accordingly.

[36/2014]

(2) Where it is proved to the Registrar's satisfaction —

(*a*) that the objects of a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto;

(*b*) that the company has some basis of national or general public interest;

(*c*) that the company is in a financial position to carry out the objects for which it was formed; and

(*d*) that by its constitution the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Registrar may grant his or her approval to the company to change its name to a name which does not contain the word "Limited" or "Berhad", being a name approved by the Registrar.

[36/2014]

(3) The Registrar may grant his or her approval on such conditions as the Registrar thinks fit, and those conditions are binding on the company and must, if the Registrar so directs, be inserted in the constitution of the company and the constitution may by special resolution be altered to give effect to any such direction.

[36/2014]

(4) Where the constitution of a company includes, as a result of a direction of the Registrar given pursuant to subsection (3) or pursuant to any corresponding previous written law, a provision that the constitution must not be altered except with the consent of the Minister, the company may, with the Minister's consent, by special resolution alter any provision of the constitution.

[36/2014]

(5) A company is, while an approval granted under this section to it is in force, exempted from complying with the provisions of this Act relating to the use of the word "Limited" or "Berhad" as any part of its name.

(6) Any approval granted under this section may at any time be revoked by the Registrar and, upon revocation, the Registrar must enter the word "Limited" or "Berhad" at the end of the name of the company in the register, and the company must thereupon cease to enjoy the exemption granted by reason of the approval under this section but before the approval is so revoked the Registrar must give to the company written notice of the Registrar's intention and must afford it an opportunity to be heard.

[36/2014]

(6A) If the Registrar is of the opinion that a company has ceased to satisfy the conditions of approval granted under subsection (1) or (2), the Registrar may revoke the approval.

[36/2014]

(7) Where the approval of the Registrar under this section is revoked, the constitution of the company may be altered by special resolution so as to remove any provision in or to the effect that the constitution may be altered only with the consent of the Minister.

[36/2014]

(8) Notice of any approval under this section must be given by the Registrar to the company or, in the case of a proposed limited company, to the applicant for the approval.

[36/2014]

(8A) An appeal to the Minister against a decision of the Registrar under subsection (1) or (2) may be made by the following persons within the following times:

(*a*) in the case of a decision made by the Registrar under subsection (1) — by the promoter of the proposed limited company within 30 days after the notice is given by the Registrar under subsection (8);

(*b*) in the case of a decision made by the Registrar under subsection (2) — by the company within 30 days after the notice is given by the Registrar under subsection (8).

[36/2014]

(9) Upon the application of the company or proposed limited company and payment of the prescribed fee, the Registrar must issue to the company or proposed limited company a certificate confirming the approval under this section.

(10) This section does not apply to a limited company that is registered as a charity under the Charities Act 1994.

[36/2014]

(11) Any approval of the Minister and any condition of the Minister's approval that was in force immediately before 3 January 2016 for a company —

(*a*) to be registered without the word "Limited" or "Berhad" to its name; or

(*b*) to change its name to one which does not contain the word "Limited" or "Berhad",

is on or after that date to be treated as the approval of the Registrar and condition of the Registrar's approval.

[36/2014]

(12) Any reference to the Minister's approval in any condition of approval that was in force immediately before 3 January 2016 that was inserted in the constitution of a company pursuant to a direction

of the Minister under section 29(3) in force immediately before that date is, on or after that date, to be read as a reference to the Registrar.

[36/2014]

(13) A reference to a direction of the Minister in subsections (3) and (4) in force immediately before 3 January 2016 is, on or after that date, to be read as a direction of the Registrar.

[36/2014]

Omission of "Limited" or "Berhad" in names of companies registered under Charities Act 1994

29A.—(1) Despite section 28(1) and (2) but subject to section 28(3) to (6), a limited company registered as a charity under the Charities Act 1994 (called in this section a charitable company) may change its name to omit the word "Limited" or "Berhad" from its name.

[36/2014]

(2) A charitable company that proposes to change its name to omit the word "Limited" or "Berhad" from its name must —

(*a*) alter its constitution to reflect the change of name; and

(*b*) file the prescribed form with the Registrar, together with a copy of the special resolution authorising the change of name.

[36/2014]

(3) Upon receipt of the prescribed form mentioned in subsection (2)(*b*), the Registrar must —

(*a*) register the name of the charitable company with the omission of the word "Limited" or "Berhad" from its name; and

(*b*) issue to the company a notice of incorporation of the company under the new name.

[36/2014]

(4) Upon issue of the notice under subsection (3)(*b*) —

(*a*) the change of name becomes effective; and

(*b*) the charitable company is exempted from the provisions of this Act relating to the use of the word "Limited" or "Berhad" as part of the name.

[36/2014]

(5) If the Registrar is satisfied that a charitable company that is registered with the omission of the word "Limited" or "Berhad" from its name under this section has ceased to be a charitable company, the Registrar must enter the word "Limited" or "Berhad" at the end of the name of the company and upon notice of that fact being given to the company, the exemption under subsection (4)(*b*) ceases.

[36/2014]

Registration of unlimited company as limited company, etc.

30.—(1) Subject to this section —

(*a*) an unlimited company may convert to a limited company if it was not previously a limited company that became an unlimited company pursuant to paragraph (*b*); and

(*b*) a limited company may convert to an unlimited company if it was not previously an unlimited company that became a limited company pursuant to paragraph (*a*) or any corresponding previous written law.

(2) Where a company applies to the Registrar for a change of status as provided by subsection (1) and, subject to section 33(8) and (9) as applied by subsection (7), lodges with the application the prescribed documents relating to the application, the Registrar must, upon registration of such prescribed documents so lodged as are registrable under this Act, issue to the company a notice of incorporation —

(*a*) appropriate to the change of status applied for; and

(*b*) specifying, in addition to the particulars prescribed in respect of a notice of incorporation of a company of that status, that the notice is issued pursuant to this section,

and, upon the issue of such a notice of incorporation, the company is deemed to be a company having the status specified therein.

(3) Where the status of a company is changed pursuant to this section, notice of the change of status must be published in such manner (if any) as the Registrar may direct.

(3A) Upon the application of the company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation of the company with the new status.

[36/2014]

(4) In subsection (2), "prescribed documents", in relation to an application mentioned in that subsection, means —

(*a*) a copy of a special resolution of the company —

(i) resolving to change the status of the company and specifying the status sought;

(ii) making such alterations to the constitution of the company as are necessary to bring the constitution into conformity with the requirements of this Act relating to the constitution of a company of the status sought; and

(iii) [*Deleted by Act 36 of 2014*]

(iv) [*Deleted by Act 36 of 2014*]

(v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;

(*b*) where, by a special resolution mentioned in paragraph (*a*), the constitution of the company is altered or added to — a copy of the constitution as altered; and

(*c*) in the case of an application by a limited company to convert to an unlimited company —

(i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and

(ii) a declaration by or on behalf of a director or the secretary of the company, or a registered qualified individual authorised by the company, verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself or herself, that the

director, secretary or registered qualified individual making the declaration has taken all reasonable steps to satisfy himself or herself that each person who subscribed the form was lawfully empowered to do so.

[36/2014]

(5) Section 26(2) to (6) does not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

(6) A special resolution passed for the purposes of an application under this section takes effect only upon the issue under this section of a notice of incorporation of the company to which the resolution relates.

(7) With such modifications as may be necessary, section 33 (except subsection (1)) applies to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under that section.

(8) A change in the status of a company pursuant to this section does not operate —

(*a*) to create a new legal entity;

(*b*) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(*c*) to affect the property, or the rights or obligations, of the company; or

(*d*) to render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or commenced by or against it prior to the change in its status may, despite the change in its status, be continued or commenced by or against it after the change in its status.

Change from public to private company

31.—(1) A public company having a share capital may convert to a private company by lodging with the Registrar —

(*a*) a copy of a special resolution —

(i) determining to convert to a private company and specifying an appropriate alteration to its name; and

(ii) altering the provisions of its constitution so far as is necessary to impose the restrictions and limitations referred to in section 18(1);

(*b*) a list of persons holding shares in the company in the prescribed form; and

(*c*) such other information relating to the company or its members and officers as may be prescribed.

[36/2014]

Change from private to public company

(2) A private company may, subject to its constitution, convert to a public company by lodging with the Registrar —

(*a*) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name;

(*b*) a statement in lieu of prospectus; and

(*c*) a declaration in the prescribed form verifying that section 61(2)(*b*) has been complied with,

and thereupon the restrictions and limitations referred to in section 18(1) as included in or deemed to be included in the constitution of such company cease to form part of the constitution.

[36/2014]

(3) On compliance by a company with subsection (1) or (2) and on the issue of a notice of incorporation altered accordingly the company becomes a private company or a public company (as the case requires).

(3A) The public company referred to in subsection (2) must, within 14 days after the issue of the notice of incorporation referred to in

subsection (3), lodge with the Registrar in the prescribed form a list of persons holding shares in the company.

[36/2014]

(4) A conversion of a company pursuant to subsection (1) or (2) does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, despite any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion.

(5) Upon the application of the company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation of the company with the new status.

[36/2014]

Default in complying with requirements as to private companies

32.—(1) [*Deleted by Act 5 of 2004*]

(2) Where —

(*a*) default has been made in relation to a private company in complying with a limitation of a kind specified in section 18(1)(*b*) that is included, or is deemed to be included in the constitution of the company;

(*b*) [*Deleted by Act 5 of 2004*]

(*c*) the constitution of a private company have been so altered that they no longer include restrictions or limitations of the kinds specified in section 18(1); or

(*d*) a private company has ceased to have a share capital,

the Registrar may by notice served on the company determine that, on such date as is specified in the notice, the company ceased to be a private company.

[36/2014]

(3) Where, under this section, the Court or the Registrar determines that a company has ceased to be a private company —

(*a*) the company is a public company and is deemed to have been a public company on and from the date specified in the order or notice;

(*b*) the company is on the date so specified deemed to have changed its name by the omission from its name of the word "Private" or the word "Sendirian", as the case requires; and

(*c*) the company must, within a period of 14 days after the date of the order or the notice, lodge with the Registrar —

(i) a statement in lieu of prospectus; and

(ii) a declaration in the prescribed form verifying that section 61(2)(*b*) has been complied with.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a private company.

(5) A company that, by virtue of a determination made under this section, has become a public company may not convert to a private company without the permission of the Court.

[Act 25 of 2021 wef 01/04/2022]

(6) If default is made in complying with subsection (3)(*c*), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(7) [*Deleted by Act 5 of 2004*]

(8) Where default is made in relation to a private company in complying with any restriction or limitation of a kind specified in section 18(1) that is included, or deemed to be included, in the constitution of the company, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[36/2014]

Alterations of objects in constitution

33.—(1) Subject to this section, a company may by special resolution alter the provisions of its constitution with respect to the objects of the company, if any.

[36/2014]

(2) Where a company proposes to alter its constitution, with respect to the objects of the company, it must give 21 days' written notice by post or by electronic communications in accordance with section 387A or 387C, specifying the intention to propose the resolution as a special resolution and to submit it for passing at a meeting of the company to be held on a day specified in the notice.

[36/2014]

(3) The notice must be given to all members, and to all trustees for debenture holders and, if there are no trustees for any class of debenture holders, to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4) The Court may in the case of any person or class of persons for such reasons as to it seem sufficient dispense with the notice required by subsection (2).

(5) If an application for the cancellation of an alteration is made to the Court in accordance with this section by —

(*a*) the holders of not less in the aggregate than 5% of the total number of issued shares of the company or any class of those shares or, if the company is not limited by shares, not less than 5% of the company's members; or

(*b*) the holders of not less than 5% in nominal value of the company's debentures,

the alteration does not have effect except so far as it is confirmed by the Court.

(5A) For the purposes of subsection (5), any of the company's issued shares held as treasury shares is to be disregarded.

[36/2014]

(6) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application

by such one or more of their number as they appoint in writing for the purpose.

(7) On the application, the Court —

(*a*) must have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;

(*b*) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members;

(*c*) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and

(*d*) may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit.

(8) Despite any other provision of this Act, a copy of a resolution altering the objects of a company must not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution, or if any application to the Court has been made, before the application has been determined by the Court, whichever is the later.

(9) A copy of the resolution must be lodged with the Registrar by the company within 14 days after the expiration of the 21 days mentioned in subsection (8), but if an application has been made to the Court in accordance with this section, the copy must be lodged with the Registrar together with a copy of the order of the Court within 14 days after the application has been determined by the Court.

(10) On compliance by a company with subsection (9), the alteration (if any) of the objects takes effect.

(11) To avoid doubt, a reference in this section to the alteration of any provision of the constitution of a company or the alteration of the objects of a company includes the removal of that provision or of all or any of those objects.

[36/2014]

Alteration of constitution by company pursuant to repeal and re-enactment of sections 10 and 14 of Residential Property Act 1976

34.—(1) Where the constitution of a company contains any of the provisions referred to in section 10(1) of the Residential Property Act 1976 in force immediately before 31 March 2006, the company may, by special resolution, amend its constitution to remove that provision.

[36/2014]

(2) Where the constitution of a company contains a provision to the effect that its constitution must not be altered to remove any of the provisions referred to in section 10(1) of the Residential Property Act 1976 in force immediately before 31 March 2006 except in accordance with the requirements of that Act —

(*a*) that provision ceases to have effect as from that date; and

(*b*) the company may, by special resolution, amend its constitution to remove that provision.

[36/2014]

Regulations for company

35.—(1) Subject to this section, a company's constitution must contain the regulations for the company.

[36/2014]

(2) Subsection (1) does not apply to a company limited by shares that was incorporated before 3 January 2016.

[36/2014]

(3) Despite subsection (2), where immediately before 3 January 2016, regulations were in force for a company, whether the regulations were prescribed in the company's registered articles, or were applicable in lieu of or in addition to the company's registered articles by virtue of section 36(2) in force before that date, such regulations are deemed to be the regulations for the company contained in the company's constitution for the purposes of subsection (1) until such time as the constitution of the company is amended to replace or amend those regulations.

[36/2014]

Model constitution

36.—(1) The Minister may prescribe model constitutions for —

(*a*) private companies; and

(*b*) companies limited by guarantee,

(called in this section and section 37 specified companies).

[36/2014]

(2) Different model constitutions may be prescribed for different descriptions of specified companies.

[36/2014]

Adoption of model constitution

37.—(1) A specified company may adopt as its constitution the whole or any part of the model constitution prescribed under section 36(1) for the type of company to which it belongs.

[36/2014]

(2) A specified company may in its constitution adopt the whole model constitution for the type of company to which it belongs by reference to the title of the model constitution.

[36/2014]

(3) Where a specified company adopts the whole model constitution for the type of company to which it belongs, the specified company may choose —

(*a*) to adopt the model constitution as in force at the time of adoption; or

(*b*) to adopt the model constitution as may be in force from time to time, in which case the model constitution for the type of company to which the specified company belongs that is for the time being in force is, so far as applicable, the constitution for that specified company.

[36/2014]

(4) A copy of the constitution of a specified company must be submitted to the Registrar, in accordance with section 19(1), where the specified company —

(*a*) adopts only part of the model constitution for the type of company to which it belongs;

(*b*) includes provisions additional to those in the model constitution; or

(*c*) includes object clauses as part of its constitution.

[36/2014]

As to constitution of companies limited by guarantee

38.—(1) In the case of a company limited by guarantee, every provision in the constitution or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company, otherwise than as a member, is void.

[36/2014]

(2) For the purposes of the provisions of this Act relating to the constitution of a company limited by guarantee and of this section, every provision in the constitution or in any resolution of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests is to be treated as a provision for a share capital even though the number of the shares or interests is not specified thereby.

[36/2014]

Effect of constitution

39.—(1) Subject to this Act, the constitution of a company, when registered, binds the company and the members thereof to the same extent as if it respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.

[36/2014]

(2) All money payable by any member to the company under the constitution is a debt due from the member to the company.

[36/2014]

As to effect of alterations on members who do not consent

(3) Despite anything in the constitution of a company, no member of the company, unless either before or after the alteration is made the member agrees in writing to be bound thereby, is bound by an alteration made in the constitution after the date on which the member became a member so far as the alteration requires the member to take or subscribe for more shares than the number held by the member at

the date on which the alteration is made or in any way increases the member's liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

[36/2014]

Copies of constitution

40.—(1) A company must, on being so required by any member, send to the member a copy of the constitution (if any) subject to payment of $5 or such lesser sum as is fixed by the directors.

[36/2014]

(2) Where an alteration is made in the constitution of a company, a copy of the constitution must not be issued by the company after the date of alteration unless —

(*a*) the copy is in accordance with the alteration; or

(*b*) a copy of the order or resolution making the alteration is annexed to the copy of the constitution and the particular clauses affected are indicated.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(3) [*Omitted in 2006 Revised Edition*]

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence.

Ratification by company of contracts made before incorporation

41.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company becomes bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company are, in the absence of express agreement to the contrary, personally bound by the contract or other transaction and entitled to the benefit thereof.

Form of contract

(3) Contracts on behalf of a corporation may be made as follows:

(*a*) a contract which if made between private persons would by law be required to be in writing under seal may be made on behalf of the corporation in writing under the common seal of the corporation;

(*b*) a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith may be made on behalf of the corporation in writing signed by any person acting under its authority, express or implied;

(*c*) a contract which if made between private persons would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the corporation by any person acting under its authority, express or implied,

and any contract so made is effectual in law and binds the corporation and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorised to be made.

Authentication of documents

(4) A document or proceeding requiring authentication by a corporation may be signed by an authorised officer of the corporation and need not be under its common seal.

Execution of deeds

(5) A corporation may by writing under its common seal empower any person, either generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the corporation and under his or her seal, or, subject to subsection (7), under the appropriate official seal of the corporation binds the corporation and has the same effect as if it were under its common seal.

(6) The authority of any such agent or attorney continues, as between the corporation and any person dealing with him or her,

during the period (if any) mentioned in the instrument conferring the authority, or if no period is therein mentioned then until notice of the revocation or determination of his or her authority has been given to the person dealing with him or her.

Official seal for use abroad

(7) A corporation whose objects require or comprise the transaction of business outside Singapore may, if authorised by its constitution, have for use in any place outside Singapore an official seal, which must be a facsimile of the common seal of the corporation with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal must, in writing under his or her hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

[36/2014]

Authority of agent of a corporation need not be under seal, unless seal required by law of foreign state

(8) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a corporation is not under seal does not, if such power of attorney or document of authorisation is valid as a power of attorney or document of authorisation in accordance with the laws of the country under which such corporation is incorporated, affect for any purpose intended to be effected in Singapore the validity or effect of any instrument under seal executed on behalf of that corporation by such donee of the power or agent, which is for all such purposes whatsoever as valid as if such authority had been under seal.

Retrospective application

(9) Subsection (8) also applies to every instrument under seal executed before 15 May 1987 on behalf of any corporation by a donee of a power or an agent of that corporation whose authority was not under seal.

Common seal

41A.—(1) A company may have a common seal but need not have one.

[15/2017]

(2) Sections 41B and 41C apply whether a company has a common seal or not.

[15/2017]

Execution of deeds by company

41B.—(1) A company may execute a document described or expressed as a deed without affixing a common seal onto the document by signature —

(*a*) on behalf of the company by a director of the company and a secretary of the company;

(*b*) on behalf of the company by at least 2 directors of the company; or

(*c*) on behalf of the company by a director of the company in the presence of a witness who attests the signature.

[15/2017]

(2) A document mentioned in subsection (1) that is signed on behalf of the company in accordance with that subsection has the same effect as if the document were executed under the common seal of the company.

[15/2017]

(3) Where a document is to be signed by a person on behalf of more than one company, the document is not considered to be signed by that person for the purposes of subsection (1) or (2) unless the person signs the document separately in each capacity.

[15/2017]

(4) This section applies in the case of a document mentioned in subsection (1) that is executed by the company in the name or on behalf of another person, whether or not that person is also a company.

[15/2017]

Alternative to sealing

41C. Where any written law or rule of law requires any document to be under or executed under the common seal of a company, or provides for certain consequences if it is not, a document satisfies that written law or rule of law if the document is signed in the manner set out in section 41B(1)(*a*), (*b*) or (*c*) and (3).

[15/2017]

42. [*Repealed by Act 5 of 2004*]

Company or foreign company with a charitable purpose which contravenes Charities Act 1994 or regulations made thereunder may be wound up or struck off register

42A.—(1) This section applies to a company or a foreign company —

(*a*) that is registered under the Charities Act 1994; or

(*b*) that has as its sole object or one of its principal objects a charitable purpose connected with persons, events or objects outside Singapore.

(2) A company or foreign company to which this section applies that is convicted of an offence under the Charities Act 1994 or any regulations made thereunder is deemed to be a company or foreign company (as the case may be) that is being used for purposes prejudicial to public welfare and may be liable, in the case of a company, to be wound up by the Court under section 125(1)(*n*) of the Insolvency, Restructuring and Dissolution Act 2018 or, in the case of a foreign company, to have its name struck off the register by the Registrar under section 377(8).

[40/2018]

(3) In this section, "charitable purpose" means any charitable purpose or object or any other religious, public or social purpose or object, whether or not charitable under the law of Singapore.

PART 4

SHARES, DEBENTURES AND CHARGES

Division 1 — [Repealed by S 236/2002]

43. to **56.** [*Repealed by S 236/2002*]

Division 2 — Restrictions on allotment and commencement of business

57. [*Repealed by S 236/2002*]

58. [*Repealed by S 236/2002*]

Restriction on allotment in certain cases

59.—(1) A public company having a share capital which does not issue a prospectus on or with reference to its formation must not allot any of its shares or debentures unless, at least 3 days before the first allotment of either shares or debentures, there has been lodged with the Registrar a statement in lieu of prospectus which complies with the requirements of this Act.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

(3) Every director of a company who knowingly contravenes or permits or authorises the contravention of subsection (1) shall —

(*a*) be guilty of an offence; and

(*b*) be liable in addition to the penalty or punishment for the offence to compensate the company and allottee respectively for any loss, damages or costs which the company or allottee has sustained or incurred thereby.

(4) No proceedings for the recovery of any compensation referred to in subsection (3)(*b*) may be commenced after the expiration of 2 years from the date of the allotment.

Requirements as to statements in lieu of prospectus

60.—(1) To comply with the requirements of this Act, a statement in lieu of prospectus lodged by or on behalf of a company —

(*a*) must be signed by every person who is named therein as a director or a proposed director of the company or by the person's agent authorised in writing;

(*b*) must, subject to Part 3 of the Sixth Schedule, be in the form of and state the matters specified in Part 1 of that Schedule and set out the reports specified in Part 2 of that Schedule; and

(*c*) must, where the persons making any report specified in Part 2 of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part 3 of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The Registrar must not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Where in any statement in lieu of prospectus there is any untrue statement or wilful non-disclosure, any director who signed the statement in lieu of prospectus shall, unless he or she proves either that the untrue statement or non-disclosure was immaterial or that he or she had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true or the non-disclosure immaterial, be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

Restrictions on commencement of business in certain circumstances

61.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company

must not commence any business or exercise any borrowing power —

(*a*) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any securities exchange; or

(*b*) unless —

(i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(ii) every director has paid to the company on each of the shares taken or contracted to be taken by him or her, and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(iii) there has been lodged with the Registrar a declaration in the prescribed form by —

(A) the secretary or one of the directors of the company; or

(B) a registered qualified individual authorised by the company,

verifying that sub-paragraphs (i) and (ii) have been complied with.

[36/2014]

(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company must not commence any business or exercise any borrowing power unless —

(*a*) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the provisions of this Act;

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him or her, and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(*c*) there has been lodged with the Registrar a declaration in the prescribed form by —

(i) the secretary or one of the directors of the company; or

(ii) a registered qualified individual authorised by the company,

verifying that paragraph (*b*) has been complied with.

[36/2014]

(3) The Registrar must, on the lodgment of the declaration under subsection (1)(*b*)(iii) or (2)(*c*) (as the case may be), issue a notice in the prescribed form that the company is entitled to commence business and to exercise its borrowing powers; and that notice is conclusive evidence of the matters stated in it.

(4) Any contract made by a company before the date on which it is entitled to commence business is provisional only and is not binding on the company until that date, and on that date it becomes binding.

(5) Where shares and debentures are offered simultaneously by a company for subscription, nothing in this section prevents the receipt by the company of any money payable on application for the debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and to a default penalty of $250.

(7) Upon the application of a company which has received a notice under subsection (3) and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming that the company is entitled to commence business and to exercise its borrowing

powers, and that certificate is conclusive evidence of the matters stated in it.

Restriction on varying contracts referred to in prospectus, etc.

62. A company must not before the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, unless the variation is made subject to the approval of the statutory meeting.

Division 3 — Shares

No par value shares

62A.—(1) Shares of a company have no par or nominal value.

(2) Subsection (1) applies to all shares, whether issued before, on or after 30 January 2006.

Transitional provisions for section 62A

62B.—(1) For the purpose of the operation of this Act on or after 30 January 2006 in relation to a share issued before that date —

(*a*) the amount paid on the share is the sum of all amounts paid to the company at any time for the share (but not including any premium); and

(*b*) the amount unpaid on the share is the difference between the price of issue of the share (but not including any premium) and the amount paid on the share.

(2) On 30 January 2006, any amount standing to the credit of a company's share premium account and any amount standing to the credit of a company's capital redemption reserve becomes part of the company's share capital.

(3) Despite subsection (2), a company may use the amount standing to the credit of its share premium account immediately before 30 January 2006 to —

(*a*) provide for the premium payable on redemption of debentures or redeemable preference shares issued before that date;

(*b*) write off —

(i) the preliminary expenses of the company incurred before that date; or

(ii) expenses incurred, or commissions or brokerages paid or discounts allowed, on or before that date, for or on any duty, fee or tax payable on or in connection with any issue of shares of the company;

(*c*) pay up, pursuant to an agreement made before that date, shares which were unissued before that date and which are to be issued on or after that date to members of the company as fully paid bonus shares;

(*d*) pay up in whole or in part the balance unpaid on shares issued before that date to members of the company; or

(*e*) pay dividends declared before that date, if such dividends are satisfied by the issue of shares to members of the company.

(4) Despite subsection (2), if the company carries on insurance business in Singapore immediately before 30 January 2006, it may also apply the amount standing to the credit of its share premium account immediately before that date by appropriation or transfer to any fund established and maintained pursuant to the Insurance Act 1966.

(5) Despite subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before 30 January 2006 (whether on account of the par value of the shares or by way of premium) is not affected by the shares ceasing to have a par value.

(6) For the purpose of interpreting and applying, on or after 30 January 2006, a contract (including the constitution of the company) entered into before that date or a trust deed or other document executed before that date —

(*a*) a reference to the par or nominal value of a share is a reference to —

(i) if the share is issued before that date — the par or nominal value of the share immediately before that date;

(ii) if the share is issued on or after that date but shares of the same class were on issue immediately before that date — the par or nominal value that the share would have had if it had been issued then; or

(iii) if the share is issued on or after that date and shares of the same class were not on issue immediately before that date — the par or nominal value determined by the directors,

and a reference to share premium is a reference to any residual share capital in relation to the share;

(*b*) a reference to a right to a return of capital on a share is a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value; and

(*c*) a reference to the aggregate par or nominal value of the company's issued share capital is a reference to that aggregate as it existed immediately before that date as —

(i) increased to take account of the par or nominal value as defined in paragraph (*a*) of any shares issued on or after that date; and

(ii) reduced to take account of the par or nominal value as defined in paragraph (*a*) of any shares cancelled on or after that date.

[36/2014]

(7) A company may —

(*a*) at any time before —

(i) the date it is required under section 197(4) in force immediately before 3 January 2016 to lodge its first annual return after 30 January 2006; or

(ii) the expiry of 6 months from 30 January 2006,

whichever is the earlier; or

(*b*) within such longer period as the Registrar may, if he or she thinks fit in the circumstances of the case, allow,

file with the Registrar a notice in the prescribed form of its share capital.

[36/2014]

(8) Unless a company has filed a notice of its share capital under subsection (7), the Registrar may for the purposes of the records maintained by the Authority adopt, as the share capital of the company, the aggregate nominal value of the shares issued by the company as that value appears in the Authority's records immediately before 30 January 2006.

Return as to allotments by private companies

63.—(1) A private company may allot new shares, other than a deemed allotment, by lodging with the Registrar a return of the allotment in the prescribed form, which must include the following particulars:

(*a*) the number of the shares comprised in the allotment;

(*b*) the amount (if any) paid or deemed to be paid on the allotment of each share;

(*c*) the amount (if any) unpaid on each share referred to in paragraph (*b*);

(*d*) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and

(*e*) for each member of the private company —

(i) the full name;

(ii) the identification and nationality, if required by the Registrar;

(iii) the residential address and contact address (if the member is an individual) or the address (if otherwise); and

(iv) the number and class of shares held.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(2) An allotment of shares, other than a deemed allotment, by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(3) In this section and section 63A, "deemed allotment" means an issue of shares without formal allotment to subscribers to the constitution.

[36/2014]

Return as to allotments by public companies

63A.—(1) Where a public company makes any allotment of its shares, other than a deemed allotment, the company must within 14 days thereafter lodge with the Registrar a return of the allotments stating —

(*a*) the number of the shares comprised in the allotment;

(*b*) the amount (if any) paid or deemed to be paid on the allotment of each share;

(*c*) the amount (if any) unpaid on each share referred to in paragraph (*b*);

(*d*) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and

(*e*) for each of the 50 members of the public company who, following the allotment, hold the most number of shares in the company (excluding treasury shares) —

(i) the full name;

(ii) the identification and nationality, if required by the Registrar;

(iii) the residential address and contact address (if the member is an individual) or the address (if otherwise); and

(iv) the number and class of shares held.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(2) A return of allotment mentioned in subsection (1) by a public company, the shares of which are listed on an approved exchange in Singapore or any securities exchange outside Singapore, need not state the particulars specified in subsection (1)(*e*).

[36/2014; 4/2017]

(3) If default is made in complying with this section, every officer of the public company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and to a default penalty of $250.

[36/2014]

Lodgment of documents in relation to allotment

63B.—(1) Where shares are allotted by a company as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company must lodge with the return of allotment the contract evidencing the entitlement of the allottee or a copy of any such contract certified as prescribed.

[36/2014]

(2) If a certified copy of a contract is lodged, the original contract duly stamped must if the Registrar so requests be produced at the same time to the Registrar.

[36/2014]

(3) Where shares are allotted as fully or partly paid up otherwise than in cash and the allotment is made —

(*a*) pursuant to a contract not reduced to writing;

(*b*) pursuant to a provision in the constitution; or

(*c*) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders, or in pursuance of the application of moneys held by the company in an account or reserve in paying up unissued shares to which the shareholders have become entitled,

the company must lodge with the Registrar the document specified in subsection (4) within the time specified in subsection (5).

[36/2014]

(4) The document referred to in subsection (3) is —

(*a*) a statement of prescribed particulars; or

(*b*) in lieu of the statement, where the shares are allotted pursuant to a scheme of arrangement approved by the Court under section 210, a copy of the order of the Court.

[36/2014]

(5) The company must lodge the document specified in subsection (4) at the same time and together with the return of allotment.

[36/2014]

(6) If default is made in complying with this section, every officer of a company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $4,000 and to a default penalty of $250.

[36/2014]

Notice of increase in total amount paid up on shares

63C. Where a private company issues any partly paid or unpaid share of any class and the company subsequently receives all or any part of the unpaid amount with respect to the share, the company must lodge with the Registrar a notice in the prescribed form with respect to the total amount of such payments and the increase in the total amount paid up on the relevant class of shares within 14 days after the payment.

[36/2014]

Rights and powers attaching shares

64.—(1) Subject to subsections (2) and (3), sections 21 and 76J, and any written law to the contrary, a share in a company confers on the holder of the share the right to one vote on a poll at a meeting of the company on any resolution.

[36/2014]

(2) A company's constitution may provide that a member is not entitled to vote unless all calls or other sums personally payable by the member in respect of shares in the company have been paid.

[36/2014]

(3) Subject to subsection (4) and section 64A, a right specified in subsection (1) may be negated, altered, or added to by the constitution of the company.

[36/2014]

(4) Despite subsection (3), the right of a holder of a specified share of a company to at least one vote on a poll at a meeting of the company on the following resolutions may not be negated or altered:

(*a*) a resolution to wind up the company voluntarily under section 160 of the Insolvency, Restructuring and Dissolution Act 2018; or

(*b*) a resolution to vary any right attached to a specified share and conferred on the holder.

[36/2014; 40/2018]

(5) In subsection (4), "specified share" means a share in the company, by whatever name called which, but for that subsection, does not entitle the holder thereof to the right to vote at a general meeting of the company.

[36/2014]

(6) This section does not operate so as to limit or derogate from the rights of any person under section 74.

[36/2014]

Issue of shares with different voting rights by public company

64A.—(1) Different classes of shares in a public company may be issued only if —

(*a*) the issue of the class or classes of shares is provided for in the constitution of the public company; and

(*b*) the constitution of the public company sets out in respect of each class of shares the rights attached to that class of shares.

[36/2014]

(2) Without limiting subsection (1) but subject to the conditions of subsection (1)(*a*) and (*b*), shares in a public company may —

(*a*) confer special, limited, or conditional voting rights; or

(*b*) not confer voting rights.

[36/2014]

(3) Despite anything in subsection (1) or (2), a public company must not undertake any issuance of shares in the public company that confers special, limited or conditional voting rights, or that confers no voting rights unless it is approved by the members of the public company by special resolution.

[36/2014]

(4) Where a public company has one or more classes of shares that confer special, limited or conditional voting rights, or that confer no voting rights, the notice of any general meeting required to be given to a person entitled to receive notice of the meeting must specify the special, limited or conditional voting rights, or the absence of voting rights, in respect of each such class of shares.

[36/2014]

(5) This section does not operate so as to limit or derogate from the rights of any person under section 74.

[36/2014]

(6) Nothing in this section affects the right of a private company, subject to its constitution, to issue shares of different classes, including shares conferring special, limited or conditional voting rights or no voting rights, as the case may be.

[36/2014]

Differences in calls and payments, etc.

65.—(1) A company if so authorised by its constitution may —

(*a*) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;

(*b*) accept from any member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and

(*c*) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

[36/2014]

Reserve liability

(2) A limited company may by special resolution determine that any portion of its share capital which has not been already called up is not capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital is not capable of being called up except in the event and for the purposes of the company being wound up, but no such resolution affects the rights of any person acquired before the passing of the resolution.

Share warrants

66.—(1) A company must not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant.

(2) The bearer of a share warrant issued before 29 December 1967 is, in the 2-year period after 1 July 2015, entitled to surrender it for cancellation and to have the bearer's name entered in the register of members.

[36/2014]

(3) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant issued before 29 December 1967 in respect of the shares therein specified without the warrant being surrendered and cancelled.

[36/2014]

(4) A company must cancel any share warrant which is issued by a company before 29 December 1967 that is unaccounted for by the expiry of the 2-year period mentioned in subsection (2), and the company is not responsible for any loss incurred by any person by reason of such cancellation.

[36/2014]

Use of share capital to pay expenses incurred in issue of new shares

67.—(1) A company may use its share capital to pay any expenses (including brokerage or commission) incurred directly in the issue of new shares.

[36/2014]

(2) A payment made under subsection (1) is not to be taken as reducing the amount of share capital of the company.

[36/2014]

Issue of shares for no consideration

68. A company having a share capital may issue shares for which no consideration is payable to the issuing company.

[36/2014]

69. to **69F.** [*Repealed by Act 21 of 2005*]

Redeemable preference shares

70.—(1) Subject to this section, a company having a share capital may, if so authorised by its constitution, issue preference shares which are, or at the option of the company are to be, liable to be redeemed and the redemption may be effected only on such terms and in such manner as is provided by the constitution.

[36/2014]

(2) [*Deleted by Act 36 of 2014*]

(3) The shares must not be redeemed unless they are fully paid up.

(4) The shares must not be redeemed out of the capital of the company unless —

(*a*) all the directors have made a solvency statement in relation to such redemption; and

(*b*) the company has lodged a copy of the statement with the Registrar.

(5) To avoid doubt, shares redeemed out of proceeds of a fresh issue of shares issued for the purpose of redemption are not to be treated as having been redeemed out of the capital of the company.

[36/2014]

(6) A private company may redeem any redeemable preference shares by lodging a prescribed notice of redemption with the Registrar.

[36/2014]

(7) A redemption of any redeemable preference shares by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(8) If a public company redeems any redeemable preference shares, it must within 14 days after doing so give notice thereof to the Registrar specifying the shares redeemed.

[36/2014]

Power of company to alter its share capital

71.—(1) Subject to subsections (1B) and (1C), a company, if so authorised by its constitution, may in general meeting alter its share capital in any one or more of the following ways:

(*a*) [*Deleted by Act 21 of 2005*]

(*b*) consolidate and divide all or any of its share capital;

(*c*) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares;

(*d*) subdivide its shares or any of them, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel the number of shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the number of the shares so cancelled.

[36/2014]

(1A) A public company which alters its share capital may lodge with the Registrar a notice of the alteration in the prescribed form.

[36/2014]

(1B) A private company may alter its share capital by lodging a notice of alteration in the prescribed form with the Registrar.

[36/2014]

(1C) An alteration of share capital of a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

Cancellations

(2) A cancellation of shares under this section is not deemed to be a reduction of share capital within the meaning of this Act.

As to share capital of unlimited company on re-registration

(3) An unlimited company having a share capital may by any resolution passed for the purposes of section 30(1) —

(*a*) increase the amount of its share capital by increasing the issue price of each of its shares, but subject to the condition that no part of the increased capital is capable of being called up except in the event and for the purposes of the company being wound up; and

(*b*) in addition or alternatively, provide that a specified portion of its uncalled share capital is not capable of being called up except in the event and for the purposes of the company being wound up.

Validation of shares improperly issued

72. Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other written law or of the constitution of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Court may, upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or

both and upon a copy of the order being lodged with the Registrar those shares are deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

[36/2014]

Redenomination of shares

73.—(1) A company having a share capital may by ordinary resolution convert its share capital or any class of shares from one currency to another currency.

[36/2014]

(2) A resolution under this section may authorise a company having a share capital to redenominate its share capital —

(*a*) on more than one occasion; and

(*b*) at a specified time or under specified circumstances.

[36/2014]

(3) The redenomination must be made at a spot rate of exchange specified in the resolution.

[36/2014]

(4) The rate mentioned in subsection (3) must be either —

(*a*) a rate prevailing on a day specified in the resolution; or

(*b*) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.

[36/2014]

(5) The day or period specified for the purposes of subsection (4) must be within the period of 28 days ending on the day before the resolution is passed.

[36/2014]

(6) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

[36/2014]

(7) Redenomination in accordance with a resolution under this section takes effect —

(*a*) on the day on which the resolution is passed; or

(*b*) on such later day as may be determined in accordance with the resolution.

[36/2014]

(8) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.

[36/2014]

(9) A company's constitution may exclude or restrict the exercise of a power conferred by this section.

[36/2014]

(10) In this section and sections 73A and 73B, "redenomination" means the conversion of share capital or any class of shares from one currency to another.

[36/2014]

Effect of redenomination

73A.—(1) A redenomination of shares does not affect —

(*a*) any rights or obligations of members under the company's constitution or any restrictions affecting members under the company's constitution; or

(*b*) any entitlement to dividends (including any entitlement to dividends in a particular currency), voting rights and liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).

[36/2014]

(2) For the purposes of subsection (1), the reference to a company's constitution includes the terms on which any shares of the company are allotted or held.

[36/2014]

Notice of redenomination

73B.—(1) Within 14 days after passing a resolution under section 73, a company must deliver a notice in the specified form to the Registrar for registration in relation to the redenomination.

[36/2014]

(2) The notice must include the following information with respect to the company's share capital as redenominated by the resolution:

(*a*) the total number of issued shares in the company;

(*b*) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid on the total number of issued shares in the company;

(*c*) the total amount of the company's issued share capital; and

(*d*) for each class of shares —

(i) the particulars specified in subsection (3);

(ii) the total number of issued shares in the class;

(iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid on the total number of issued shares in the class; and

(iv) the total amount of issued share capital of the class.

[36/2014]

(3) The particulars referred to in subsection (2)(*d*)(i) are —

(*a*) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;

(*b*) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

(*c*) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up of the company); and

(*d*) whether or not shares in the class are redeemable shares.

[36/2014]

(4) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and to a default penalty of $250.

[36/2014]

Rights of holders of classes of shares

74.—(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the constitution for authorising the variation or abrogation of the rights

attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and pursuant to that provision, the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 5% of the total number of issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation does not have effect until confirmed by the Court.

[36/2014]

(1A) For the purposes of subsection (1), any of the company's issued shares held as treasury shares is to be disregarded.

[36/2014]

(2) An application is not invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.

(3) The application must be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(4) On the application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation, as the case may be, and must, if not so satisfied, confirm it and the decision of the Court is final.

(5) The company must, within 14 days after the making of an order by the Court on any such application, lodge a copy of the order with the Registrar and if default is made in complying with this provision the company and every officer of the company who is in default shall

be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(6) The issue by a company of preference shares ranking pari passu with existing preference shares issued by the company is deemed to be a variation of the rights attached to those existing preference shares unless the issue of the firstmentioned shares was authorised by the terms of issue of the existing preference shares or by the constitution of the company in force at the time the existing preference shares were issued.

[36/2014]

(7) For the purposes of this section, the alteration of any provision in the constitution of a company which affects or relates to the manner in which the rights attaching to the shares of any class may be varied or abrogated is deemed to be a variation or abrogation of the rights attached to the shares of that class.

[36/2014]

(8) This section does not operate so as to limit or derogate from the rights of any person to obtain relief under section 216.

Conversion of shares

74A.—(1) Subject to this section and sections 64A and 75, a company the share capital of which is divided into different classes of shares may make provision in its constitution to authorise the conversion of one class of shares into another class of shares.

[36/2014]

(2) A public company may convert one class of shares (*A*) into another class of shares (*B*) by special resolution only if the constitution of the public company —

(*a*) permits *B* to be issued; and

(*b*) sets out the rights attached to *B*.

[36/2014]

(3) A private company may convert shares from one class to another by lodging a notice of conversion in the prescribed form with the Registrar.

[36/2014]

(4) A conversion of shares by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(5) Section 74 applies where a conversion of shares undertaken by a company involves a variation or an abrogation of the rights attached to any class of shares in the company.

[36/2014]

(6) Despite anything in this section, a share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

[36/2014]

Rights of holders of preference shares to be set out in constitution

75.—(1) No company may allot any preference shares or convert any issued shares into preference shares unless there are set out in its constitution the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

[36/2014]

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

Company financing dealings in its shares, etc.

76.—(1) Except as otherwise expressly provided by this Act, a public company or a company whose holding company or ultimate holding company is a public company must not, whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —

(*a*) the acquisition by any person, whether before or at the same time as the giving of financial assistance, of —

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company or ultimate holding company (as the case may be) of the company; or

(*b*) the proposed acquisition by any person of —

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company or ultimate holding company (as the case may be) of the company.

[36/2014]

(1A) Except as otherwise expressly provided by this Act, a company must not —

(*a*) whether directly or indirectly, in any way —

(i) acquire shares or units of shares in the company; or

(ii) purport to acquire shares or units of shares in a holding company or ultimate holding company, as the case may be, of the company; or

(*b*) whether directly or indirectly, in any way, lend money on the security of —

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company or ultimate holding company, as the case may be, of the company.

[36/2014]

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt or otherwise.

(3) For the purposes of this section, a company is taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in subsection (1) (called in this subsection the relevant purpose) if —

(*a*) the company gave the financial assistance for purposes that included the relevant purpose; and

(*b*) the relevant purpose was a substantial purpose of the giving of the financial assistance.

[36/2014]

(4) For the purposes of this section, a company is taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in subsection (1) if, when the financial assistance was given to a person, the company was aware that the financial assistance would financially assist —

(*a*) the acquisition by a person of shares or units of shares in the company; or

(*b*) where shares in the company had already been acquired — the payment by a person of any unpaid amount of the subscription payable for the shares, or the payment of any calls on the shares.

[36/2014]

(5) If a company contravenes subsection (1) or (1A), the company shall not be guilty of an offence, despite section 407, but each officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 3 years or to both.

[36/2014]

(6) Where a person is convicted of an offence under subsection (5) and the Court by which the person is convicted is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence, that Court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or other person (as the case may be) of such amount as the Court specifies, and any such order may be enforced as if it were a judgment of the Court.

(7) The power of a Court under section 391 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under

subsection (6) from the liability to have such an order made against the person.

(8) Nothing in subsection (1) or (1A) prohibits —

(*a*) a distribution of a company's assets by way of dividends lawfully made;

(*aa*) a distribution in the course of a company's winding up;

(*b*) a payment made by a company pursuant to a reduction of capital in accordance with Division 3A of this Part;

(*c*) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;

(*d*) anything done pursuant to an order of Court made under section 210;

(*e*) anything done under an arrangement made pursuant to section 178 of the Insolvency, Restructuring and Dissolution Act 2018;

(*f*) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 187 of the Insolvency, Restructuring and Dissolution Act 2018;

(*g*) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it —

(i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by any charge over the property of that company; or

(ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;

(*ga*) the giving by a company in good faith and in the ordinary course of commercial dealing of any representation, warranty or indemnity in relation to an offer to the public of, or an invitation to the public to subscribe for or purchase, shares or units of shares in that company;

(*h*) the purchase by a company of shares in the company pursuant to an order of a Court;

(*i*) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for any amount payable to the company in respect of the shares;

(*j*) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company permitting the subscriber to make payments for the shares by instalments;

(*k*) an allotment of bonus shares;

(*l*) a redemption of redeemable shares of a company in accordance with the company's constitution; or

(*m*) the payment of some or all of the costs by a company listed on an approved exchange in Singapore or any securities exchange outside Singapore associated with a scheme, an arrangement or a plan under which any shareholder of the company may purchase or sell shares for the sole purpose of rounding off any odd-lots which the shareholder owns,

but nothing in this subsection —

(*n*) is to be construed as implying that a particular act of a company would, but for this subsection, be prohibited by subsection (1) or (1A); or

(*o*) is to be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares or units of shares.

[36/2014; 4/2017; 40/2018]

(8A) For the purposes of subsection (8)(*m*) —

(*a*) an "odd-lot" means any amount of shares in the company which is less than the amount of shares constituting a board lot;

(*b*) a "board lot" means a standard unit of trading of the securities exchange on which the company is listed; and

(*c*) the reference to "rounding off any odd-lots" includes an act by a shareholder, who owns only odd-lots in a company, disposing all such odd-lots.

[36/2014]

(9) Nothing in subsection (1) or (1A) prohibits —

(*a*) the making of a loan, or the giving of a guarantee or the provision of security in connection with one or more loans made by one or more other persons, by a company in the ordinary course of its business where the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore and where —

(i) the lending of money, or the giving of guarantees or the provision of security in connection with loans made by other persons, is done in the course of such activities; and

(ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, that loan is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise;

(*b*) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company to be held by or for the benefit of employees of the company or of a

corporation that is related to the company, including any director holding a salaried employment or office in the company or in the corporation; or

(*c*) the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.

[36/2014]

(9A) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

(*a*) the amount of the financial assistance, together with any other financial assistance given by the company under this subsection repayment of which remains outstanding, would not exceed 10% of the aggregate of —

(i) the total paid-up capital of the company; and

(ii) the reserves of the company,

as disclosed in the most recent financial statements of the company that comply with section 201;

(*b*) the company receives fair value in connection with the financial assistance;

(*c*) the board of directors of the company passes a resolution that —

(i) the company should give the assistance;

(ii) giving the assistance is in the best interests of the company; and

(iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;

(*d*) the resolution sets out in full the grounds for the directors' conclusions;

(*e*) all the directors of the company make a solvency statement in relation to the giving of the financial assistance;

(*f*) within 10 business days of providing the financial assistance, the company sends to each member a notice containing particulars of —

(i) the class and number of shares or units of shares in respect of which the financial assistance was or is to be given;

(ii) the consideration paid or payable for those shares or units of shares;

(iii) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner; and

(iv) the nature and, if quantifiable, the amount of the financial assistance; and

(*g*) not later than the business day next following the day when the notice mentioned in paragraph (*f*) is sent to members of the company, the company lodges with the Registrar a copy of that notice and a copy of the solvency statement mentioned in paragraph (*e*).

[36/2014]

(9B) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

(*a*) the board of directors of the company passes a resolution that —

(i) the company should give the assistance;

(ii) giving the assistance is in the best interests of the company; and

(iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;

(*b*) the resolution sets out in full the grounds for the directors' conclusions;

(*c*) all the directors of the company make a solvency statement in relation to the giving of the financial assistance;

(*d*) not later than the business day next following the day when the resolution mentioned in paragraph (*a*) is passed, the company sends to each member having the right to vote on the resolution mentioned in paragraph (*e*) a notice containing particulars of —

(i) the directors' resolution mentioned in paragraph (*a*);

(ii) the class and number of shares or units of shares in respect of which the financial assistance is to be given;

(iii) the consideration payable for those shares or units of shares;

(iv) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner;

(v) the nature and, if quantifiable, the amount of the financial assistance; and

(vi) such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the company and its members of the proposed transaction;

(*e*) a resolution is passed —

(i) by all the members of the company present and voting either in person or by proxy at the relevant meeting; or

(ii) if the resolution is proposed to be passed by written means under section 184A, by all the members of the company,

to give that assistance;

(*f*) not later than the business day next following the day when the resolution mentioned in paragraph (*e*) is passed, the company lodges with the Registrar a copy of that resolution and a copy of the solvency statement mentioned in paragraph (*c*); and

(*g*) the financial assistance is given not more than 12 months after the resolution mentioned in paragraph (*e*) is passed.

[36/2014]

(9BA) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

(*a*) giving the assistance does not materially prejudice —

(i) the interests of the company or its shareholders; or

(ii) the company's ability to pay its creditors;

(*b*) the board of directors of the company passes a resolution that —

(i) the company should give the assistance; and

(ii) the terms and conditions under which the assistance is proposed to be given are fair and reasonable to the company;

(*c*) the resolution sets out in full the grounds for the directors' conclusions; and

(*d*) the company lodges with the Registrar a copy of the resolution mentioned in paragraph (*b*).

[36/2014]

(9C) A company must not give financial assistance under subsection (9A) or (9B) if, before the assistance is given —

(*a*) any of the directors who voted in favour of the resolution under subsection (9A)(*c*) or (9B)(*a*), respectively —

(i) ceases to be satisfied that the giving of the assistance is in the best interests of the company; or

(ii) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company; or

(*b*) any of the directors no longer has reasonable grounds for any of the opinions expressed in the solvency statement.

(9CA) A company must not give financial assistance under subsection (9BA) if, before the assistance is given, any of the directors who voted in favour of the resolution under subsection (9BA)(*b*) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company.

[36/2014]

(9D) A director of a company is not relieved of any duty to the company under section 157 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company, by —

(*a*) the passing of a resolution by the board of directors of the company under subsection (9A) or (9BA) for the giving of the financial assistance; or

(*b*) the passing of a resolution by the board of directors of the company, and the passing of a resolution by the members of the company, under subsection (9B) for the giving of the financial assistance.

[36/2014]

(10) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

(*a*) the company, by special resolution, resolves to give financial assistance for the purpose of or in connection with, that acquisition;

(*b*) where —

(i) the company is a subsidiary of a listed corporation; or

(ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Singapore,

the listed corporation or the ultimate holding company (as the case may be) has, by special resolution, approved the giving of the financial assistance;

(*c*) the notice specifying the intention to propose the resolution referred to in paragraph (*a*) as a special resolution sets out —

(i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and

(ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations,

and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or any class of those creditors or members;

(*d*) the notice specifying the intention to propose the resolution referred to in paragraph (*b*) as a special resolution is accompanied by a copy of the notice, and a copy of the statement, mentioned in paragraph (*c*);

(*e*) not later than the day next following the day when the notice mentioned in paragraph (*c*) is despatched to members of the company there is lodged with the Registrar a copy of that notice and a copy of the statement that accompanied that notice;

(*f*) the notice mentioned in paragraph (*c*) and a copy of the statement mentioned in that paragraph are sent to —

(i) all members of the company;

(ii) all trustees for debenture holders of the company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the company — all debenture holders, or all debenture holders of that class (as the case may be) of the company whose names are, at the time when the notice is despatched, known to the company;

(*g*) the notice mentioned in paragraph (*d*) and the accompanying documents are sent to —

(i) all members of the listed corporation or of the ultimate holding company;

(ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company — all debenture holders or debenture holders of that class (as the case may be) of the listed corporation or of the ultimate holding company whose names are, at the time when the notice is despatched, known to the listed corporation or the ultimate holding company;

(*h*) within 21 days after the date on which the resolution mentioned in paragraph (*a*) is passed or, in a case to which paragraph (*b*) applies, the date on which the resolution referred to in that paragraph is passed, whichever is the later, a notice —

(i) setting out the terms of the resolution mentioned in paragraph (*a*); and

(ii) stating that any of the persons referred to in subsection (12) may, within the period mentioned in that subsection, make an application to the Court opposing the giving of the financial assistance,

is published in a daily newspaper circulating generally in Singapore;

(*i*) no application opposing the giving of the financial assistance is made within the period mentioned in subsection (12) or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance; and

(*j*) the financial assistance is given in accordance with the terms of the resolution mentioned in paragraph (*a*) and not earlier than —

(i) in a case to which sub-paragraph (ii) does not apply — the expiration of the period mentioned in subsection (12); or

(ii) if an application or applications has or have been made to the Court within that period —

(A) where the application or each of the applications has been withdrawn — the withdrawal of the application or of the last of the applications to be withdrawn; or

(B) in any other case — the decision of the Court on the application or applications.

[36/2014]

(10A) If the resolution mentioned in subsection (10)(*a*) or (*b*) is proposed to be passed by written means under section 184A, subsection (10)(*f*) or (*g*) (as the case may be) must be complied with at or before the time —

(*a*) agreement to the resolution is sought in accordance with section 184C; or

(*b*) documents referred to in section 183(3A) in respect of the resolution are served on or made accessible to members of the company in accordance with section 183(3A),

as the case may be.

(11) Where, on application to the Court by a company, the Court is satisfied that the provisions of subsection (10) have been substantially complied with in relation to a proposed giving by the company of financial assistance of a kind mentioned in that subsection, the Court may, by order, declare that the provisions of that subsection have been complied with in relation to the proposed giving by the company of financial assistance.

(12) Where a special resolution mentioned in subsection (10)(*a*) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice mentioned in subsection (10)(*h*) —

(*a*) by a member of the company;

(*b*) by a trustee for debenture holders of the company;

(*c*) by a debenture holder of the company;

(*d*) by a creditor of the company;

(*e*) if subsection (10)(*b*) applies by —

(i) a member of the listed corporation or ultimate holding company that passed a special resolution mentioned in that subsection;

(ii) a trustee for debenture holders of that listed corporation or ultimate holding company;

(iii) a debenture holder of that listed corporation or ultimate holding company; or

(iv) a creditor of that listed corporation or ultimate holding company; or

(*f*) by the Registrar.

(13) Where an application or applications opposing the giving of financial assistance by a company in accordance with a special resolution passed by the company is or are made to the Court under subsection (12), the Court —

(*a*) must, in determining what order or orders to make in relation to the application or applications, have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors of the company or of any class of them; and

(*b*) must not make an order approving the giving of the financial assistance unless the Court is satisfied that —

(i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance; and

(ii) the proposed financial assistance would not, after taking into account the financial position of the company (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the company or of any class of those creditors or members,

and may do all or any of the following:

(iii) if it thinks fit, make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;

(iv) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the

company or by a subsidiary of the company) of the interests of dissentient members;

(v) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks expedient;

(vi) make an order disapproving the giving of the financial assistance or, subject to paragraph (*b*), an order approving the giving of the financial assistance.

(14) Where the Court makes an order under this section in relation to the giving of financial assistance by a company, the company must, within 14 days after the order is made, lodge with the Registrar a copy of the order.

(15) The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the company of any duty to the company under section 157 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

(16) A reference in this section to an acquisition or proposed acquisition of shares or units of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

(17) This section does not apply in relation to the doing of any act or thing pursuant to a contract entered into before 15 May 1987 if the doing of that act or thing would have been lawful if this Act had not been enacted.

Consequences of company financing dealings in its shares, etc.

76A.—(1) The following contracts or transactions made or entered into in contravention of section 76 are void:

(*a*) a contract or transaction by which a company acquires or purports to acquire its own shares or units of its own

shares, or shares or units of shares in its holding company or ultimate holding company, as the case may be;

(*b*) a contract or transaction by which a company lends money on the security of its own shares or units of its own shares, or on the security of shares or units of shares in its holding company or ultimate holding company, as the case may be.

[36/2014]

(1A) Subsection (1) does not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1).

[36/2014]

(2) Subject to subsection (1), a contract or transaction made or entered into in contravention of section 76, or a contract or transaction related to such contract or transaction, is voidable at the option of the company. The company may, subject to the following provisions of this section, avoid any contract or transaction to which this subsection applies by giving written notice to the other party or parties to the contract or transaction.

(3) The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorise the member, holder of debentures, trustee or director to give a notice or notices under subsection (2) in the name of the company.

(4) Where —

(*a*) a company makes or performs a contract, or engages in a transaction;

(*b*) the contract is made or performed, or the transaction is engaged in, in contravention of section 76 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and

(*c*) the Court is satisfied, on the application of the company or of any other person, that the company or that other person

has suffered, or is likely to suffer, loss or damage as a result of —

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void by reason of subsection (1) or avoided under subsection (2); or

(iv) a related contract or transaction being void by reason of subsection (1) or avoided under subsection (2),

the Court may make such order or orders as it thinks just and equitable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the company or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under subsection (4) include —

(*a*) an order directing a person to refund money or return property to the company or to another person;

(*b*) an order directing a person to pay to the company or to another person a specified amount of the loss or damage suffered by the company or other person; and

(*c*) an order directing a person to indemnify the company or another person against any loss or damage that the company or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

(6) If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or

proposed acquisition by a person of shares or units in the company or in a holding company or ultimate holding company (as the case may be) of the company is given to a person —

(*a*) the person to whom the certificate is given is not under any liability to have an order made against the person under subsection (4) by reason of any contract made or performed, or any transaction engaged in, by the person in reliance on the certificate; and

(*b*) any such contract or transaction is not invalid, and is not voidable under subsection (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 76 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

[36/2014]

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the company concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be) had not been complied with in relation to the financial assistance to which the certificate related.

[36/2014]

(8) For the purposes of subsection (7), a person is, in the absence of proof to the contrary, deemed to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In any proceeding, a document purporting to be a certificate given under subsection (6) is, in the absence of proof to the contrary, deemed to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under subsection (6) is, in the absence of proof to the contrary, deemed to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be) have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[36/2014]

(12) It is a defence to a prosecution for an offence under subsection (11) if the defendant proves that at the time when the defendant signed the certificate he or she believed on reasonable grounds that all the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be) had been complied with in respect of the proposed giving of financial assistance to which the certificate relates.

[36/2014]

(13) The power of a Court under section 391 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability mentioned in that section extends to relieving a person against whom an order may be made under subsection (4) from the liability to have such an order made against the person.

(14) If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in section 76(1) or lends money as mentioned in section 76(1A)(*b*), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money is deemed for the purposes of this section to be related to the firstmentioned contract or transaction.

[36/2014]

(15) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court

under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court prevails.

Company may acquire its own shares

76B.—(1) Despite section 76, a company may, in accordance with this section and sections 76C to 76G, purchase or otherwise acquire shares issued by it if it is expressly permitted to do so by its constitution.

[36/2014]

(2) This section and sections 76C to 76G apply to ordinary shares, stocks and preference shares.

(3) The total number of ordinary shares and stocks in any class that may be purchased or acquired by a company during the relevant period must not exceed 20% (or such other percentage as the Minister may by notification prescribe) of the total number of ordinary shares and stocks of the company in that class ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E unless —

(*a*) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or

(*b*) the Court has, at any time during the relevant period, made an order under section 78I approving the reduction of share capital of the company.

[36/2014]

(3A) Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, the total number of ordinary shares and stocks of the company in any class is, despite subsection (3)(*a*) and (*b*), taken to be the total number of ordinary shares and stocks of the company in

that class as altered by the special resolution of the company or the order of the Court, as the case may be.

(3B) The total number of preference shares in any class which are not redeemable under section 70 that may be purchased or acquired by a company during the relevant period must not exceed 20% (or such other percentage as the Minister may by notification prescribe) of the total number of non-redeemable preference shares of the company in that class ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E, unless —

(*a*) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or

(*b*) the Court has, at any time during the relevant period, made an order under section 78I approving the reduction of share capital of the company.

[36/2014]

(3C) Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, the total number of non-redeemable preference shares of the company in any class is, despite subsection (3B)(*a*) and (*b*), taken to be the total number of non-redeemable preference shares of the company in that class as altered by the special resolution of the company or the order of the Court, as the case may be.

(3D) There is no limit on the number of redeemable preference shares that may be purchased or acquired by a company during the relevant period.

(3E) For the purposes of this section, any of the company's ordinary shares held as treasury shares is to be disregarded.

(4) In subsections (3), (3B) and (3D), "relevant period" means the period —

(*a*) commencing from the date of a resolution passed pursuant to section 76C, 76D, 76DA or 76E (as the case may be); and

(*b*) expiring on the date the next annual general meeting is or is required by law to be held, whichever is the earlier.

[36/2014]

(5) Ordinary shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E are, unless held in treasury in accordance with section 76H, deemed to be cancelled immediately on purchase or acquisition.

(5A) Preference shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E are deemed to be cancelled immediately on purchase or acquisition.

(6) On the cancellation of a share under subsection (5) or (5A), the rights and privileges attached to that share expire.

(7) A private company may purchase or acquire any of its shares under section 76C, 76D, 76DA or 76E by lodging the following with the Registrar:

(*a*) a copy of a resolution mentioned in section 76C, 76D, 76DA or 76E;

(*b*) a notice of purchase or acquisition in the prescribed form with the following particulars:

(i) the date of the purchase or acquisition;

(ii) the number of shares purchased or acquired;

(iii) the number of shares cancelled;

(iv) the number of shares held as treasury shares;

(v) the company's issued share capital before the purchase or acquisition;

(vi) the company's issued share capital after the purchase or acquisition;

(vii) the amount of consideration paid by the company for the purchase or acquisition of the shares;

(viii) whether the shares were purchased or acquired out of the profits or the capital of the company;

(ix) such other particulars as may be required in the prescribed form.

[36/2014]

(8) A purchase or acquisition by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(9) Where a public company purchases or acquires shares issued by it under section 76C, 76D, 76DA or 76E —

(*a*) within 30 days after the passing of a resolution mentioned in section 76C, 76D, 76DA or 76E (as the case may be) the directors of the company must lodge with the Registrar a copy of the resolution;

(*b*) within 30 days after the purchase or acquisition of the shares, the directors of the company must lodge a notice of purchase or acquisition in the prescribed form with the following particulars:

(i) the date of the purchase or acquisition;

(ii) the number of shares purchased or acquired;

(iii) the number of shares cancelled;

(iv) the number of shares held as treasury shares;

(v) the company's issued share capital before the purchase or acquisition;

(vi) the company's issued share capital after the purchase or acquisition;

(vii) the amount of consideration paid by the company for the purchase or acquisition of the shares;

(viii) whether the shares were purchased or acquired out of the profits or the capital of the company;

(ix) such other particulars as may be required in the prescribed form; and

(*c*) for the purposes of this section, shares are deemed to be purchased or acquired on the date on which the company would, apart from subsection (5), become entitled to exercise the rights attached to the shares.

[36/2014]

(10) Nothing in this section or in sections 76C to 76G is to be construed so as to limit or affect an order of the Court made under any section that requires a company to purchase or acquire its own shares.

Authority for off-market acquisition on equal access scheme

76C.—(1) A company, whether or not it is listed on an approved exchange in Singapore or any securities exchange outside Singapore, may make a purchase or acquisition of its own shares otherwise than on an approved exchange in Singapore or any securities exchange outside Singapore (called in this section an off-market purchase) if the purchase or acquisition is made in accordance with an equal access scheme authorised in advance by the company in general meeting.

[36/2014; 4/2017]

(2) The notice specifying the intention to propose the resolution to authorise an off-market purchase must —

(*a*) specify the maximum number of shares or the maximum percentage of ordinary shares authorised to be purchased or acquired;

(*b*) determine the maximum price which may be paid for the shares;

(*c*) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

(*d*) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[36/2014]

(3) The resolution authorising an off-market purchase mentioned in subsection (2) must state the particulars referred to in subsection (2)(*a*), (*b*) and (*c*).

(4) The authority for an off-market purchase referred to in subsection (2) may, from time to time, be varied or revoked by the company in general meeting.

(5) A resolution to confer or vary the authority for an off-market purchase under this section may determine the maximum price for purchase or acquisition by —

(*a*) specifying a particular sum; or

(*b*) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(6) For the purposes of this section and sections 76D and 76DA, an "equal access scheme" means a scheme which satisfies all the following conditions:

(*a*) the offers under the scheme are to be made to every person who holds shares to purchase or acquire the same percentage of their shares;

(*b*) all of those persons have a reasonable opportunity to accept the offers made to them;

(*c*) the terms of all the offers are the same except that there must be disregarded —

(i) differences in consideration attributable to the fact that the offers relate to shares with different accrued dividend entitlements;

(ii) differences in consideration attributable to the fact that the offers relate to shares with different amounts remaining unpaid; and

(iii) differences in the offers introduced solely to ensure that each member is left with a whole number of shares.

Authority for selective off-market acquisition

76D.—(1) A company may make a purchase or acquisition of its own shares otherwise than on a securities exchange and not in accordance with an equal access scheme (called in this section a selective off-market purchase) if the purchase or acquisition is made in accordance with an agreement authorised in advance under subsection (2).

[36/2014]

(2) The terms of the agreement for a selective off-market purchase must be authorised by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons, and subsections (3) to (13) apply with respect to that authority and to resolutions conferring it.

(3) The notice specifying the intention to propose a special resolution to authorise an agreement for a selective off-market purchase must —

(*a*) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

(*b*) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

(4) The special resolution authorising a selective off-market purchase mentioned in subsection (2) must state the expiry date referred to in subsection (3)(*a*).

(4A) If the special resolution mentioned in subsection (2) is proposed to be passed by written means under section 184A —

(*a*) a person whose shares are proposed to be purchased or acquired or any of the person's associated persons is not to be regarded as a member having the right to vote on the resolution at a general meeting of the company for the purposes of section 184A;

(*b*) subsection (7) does not apply; but all documents referred to in this section must be given to all members having the right to vote on the resolution at a general meeting for the purposes of section 184A at or before the time —

(i) agreement to the resolution is sought in accordance with section 184C; or

(ii) documents referred to in section 183(3A) in respect of the resolution are served on or made accessible to them in accordance with section 183(3A),

as the case may be.

(5) The authority referred to in subsection (2) may, from time to time, be varied or revoked by a special resolution with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons.

(6) For the purposes of subsections (2) and (5) —

(*a*) a member or any of the member's associated persons who holds any of the shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if the member or person votes in respect of them on a poll on the question whether the resolution should be passed, but also if the member or person votes on the resolution otherwise than on a poll;

(*b*) despite anything in the company's constitution, any member of the company may demand a poll on that question; and

(*c*) a vote and a demand for a poll by a person as proxy for a member or any of the member's associated persons are the same respectively as a vote and a demand by the member.

[36/2014]

(7) The special resolution mentioned in subsection (2) is not effective for the purposes of this section unless (if the proposed agreement is in writing) a copy of the agreement or (if not) a written memorandum of its terms is available for inspection by members of the company both —

(*a*) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and

(*b*) at the meeting itself.

(8) A memorandum of terms so made available must include the names of any members holding shares to which the agreement relates and where a member holds such shares as nominee for another person, the name of that other person; and a copy of the agreement so made available must have annexed to it a written memorandum specifying any such names which do not appear in the agreement itself.

(9) A company may agree to a variation of an existing agreement so approved, but only if the variation is authorised, before it is agreed to, by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons.

(10) Subsections (3) to (7) apply to the authority for a proposed variation as they apply to the authority for a proposed agreement except that a copy of the original agreement or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (7).

(11) The rights of a company under an agreement for a selective off-market purchase approved under this section are not capable of being assigned except by order of the Court made pursuant to any provision of this Act or any other written law.

(12) An agreement by a company to release its rights under an agreement for a selective off-market purchase approved under this section is void unless the terms of the release agreement are approved in advance before the agreement is entered into by a special resolution of the company with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons; and subsections (3) to (7) apply to the approval for a proposed release agreement as they apply to authority for the proposed variation of an existing agreement.

(13) A resolution to confer or vary authority for a selective off-market purchase under this section may determine the maximum price for purchase or acquisition by —

(*a*) specifying a particular sum; or

(*b*) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(14) In this section, "associated person", in relation to a person, means —

(*a*) the person's spouse, child or stepchild; or

(*b*) a person who would, by virtue of section 7(5), be treated as an associate of the firstmentioned person.

Contingent purchase contract

76DA.—(1) A company may, whether or not it is listed on an approved exchange in Singapore or any securities exchange outside Singapore, make a purchase or acquisition of its own shares under a contingent purchase contract if the proposed contingent purchase contract is authorised in advance by a special resolution of the company.

[36/2014; 4/2017]

(2) Subject to subsection (3), the authority under subsection (1) may, from time to time, be varied or revoked by a special resolution of the company.

(3) The notice specifying the intention to propose a special resolution to authorise a contingent purchase contract must specify a date on which the authority is to expire and that date must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier.

(4) The special resolution mentioned in subsection (1) is invalid for the purposes of this section unless a copy of the proposed contingent purchase contract is available for inspection by members of the company —

(*a*) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and

(*b*) at the meeting itself.

(5) A company may agree to a variation of an existing contingent purchase contract so approved if, and only if, the variation is authorised, before it is agreed to, by a special resolution of the company.

(6) Subsections (2), (3) and (4) apply to the authority for a proposed variation as they apply to the authority for a proposed contingent purchase contract, except that a copy of the original contract, together with any variations previously made, must also be available for inspection in accordance with subsection (4).

(7) The company may only make an offer to enter into a contingent purchase contract in accordance with all of the following conditions:

(*a*) the offer must be made to every person who holds shares of the same class in the company;

(*b*) the number of shares that a company is obliged or entitled to purchase or acquire under the contract from any person, in relation to the total number of shares of the same class held by that person, must be of the same proportion for every person who holds shares of that class to whom the offer is made;

(*c*) the terms of all offers in respect of each class of shares must be the same.

(8) To avoid doubt, the company may purchase or acquire shares under a contingent purchase contract from any person whether or not the offer to enter into the contract was originally made to the person.

(9) In this section, "contingent purchase contract" means a contract entered into by a company and relating to any of its shares —

(*a*) which does not amount to a contract to purchase or acquire those shares; but

(*b*) under which the company may (subject to any condition) become entitled or obliged to purchase or acquire those shares.

Authority for market acquisition

76E.—(1) A company must not make a purchase or acquisition of its own shares on a securities exchange (called in this section a market purchase) unless the purchase or acquisition has been authorised in advance by the company in general meeting.

(2) The notice specifying the intention to propose the resolution to authorise a market purchase must —

(*a*) specify the maximum number of shares or the maximum percentage of ordinary shares authorised to be purchased or acquired;

(*b*) determine the maximum price which may be paid for the shares;

(*c*) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

(*d*) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[36/2014]

(3) The authority for a market purchase may be unconditional or subject to conditions and must state the particulars referred to in subsection (2)(*a*), (*b*) and (*c*).

(4) The authority for a market purchase may, from time to time, be varied or revoked by the company in general meeting but the variation must comply with subsections (2) and (3).

(5) A resolution to confer or vary authority for a market purchase under this section may determine the maximum price for purchase or acquisition by —

(*a*) specifying a particular sum; or

(*b*) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

Payments to be made only if company is solvent

76F.—(1) A payment made by a company in consideration of —

(*a*) acquiring any right with respect to the purchase or acquisition of its own shares in accordance with section 76C, 76D, 76DA or 76E;

(*b*) the variation of an agreement approved under section 76D or 76DA; or

(*c*) the release of any of the company's obligations with respect to the purchase or acquisition of any of its own shares under an agreement approved under section 76D or 76DA,

may be made out of the company's capital or profits so long as the company is solvent.

(1A) A payment referred to in subsection (1)(*a*) includes any expenses (including brokerage or commission) incurred directly in the purchase or acquisition by the company of its own shares.

[36/2014]

(2) If the requirements in subsection (1) are not satisfied in relation to an agreement —

(*a*) in a case within subsection (1)(*a*) — no purchase or acquisition by the company of its own shares pursuant to that agreement is lawful;

(*b*) in a case within subsection (1)(*b*) — no such purchase or acquisition following the variation is lawful; and

(*c*) in a case within subsection (1)(*c*) — the purported release is void.

(3) Every director or chief executive officer of a company who approves or authorises, the purchase or acquisition of the company's own shares or the release of obligations, knowing that the company is not solvent shall, without affecting any other liability, be guilty of an

offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years.

[36/2014]

(4) For the purposes of this section, a company is solvent if at the date of the payment mentioned in subsection (1) the following conditions are satisfied:

(*a*) there is no ground on which the company could be found to be unable to pay its debts;

(*b*) if —

(i) it is intended to commence winding up of the company within the period of 12 months immediately after the date of the payment, the company will be able to pay its debts in full within the period of 12 months after the date of commencement of the winding up; or

(ii) it is not intended so to commence winding up, the company will be able to pay its debts as they fall due during the period of 12 months immediately after the date of the payment;

(*c*) the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed purchase, acquisition, variation or release (as the case may be), become less than the value of its liabilities (including contingent liabilities).

[36/2014]

Reduction of capital or profits or both on cancellation of repurchased shares

76G.—(1) Where under section 76C, 76D, 76DA or 76E, shares of a company are purchased or acquired, and cancelled under section 76B(5), the company must —

(*a*) reduce the amount of its share capital where the shares were purchased or acquired out of the capital of the company;

(*b*) reduce the amount of its profits where the shares were purchased or acquired out of the profits of the company; or

(*c*) reduce the amount of its share capital and profits proportionately where the shares were purchased or acquired out of both the capital and the profits of the company,

by the total amount of the purchase price paid by the company for the shares cancelled.

[36/2014]

(2) For the purpose of subsection (1), the total amount of the purchase price referred to in that subsection includes any expenses (including brokerage or commission) incurred directly in the purchase or acquisition of the shares of a company which is paid out of the company's capital or profits under section 76F(1).

[36/2014]

Treasury shares

76H.—(1) Where ordinary shares or stocks are purchased or otherwise acquired by a company in accordance with sections 76B to 76G, the company may —

(*a*) hold the shares or stocks (or any of them); or

(*b*) deal with any of them, at any time, in accordance with section 76K.

(2) Where ordinary shares or stocks are held under subsection (1)(*a*) then, for the purposes of section 190 (Register and index of members) and section 196A (Electronic register of members), the company must be entered in the register as the member holding those shares or stocks.

[36/2014]

Treasury shares: maximum holdings

76I.—(1) Where a company has shares of only one class, the aggregate number of shares held as treasury shares must not at any time exceed 10% of the total number of shares of the company at that time.

(2) Where the share capital of a company is divided into shares of different classes, the aggregate number of the shares of any class held as treasury shares must not at any time exceed 10% of the total number of the shares in that class at that time.

(3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares in accordance with section 76K before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow.

(4) In subsection (3), "the excess shares" means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

Treasury shares: voting and other rights

76J.—(1) This section applies to shares which are held by a company as treasury shares.

(2) The company must not exercise any right in respect of the treasury shares and any purported exercise of such a right is void.

(3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 210) and for the purposes of this Act, the company is to be treated as having no right to vote and the treasury shares are to be treated as having no voting rights.

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

(5) Nothing in this section is to be taken as preventing —

(*a*) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or

(*b*) the subdivision or consolidation of any treasury share into treasury shares of a greater or smaller number, if the total value of the treasury shares after the subdivision or consolidation is the same as the total value of the

treasury share before the subdivision or consolidation, as the case may be.

[36/2014]

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares are to be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied.

Treasury shares: disposal and cancellation

76K.—(1) Subject to subsection (1A), where shares are held by a private company as treasury shares, the company may at any time —

(*a*) sell the shares (or any of them) for cash;

(*b*) transfer the shares (or any of them) for the purposes of or pursuant to any share scheme, whether for employees, directors or other persons;

(*c*) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;

(*d*) cancel the shares (or any of them); or

(*e*) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

[36/2014]

(1A) A private company may cancel or dispose of treasury shares pursuant to subsection (1) by lodging a prescribed notice of the cancellation or disposal of treasury shares with the Registrar together with the prescribed fee.

[36/2014]

(1B) A cancellation or disposal of treasury shares by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(1C) Where shares are held by a public company as treasury shares, the company may at any time —

(*a*) sell the shares (or any of them) for cash;

(*b*) transfer the shares (or any of them) for the purposes of or pursuant to any share scheme, whether for its employees, directors or other persons;

(*c*) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;

(*d*) cancel the shares (or any of them); or

(*e*) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

[36/2014]

(1D) Where a public company cancels or disposes treasury shares in accordance with subsection (1C), the directors of the company must lodge with the Registrar a prescribed notice of the cancellation or disposal of treasury shares together with the prescribed fee within 30 days after the cancellation or disposal of treasury shares.

[36/2014]

(2) In subsections (1)(*a*) and (1C)(*a*), "cash", in relation to a sale of shares by a company, means —

(*a*) cash (including foreign currency) received by the company;

(*b*) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid;

(*c*) a release of a liability of the company for a liquidated sum; or

(*d*) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

[36/2014]

(3) But if the company receives a notice under section 215 (Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority) that a person desires to acquire any of the shares, the company must not, under subsection (1) or (1C) (as the case may be), sell or transfer the shares to which the notice relates except to that person.

[36/2014]

(4) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) or (1C) (as the case may be) without complying with section 78B (Reduction of share capital by private company), 78C (Reduction of share capital by public company) or 78I (Court order approving reduction).

[36/2014]

Options over unissued shares

77.—(1) An option granted after 29 December 1967 by a public company which enables any person to take up unissued shares of the company after a period of 5 years has elapsed from the date on which the option was granted is void.

(1A) An option granted on or after 18 November 1998 by a public company which enables any employee of that company or its related corporation (including any director holding a salaried office or employment in that company or corporation) to take up unissued shares of the company after a period of 10 years has elapsed from the date on which the option was granted is void and subsection (1) does not apply to such an option.

(2) Subsection (1) or (1A) does not apply in any case where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures.

Power of company to pay interest out of capital in certain cases

78. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of such share capital (except treasury shares) as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but —

(*a*) no such payment may be made unless it is authorised, by the constitution or by special resolution, and is approved by the Court;

(*b*) before approving any such payment, the Court may at the expense of the company appoint a person to inquire and

report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;

(*c*) the payment is to be made only for such period as is determined by the Court, but in no case extending beyond a period of 12 months after the works or buildings have been actually completed or the plant provided;

(*d*) the rate of interest must in no case exceed 5% per annum or such other rate as is for the time being prescribed; and

(*e*) the payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

[36/2014]

Division 3A — Reduction of share capital

Preliminary

78A.—(1) A company may reduce its share capital under the provisions of this Division in any way and, in particular, do all or any of the following:

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(*b*) cancel any paid-up share capital which is lost or unrepresented by available assets;

(*c*) return to shareholders any paid-up share capital which is more than it needs.

(2) A company may not reduce its share capital in any way except by a procedure provided for it by the provisions of this Division.

(3) A company's constitution may exclude or restrict any power to reduce share capital conferred on the company by this Division.

[36/2014]

(4) In this Division —

"reduction information", in relation to a proposed reduction of share capital by a special resolution of a company, means the following information:

(*a*) the amount of the company's share capital that is thereby reduced;

(*b*) the number of shares that are thereby cancelled;

"resolution date", in relation to a resolution, means the date when the resolution is passed.

[36/2014]

(5) This Division does not apply to an unlimited company, and does not preclude such a company from reducing in any way its share capital.

(5A) This Division does not apply to any redemption of preference shares issued by a company under section 70(1) which results in a reduction in the company's share capital.

[36/2014]

(6) This Division does not apply to the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.

Reduction of share capital by private company

78B.—(1) A private company limited by shares may reduce its share capital in any way by a special resolution if the company —

(*a*) [*Deleted by Act 36 of 2014*]

(*b*) meets the solvency requirements; and

(*c*) meets such publicity requirements as may be prescribed by the Minister,

but the resolution and the reduction of the share capital take effect only as provided by section 78E.

[36/2014]

(2) Despite subsection (1), the company need not meet the solvency requirements if the reduction of share capital does not involve any of the following:

(*a*) a reduction or distribution of cash or other assets by the company;

(*b*) a release of any liability owed to the company.

[36/2014]

(3) For the purposes of subsection (1), the company meets the solvency requirements if —

(*a*) all the directors of the company make a solvency statement in relation to the reduction of capital; and

(*b*) the statement is made —

(i) in time for subsection (4)(*a*) to be complied with; but

(ii) not before the beginning of the period of 20 days ending with the resolution date.

[21/2005; 36/2014]

(4) Unless subsection (2) applies, the company —

(*a*) must —

(i) if the resolution for reducing share capital is a special resolution to be passed by written means under section 184A — ensure that every copy of the resolution served under section 183(3A) or 184C(1) (as the case may be) is accompanied by a copy of the solvency statement; or

(ii) if the resolution is a special resolution to be passed in a general meeting — throughout that meeting make the solvency statement or a copy of it available for inspection by the members at that meeting; and

(*b*) must, throughout the 6 weeks beginning with the resolution date, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

(5) The resolution does not become invalid by virtue only of a contravention of subsection (4), but every officer of the company who is in default shall be guilty of an offence.

(6) Any requirement under subsection (4)(*b*) ceases if the resolution is revoked.

Reduction of share capital by public company

78C.—(1) A public company may reduce its share capital in any way by a special resolution if the company —

(*a*) [*Deleted by Act 36 of 2014*]

(*b*) meets the solvency requirements; and

(*c*) meets such publicity requirements as may be prescribed by the Minister,

but the resolution and the reduction of the share capital take effect only as provided by section 78E.

(2) Despite subsection (1), the company need not meet the solvency requirements if the reduction of share capital does not involve any of the following:

(*a*) a reduction or distribution of cash or other assets by the company;

(*b*) a release of any liability owed to the company.

[36/2014]

(3) The company meets the solvency requirements if —

(*a*) all the directors of the company make a solvency statement in relation to the reduction of share capital;

(*b*) the statement is made —

(i) in time for subsection (4)(*a*) to be complied with; but

(ii) not before the beginning of the period of 30 days ending with the resolution date; and

(*c*) a copy of the solvency statement is lodged with the Registrar, together with the copy of the resolution required to be lodged with the Registrar under section 186, within 15 days beginning with the resolution date.

[36/2014]

(4) Unless subsection (2) applies, the company must —

(*a*) throughout the meeting at which the resolution is to be passed — make the solvency statement or a copy of it available for inspection by the members at the meeting; and

(*b*) throughout the 6 weeks beginning with the resolution date — make the solvency statement or a copy of it

available at the company's registered office for inspection free of charge by any creditor of the company.

(5) The resolution does not become invalid by virtue only of a contravention of subsection (4), but every officer of the company who is in default shall be guilty of an offence.

(6) Any requirement under subsection (3)(*c*) or (4)(*b*) ceases if the resolution is revoked.

Creditor's right to object to company's reduction

78D.—(1) This section applies where a company has passed a special resolution for reducing share capital under section 78B or 78C.

(2) Any creditor of the company to which this subsection applies may, at any time during the 6 weeks beginning with the resolution date, apply to the Court for the resolution to be cancelled.

(3) Subsection (2) applies to a creditor of the company who, at the date of the creditor's application to the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company.

(4) When an application is made under subsection (2) —

(*a*) the creditor must as soon as possible serve the application on the company; and

(*b*) the company must as soon as possible give to the Registrar notice of the application.

Position at end of period for creditor objections

78E.—(1) Where —

(*a*) a private company passes a special resolution for reducing its share capital and meets the requirements under section 78B(1)(*c*) and the solvency requirements under section 78B(3) (if applicable); and

(*b*) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

for the reduction of share capital to take effect, the company must lodge with the Registrar —

(*c*) a copy of the resolution in accordance with section 186; and

(*d*) the following documents after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date:

(i) a copy of the solvency statement under section 78B(3) (if applicable);

(ii) a statement made by the directors confirming that the requirements under section 78B(1)(*c*) and the solvency requirements under section 78B(3) (if applicable) have been complied with, and that no application for cancellation of the resolution has been made;

(iii) a notice containing the reduction information.

[36/2014]

(2) Where —

(*a*) a public company passes a special resolution for reducing its share capital and meets the requirements under section 78C(1)(*c*) and the solvency requirements (if applicable) under section 78C(3); and

(*b*) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

for the reduction of share capital to take effect, the company must lodge with the Registrar the following documents after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date:

(*c*) a statement made by the directors confirming that the requirements under section 78C(1)(*c*) and the solvency requirements under section 78C(3) (if applicable) have been complied with, and that no application for cancellation of the resolution has been made;

(*d*) a notice containing the reduction information.

[36/2014]

(3) Where —

(*a*) a private company passes a special resolution for reducing its share capital and meets the requirements under section 78B(1)(*c*) and the solvency requirements under section 78B(3) (if applicable); but

(*b*) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

for the reduction of share capital to take effect, the following conditions must be satisfied:

(*c*) the company has complied with section 78D(4)(*b*) (notification to Registrar) in relation to all such applications;

(*d*) the proceedings in relation to each such application have been brought to an end —

(i) by the dismissal of the application under section 78F; or

(ii) without determination (for example, because the application has been withdrawn);

(*e*) the company has, within 15 days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (*d*), lodged with the Registrar —

(i) a statement made by the directors confirming that the requirements under section 78B(1)(*c*), the solvency requirements under section 78B(3) (if applicable) and section 78D(4)(*b*) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the dismissal of the application or without determination;

(ii) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and

(iii) a notice containing the reduction information.

[36/2014]

(4) Where —

(*a*) a public company passes a special resolution for reducing its share capital and meets the requirements under section 78C(1)(*c*) and the solvency requirements under section 78C(3) (if applicable); but

(*b*) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

for the reduction of capital to take effect, the following conditions must be satisfied:

(*c*) the company has complied with section 78D(4)(*b*) (notification to Registrar) in relation to all such applications;

(*d*) the proceedings in relation to each such application have been brought to an end —

(i) by the dismissal of the application under section 78F; or

(ii) without determination (for example, because the application has been withdrawn);

(*e*) the company has, within 15 days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (*d*), lodged with the Registrar —

(i) a statement made by the directors confirming that the requirements under section 78C(1)(*c*), the solvency requirements under section 78C(3) (if applicable) and section 78D(4) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the

dismissal of the application or without determination;

(ii) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and

(iii) a notice containing the reduction information.

[36/2014]

(5) The resolution in a case referred to in subsection (1), (2), (3) or (4), and the reduction of the share capital, take effect when the Registrar has recorded the information lodged with him or her in the appropriate register.

Power of Court where creditor objection made

78F.—(1) An application by a creditor under section 78D is to be determined by the Court in accordance with this section.

(2) The Court must make an order cancelling the resolution if, at the time the application is considered, the resolution has not been cancelled previously, any debt or claim on which the application was based is outstanding and the Court is satisfied that —

(*a*) the debt or claim has not been secured and the applicant does not have other adequate safeguards for it; and

(*b*) it is not the case that security or other safeguards are unnecessary in view of the assets that the company would have after the reduction.

(3) Otherwise, the Court is to dismiss the application.

(4) Where the Court makes an order under subsection (2), the company must send notice of the order to the Registrar within 15 days beginning with the date the order is made.

(5) If a company contravenes subsection (4), every officer of the company who is in default shall be guilty of an offence.

(6) For the purposes of this section, a debt is outstanding if it has not been discharged, and a claim is outstanding if it has not been terminated.

Reduction by special resolution subject to Court approval

78G.—(1) A company limited by shares may, as an alternative to reducing its share capital under section 78B or 78C, reduce it in any way by a special resolution approved by an order of the Court under section 78I, but the resolution and the reduction of the share capital do not take effect until —

(*a*) that order has been made;

(*b*) the company has complied with section 78I(3) (lodgment of information with Registrar); and

(*c*) the Registrar has recorded the information lodged with him or her under section 78I(3) in the appropriate register.

(2) [*Deleted by Act 36 of 2014*]

Creditor protection

78H.—(1) This section applies if a company makes an application under section 78G(1) and the proposed reduction of share capital involves either —

(*a*) a reduction of liability in respect of unpaid share capital; or

(*b*) the payment to a shareholder of any paid-up share capital,

and also applies if the Court so directs in any other case where a company makes an application under that section.

(2) Upon the application to the Court, the Court is to settle a list of qualifying creditors.

(3) If the proposed reduction of share capital involves either —

(*a*) a reduction of liability in respect of unpaid share capital; or

(*b*) the payment to a shareholder of any paid-up share capital,

the Court may, if having regard to any special circumstances of the case it thinks it appropriate to do so, direct that any class or classes of creditors are not qualifying creditors.

(4) For the purpose of settling the list of qualifying creditors, the Court —

(*a*) must ascertain, as far as possible without requiring an application from any creditor, the names of qualifying creditors and the nature and amount of their debts or claims; and

(*b*) may publish notices fixing a day or days within which creditors not included in the list are to claim to be so included or are to be excluded from the list.

(5) Any officer of the company who —

(*a*) intentionally conceals the name of a qualifying creditor;

(*b*) intentionally misrepresents the nature or amount of the debt or claim of any creditor; or

(*c*) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years.

(6) In this section and section 78I but subject to subsection (3), "qualifying creditor" means a creditor of the company who, at a date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company.

Court order approving reduction

78I.—(1) On an application by a company under section 78G(1), the Court may, subject to subsection (2), make an order approving the reduction in share capital unconditionally or on such terms and conditions as it thinks fit.

(2) If, at the time the Court considers the application, there is a qualifying creditor within the meaning of section 78H —

(*a*) who is included in the Court's list of qualifying creditors under that section; and

(*b*) whose claim has not been terminated or whose debt has not been discharged,

the Court must not make an order approving the reduction unless satisfied, as respects each qualifying creditor, that —

(*c*) the qualifying creditor has consented to the reduction;

(*d*) the qualifying creditor's debt or claim has been secured or the qualifying creditor has other adequate safeguards for it; or

(*e*) security or other safeguards are unnecessary in view of the assets the company would have after the reduction.

(3) Where an order is made under this section approving a company's reduction in share capital, the company must (for the reduction to take effect) lodge with the Registrar —

(*a*) a copy of the order; and

(*b*) a notice containing the reduction information,

within 90 days beginning with the date the order is made, or within such longer period as the Registrar may, on the application of the company and on receiving the prescribed fee, allow.

Offences for making groundless or false statements

78J. A director making a statement under section 78E(1)(*d*)(ii), (2)(*c*), (3)(*e*)(i) or (4)(*e*)(i) shall be guilty of an offence if the statement —

(*a*) is false; and

(*b*) is not believed by the director to be true.

Liability of members on reduced shares

78K. Where a company's share capital is reduced under any provision of this Division, a member of the company (past or present) is not liable in respect of the issue price of any share to any call or contribution greater in amount than the difference (if any) between —

(*a*) the issue price of the share; and

(*b*) the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.

Division 4 — Substantial shareholdings

Application and interpretation of Division

79.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

(2) A reference to a company is a reference —

(*a*) [*Deleted by Act 2 of 2009*]

(*b*) to a body corporate, being a body incorporated in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division; or

(*c*) to a body, not being a body corporate formed in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division.

[2/2009]

(3) In relation to a company the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock is deemed to be an interest in an issued share in the company having attached to it the same rights as are attached to that stock.

(4) A reference in the definition of "voting share" in section 4(1) to a body corporate includes a reference to a body referred to in subsection (2)(*c*).

Persons obliged to comply with Division

80.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate, whether incorporated or carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Minister may, by order in the *Gazette*, exempt any person or any class of persons from all or any of the provisions of this Division, subject to such terms or conditions as may be prescribed.

Substantial shareholdings and substantial shareholders

81.—(1) For the purposes of this Division, a person has a substantial shareholding in a company if —

(*a*) the person has an interest or interests in one or more voting shares in the company; and

(*b*) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company.

(2) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into 2 or more classes of shares, if —

(*a*) the person has an interest or interests in one or more voting shares included in one of those classes; and

(*b*) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares included in that class.

(3) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(4) In this section and section 83, "voting shares" exclude treasury shares.

Substantial shareholder to notify company of interests

82.—(1) A person who is a substantial shareholder in a company must give written notice to the company stating the person's name and address and full particulars (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder) of the voting shares in the company in which the person has an interest or interests and full particulars of each such interest and of the circumstances by reason of which the person has that interest.

(2) The notice must be given —

(*a*) if the person was a substantial shareholder on 1 October 1971 — within one month after that date; or

(*b*) if the person became a substantial shareholder after that date — within 2 business days after becoming a substantial shareholder.

(3) The notice must be so given even though the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable.

Substantial shareholder to notify company of change in interests

83.—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a company in voting shares in the company, the substantial shareholder must give written notice to the company stating the information specified in subsection (2) within 2 business days after the substantial shareholder becomes aware of such a change.

(2) The information referred to in subsection (1) is —

(*a*) the name and address of the substantial shareholder;

(*b*) the date of the change and the circumstances leading to that change; and

(*c*) such other particulars as may be prescribed.

(3) In subsection (1), "percentage level", in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

(*a*) all the voting shares in the company; or

(*b*) where the share capital of the company is divided into 2 or more classes of shares, all the voting shares included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Person who ceases to be substantial shareholder to notify company

84.—(1) A person who ceases to be a substantial shareholder in a company must give written notice to the company stating the person's name and the date on which the person ceased to be a substantial shareholder and full particulars of the circumstances by reason of which the person ceased to be a substantial shareholder.

(2) The notice must be given within 2 business days after the person ceased to be a substantial shareholder.

References to operation of section 7

85. The circumstances required to be stated in the notice under section 82, 83 or 84 include circumstances by reason of which, having regard to section 7 —

(*a*) a person has an interest in voting shares;

(*b*) a change has occurred in an interest in voting shares; or

(*c*) a person has ceased to be a substantial shareholder in a company,

respectively.

Persons holding shares as trustees

86.—(1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, must give to the non-resident a notice in the prescribed form as to the requirements of this Division.

(2) The notice must be given —

(*a*) if the firstmentioned person holds the shares on 1 October 1971 — within 14 days after that date; or

(*b*) if the firstmentioned person did not hold the shares on that date — within 2 days after becoming the holder of the shares.

(2A) This section does not apply to the Depository as the registered holder of a company's shares.

[36/2014]

(3) In this section, "non-resident" means a person who is not resident in Singapore or a body corporate that is not incorporated in Singapore.

(4) Nothing in this section affects the operation of section 80.

Registrar may extend time for giving notice under this Division

87. The Registrar may, on the application of a person who is required to give a notice under this Division, in the Registrar's discretion, extend, or further extend, the time for giving the notice.

Company to keep register of substantial shareholders

88.—(1) A company must keep a register in which it must immediately enter —

(*a*) in alphabetical order the names of persons from whom it has received a notice under section 82; and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 83 or 84, the information given in that notice.

(2) The register must be kept at the registered office of the company, or, if the company does not have a registered office, at the principal place of business of the company in Singapore and must be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the company requires.

(3) A person may request the company to furnish the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company must send the copy to that person, within 14 days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

(4) The Registrar may at any time in writing require the company to furnish the Registrar with a copy of the register or any part of the register and the company must furnish the copy within 7 days after the day on which the requirement is received by the company.

(5) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and in the case of a continuing offence to a further fine of $500 for every day during which the offence continues after conviction.

(6) A company is not, by reason of anything done under this Division —

(*a*) to be taken for any purpose to have notice of; or

(*b*) to be put upon inquiry as to,

a right of a person to or in relation to a share in the company.

Offences against certain sections

89. A person who fails to comply with section 82, 83, 84 or 86 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and in the case of a continuing offence to a further fine of $500 for every day during which the offence continues after conviction.

Defence to prosecutions

90.—(1) It is a defence to a prosecution for failing to comply with section 82, 83, 84 or 86 if the defendant proves that the defendant's failure was due to the defendant not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(*a*) the defendant was not so aware on the date of the summons; or

(*b*) the defendant became so aware less than 7 days before the date of the summons.

(2) For the purposes of subsection (1), a person is conclusively presumed to have been aware of a fact or occurrence at a particular time —

(*a*) of which the person would, if the person had acted with reasonable diligence in the conduct of the person's affairs, have been aware at that time; or

(*b*) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her master's or principal's interest or interests in a share or shares in the company concerned, was aware or would, if he or she had acted with reasonable diligence in the conduct of his or her master's or principal's affairs, have been aware at that time.

Powers of Court with respect to defaulting substantial shareholders

91.—(1) Where a person is a substantial shareholder, or at any time after 1 October 1971 has been a substantial shareholder in a company and has failed to comply with section 82, 83 or 84, the Court may, on the application of the Minister, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person from disposing of any interest in shares in the company in which the person is or has been a substantial shareholder;

(*b*) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (*a*) from disposing of any interest in those shares;

(*c*) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;

(*d*) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;

(*e*) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;

(*f*) an order directing the company not to register the transfer or transmission of specified shares;

(*g*) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;

(*h*) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a share may provide that the sale must be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the company.

(4) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the share vests in the Registrar.

(5) The Court must, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court must not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to the substantial shareholder's inadvertence or mistake or to the substantial shareholder not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it

thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Section 214 of the Insolvency, Restructuring and Dissolution Act 2018 applies in relation to a share that vests in the Registrar under this section as it applies in relation to an estate or interest in property vested in the Official Receiver under the firstmentioned section.

[40/2018]

(10) Any person who contravenes or fails to comply with an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and, in the case of a continuing offence, to a further fine of $500 for every day during which the offence continues after conviction.

(11) Subsection (10) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

92. [*Repealed by Act 2 of 2009*]

Division 5 — Debentures

Register of debenture holders and copies of trust deed

93.—(1) Every company which issues debentures (not being debentures transferable by delivery) must keep a register of holders of the debentures at the registered office of the company or at some other place in Singapore.

(2) Every company must within 7 days after the register is first kept at a place other than the registered office lodge with the Registrar notice of the place where the register is kept and must, within 7 days after any change in the place at which the register is kept, lodge with the Registrar notice of the change.

(3) The register must except when duly closed be open to the inspection of the registered holder of any debentures and of any holder of shares in the company and must contain particulars of the names and addresses of the debenture holders and the amount of debentures held by them.

(4) For the purposes of this section, a register is deemed to be duly closed if closed in accordance with the provisions contained in the constitution or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate 30 days in any calendar year) as is therein specified.

[36/2014]

(5) Every registered holder of debentures and every holder of shares in a company must, at the request of the holder of debentures or shares, be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof on payment of $1 for every page or part thereof required to be copied, but the copy need not include any particulars as to any debenture holder other than the debenture holder's name and address and the debentures held by the debenture holder.

(6) A copy of any trust deed relating to or securing any issue of debentures must be forwarded by the company to a holder of those debentures at the holder's request on payment of the sum of $3 or such less sum as is fixed by the company, or where the copy has to be specially made to meet the request on payment of $1 for every page or part thereof required to be copied.

(7) If inspection is refused, or a copy is refused or not forwarded within a reasonable time (but not more than one month) after a request has been made pursuant to this section, the company and every officer of the company who is in default shall be guilty of an offence.

(8) A company which issues debentures may cause to be kept in any place outside Singapore a branch register of debenture holders which is deemed to be part of the company's register of debenture holders and Division 4 of Part 5 applies with such adaptations as are necessary to and in relation to the keeping of a branch register of debenture holders.

(9) If a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

Specific performance of contracts

94. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Perpetual debentures

95. A condition in any debenture or in any deed for securing any debentures whether the debenture or deed is issued or made before or after 29 December 1967 is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, despite any rule of law or equity to the contrary.

Reissue of redeemed debentures

96.—(1) Where a company has redeemed any debentures whether before or after 29 December 1967 —

(*a*) unless any provision to the contrary, whether express or implied, is contained in the constitution or in any contract entered into by the company; or

(*b*) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures are to be cancelled,

the company has and is deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place but the reissue of a debenture or the issue of one debenture in place of another under this subsection, whether the reissue or issue was made before or after that date, is not to be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

[36/2014]

(2) After the reissue the person entitled to the debentures has and is deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after 29 December 1967 deposited any of its debentures to secure advances on current account

or otherwise, the debentures are not deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remain so deposited.

97. [*Repealed by S 236/2002*]

98. [*Repealed by S 236/2002*]

99. [*Repealed by S 236/2002*]

Power of Court in relation to certain irredeemable debentures

100.—(1) Despite anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, immediately or at such other time as the Court directs if on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures the Court is satisfied that —

(*a*) at the time of the issue of the debentures the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(*b*) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking pari passu if any); and

(*c*) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the

debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

(3) Subsection (1) does not apply in relation to any debenture that is offered to the public for subscription or purchase.

101. to **106.** [*Repealed by S 236/2002*]

Division 5A — [Repealed by S 236/2002]

106A. to **106L.** [*Repealed by S 236/2002*]

Division 6 — [Repealed by S 236/2002]

107. to **120.** [*Repealed by S 236/2002*]

Division 7 — Title and transfers

Nature of shares

121. The shares or other interest of any member in a company is movable property, transferable in the manner provided by the constitution, and is not of the nature of immovable property.

[36/2014]

Numbering of shares

122.—(1) Each share in a company must be distinguished by an appropriate number.

(2) Despite subsection (1) —

(*a*) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or

(*b*) if all the issued shares in a company are evidenced by certificates in accordance with section 123 and each certificate is distinguished by an appropriate number and

that number is recorded in the register of members, none of those shares need have a distinguishing number.

Certificate to be evidence of title

123.—(1) A certificate under the common or official seal of a company specifying any shares held by any member of the company is prima facie evidence of the title of the member to the shares.

(2) Every share certificate must be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the official seal of the company and must state as at the date of the issue of the certificate —

(*a*) the name of the company and the authority under which the company is constituted;

(*b*) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and

(*c*) the class of the shares, whether the shares are fully or partly paid up and the amount (if any) unpaid on the shares.

[36/2014]

(3) Failure to comply with this section does not affect the rights of any holder of shares.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.

Company may have duplicate common seal

124. A company may, if authorised by its constitution, have a duplicate common seal which must be a facsimile of the common seal of the company with the addition on its face of the words "Share Seal" and a certificate under such duplicate seal is deemed to be sealed with the common seal of the company for the purposes of this Act.

[36/2014]

Loss or destruction of certificates

125.—(1) Subject to subsection (2), where a certificate or other document of title to shares or debentures is lost or destroyed, the

company must on payment of a fee not exceeding $2 issue a duplicate certificate or document in lieu thereof to the owner on the owner's application accompanied by —

(*a*) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and

(*b*) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

(2) Where the value of the shares or debentures represented by the certificate or document is greater than $500 the directors of the company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant —

(*a*) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of 14 days after the publication of the advertisement to apply to the company for a duplicate; or

(*b*) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things.

(3) Any duplicate certificate issued on or after 30 January 2006 in respect of a share certificate issued before that date must state, in place of the historical nominal value of the shares, the amount paid on the shares and the amount (if any) unpaid on the shares.

(4) For the purposes of this section in relation to a book-entry security, a reference to an owner therein is to be construed as a reference to the Depository.

[36/2014]

(5) Subsection (2) does not apply to documents evidencing title in relation to listed securities which have been deposited with the Depository and registered in its name or its nominee's name.

[36/2014]

Transfer of shares in private companies

126.—(1) Despite anything in its constitution, a private company must not lodge a transfer of shares unless a proper instrument of transfer has been delivered to the company, but this section does not affect any power to lodge a notice of transfer of shares in respect of any person to whom the right to any shares of the company has been transmitted by operation of law.

[36/2014]

(2) Where there has been a transfer of shares, a private company must lodge with the Registrar notice of that transfer of shares in the prescribed form.

[36/2014]

(3) A transfer of any share in a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

Transfer of debentures in private companies

127. Despite anything in its constitution, a private company must not register a transfer of debentures unless a proper instrument of transfer has been delivered to the company, but this section does not affect any power to register as debenture holder any person to whom the right to any debentures of the company has been transmitted by operation of law.

[36/2014]

Registration of transfer at request of transferor by private companies

128.—(1) Subject to section 129, on the request in writing of the transferor of —

(*a*) any share in a private company — the company must lodge with the Registrar a notice of transfer of shares in the prescribed form; or

(*b*) any debenture or other interest in a private company — the company must enter in such register as the company considers appropriate, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

[36/2014]

(2) The transfer of any share in a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(3) On the request in writing of the transferor of a share or debenture, the private company must by written notice require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to deliver or produce it or them to the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified, and the transfer registered (in the case of a transfer of debenture) or otherwise dealt with.

[36/2014]

(4) If any person refuses or neglects to comply with a notice given under subsection (3), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered or produced as required by the notice.

[36/2014]

(5) Upon appearance of a person so summoned the Court may examine the person upon oath and receive other evidence, or if the person does not appear after being duly served with such summons, the Court may receive evidence in the person's absence and in either case the Court may order the person to deliver such documents to the company upon such terms or conditions as to the Court seem fit, and

the costs of the summons and proceedings thereon are in the discretion of the Court.

[36/2014]

(6) Lists of share certificates or debentures called in under this section and not delivered or produced must be exhibited in the office of the company and must be advertised in such newspapers and at such times as the company thinks fit.

[36/2014]

128A. [*Repealed by Act 36 of 2014*]

Notice of refusal to register transfer by private companies

129.—(1) If a private company refuses to lodge a notice of transfer of any share in the company it must, within 30 days after the date on which the transfer was lodged with it, send to the transferor and the transferee notice of the refusal.

[36/2014]

(2) If a private company refuses to register a transfer of any debenture or other interest in the company it must, within 30 days after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

[36/2014]

(3) Where an application is made to a private company to lodge with the Registrar a notice of transfer in the prescribed form in respect of any share which have been transferred or transmitted to a person by act of parties or operation of law, the company must not refuse to do so by virtue of any discretion in that behalf conferred by the constitution unless it has served on the applicant, within 30 days beginning with the day on which the application was made, a written notice stating the facts which are considered to justify refusal in the exercise of that discretion.

[36/2014]

(4) If default is made in complying with this section, the private company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Transfer of shares and debentures in public companies

130.—(1) Despite anything in its constitution, a public company must not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection does not affect any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

[36/2014]

(2) Where there has been a transfer of shares, a public company may lodge with the Registrar a notice of that transfer of shares in the prescribed form.

[36/2014]

(3) The notice must state —

(*a*) every other transfer of shares effected prior to the date of the notice, other than a transfer that has been previously notified to the Registrar; or

(*b*) the prescribed information in relation to the shares held by each of the 50 members who hold the most number of shares in the public company after the transfer.

[36/2014]

Registration of transfer at request of transferor by public companies

130AA.—(1) On the request in writing of the transferor of any share, debenture or other interest in a public company the company must enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

[36/2014]

(2) On the request in writing of the transferor of a share or debenture the public company must by written notice require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to deliver or produce it or them to the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture

cancelled or rectified and the transfer registered or otherwise dealt with.

[36/2014]

(3) If any person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered or produced as required by the notice.

[36/2014]

(4) Upon appearance of a person so summoned the Court may examine the person upon oath and receive other evidence, or if the person does not appear after being duly served with such summons, the Court may receive evidence in the person's absence and in either case the Court may order the person to deliver such documents to the company upon such terms or conditions as to the Court seem fit, and the costs of the summons and proceedings thereon are in the discretion of the Court.

[36/2014]

(5) Lists of share certificates or debentures called in under this section and not brought in must be exhibited in the office of the company and must be advertised in such newspapers and at such times as the company thinks fit.

[36/2014]

Notice of refusal to register transfer by public companies

130AB.—(1) If a public company refuses to register a transfer of any share, debenture or other interest in the company it must, within 30 days after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

[36/2014]

(2) Where an application is made to a public company for a person to be registered as a member in respect of shares which have been transferred or transmitted to the person by act of parties or operation of law, the company must not refuse registration by virtue of any discretion in that behalf conferred by its constitution unless it has served on the applicant, within 30 days beginning with the day on which the application was made, a written notice stating the facts

which are considered to justify refusal in the exercise of that discretion.

[36/2014]

(3) If default is made in complying with this section, the public company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Transfer by personal representative

130AC.—(1) A transfer of the share, debenture or other interest of a deceased person made by the deceased person's personal representative is, although the personal representative is not himself or herself a member of the company, as valid as if he or she had been such a member at the time of the execution of the instrument of transfer.

[36/2014]

(2) The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person must be accepted by the company, despite anything in its constitution, as sufficient evidence of the grant.

[36/2014]

(3) In this section, "instrument of transfer" includes a written application for transmission of a share, debenture or other interest to a personal representative.

[36/2014]

Certification of prima facie title

130AD.—(1) The certification by a company of any instrument of transfer of shares, debentures or other interests in the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares, debentures or other interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or other interests.

[36/2014]

(2) Where any person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

[36/2014]

(3) Where any certification by a private company is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable —

(*a*) in respect of any transfer of shares after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not been sent to or received by the company under section 126(1) within that period; or

(*b*) in respect of the registration of any transfer of debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

[36/2014]

(4) Where any certification by a public company is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by

the company if the instrument of transfer has not within that period been lodged with the company for registration.

[36/2014]

(5) For the purposes of this section —

(*a*) an instrument of transfer is to be treated as certificated if it bears the words "certificate lodged" or words to the like effect;

(*b*) the certification of an instrument of transfer is to be treated as made by a company if —

(i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person apparently authorised to certificate transfers on the company's behalf or by any officer either of the company or of a corporation so apparently authorised; and

(*c*) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) is deemed to be signed by the person unless it is shown that the signature or initials were not placed there by the person and were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

[36/2014]

Duties of company with respect to issue of certificates and default in issue of certificates

130AE.—(1) Every public company must within 60 days after the allotment of any of its shares or debentures, and within 30 days after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

[36/2014]

(2) Every private company must —

(*a*) within 60 days after the allotment of any of its shares or debentures;

(*b*) within 30 days after the date on which a notice of transfer of shares is lodged with the Registrar under section 126(2) or 128(1)(*a*); and

(*c*) within 30 days after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its debentures is lodged with the company,

complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

[36/2014]

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

(4) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to the person, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application must be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

[36/2014]

Division 7A — [Repealed by Act 36 of 2014]

130A. to **130P.** [*Repealed by Act 36 of 2014*]

Division 8 — Registration of charges

Registration of charges

131.—(1) Subject to this Division, where a charge to which this section applies is created by a company there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the creation of the charge, a statement containing the prescribed particulars of the charge, and if this section is not complied with in relation to the charge the charge is, so far as any security on the company's property or undertaking is thereby conferred, void against the liquidator and any creditor of the company.

[36/2014]

(1A) In connection with the registration of a charge to which this section applies which is created by a company there must be produced to the Registrar, upon the Registrar's request and for the purposes of inspection, at no cost to the Registrar, the instrument (if any) by which the charge is created or evidenced or a certified true copy thereof.

(2) Nothing in subsection (1) affects any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money secured thereby immediately becomes payable.

(3) This section applies to the following charges that are created on or after 3 January 2016:

(*a*) a charge to secure any issue of debentures;

(*b*) a charge on uncalled share capital of a company;

(*c*) a charge on shares of a subsidiary of a company which are owned by the company;

(*d*) a charge created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale;

(*e*) a charge on land wherever situate or any interest therein but not including any charge for any rent or other periodical sum issuing out of land;

(*f*) a charge on book debts of the company;

(*g*) a floating charge on the undertaking or property of a company;

(*h*) a charge on calls made but not paid;

(*i*) a charge on a ship or aircraft or any share in a ship or aircraft;

(*j*) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence to use a trademark, or on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design.

[36/2014]

(3AA) This section also applies to any charge that —

(*a*) was a charge to which this section applied under subsection (3) in force immediately before 3 January 2016; and

(*b*) was created before that date.

[36/2014]

(3AB) Despite subsection (3), a shipowner's lien created by a company on or after 1 October 2018, whether as a charge on book debts of the company or a floating charge on the undertaking or property of the company, is not a charge to which this section applies.

[35/2018]

(3AC) Despite subsection (3) or (3AA), a shipowner's lien created by a company before 1 October 2018, whether as a charge on book debts of the company or a floating charge on the undertaking or property of the company, is a charge to which this section applies only if, as at that date —

(*a*) an order for the winding up of the company has been made;

(*b*) a resolution has been passed for the voluntary winding up of the company; or

(*c*) a creditor of the company has acquired a proprietary right to or an interest in the subject matter of the lien.

[35/2018]

(3A) The reference to a charge on book debts in subsection (3)(*f*) does not include a reference to a charge on a negotiable instrument or on debentures issued by the Government.

(3B) A charge mentioned in subsection (3) does not include a charge created at any time on or after 1 May 2009 to the extent that it is capable of being registered under the International Interests in Aircraft Equipment Act 2009.

[5/2009]

(3C) In subsection (3B), "registered" has the meaning given by section 2(1) of the International Interests in Aircraft Equipment Act 2009.

[5/2009]

(4) Where a charge created in Singapore affects property outside Singapore, the statement containing the prescribed particulars of the charge may be lodged for registration under and in accordance with subsection (1) even though further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(5) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it is sufficient if there is lodged with the Registrar for registration within 30 days after the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

(*a*) the total amount secured by the whole series;

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering instrument (if any) by which the security is created or defined;

(*c*) a general description of the property charged;

(*d*) the names of the trustee (if any) for the debenture holders.

(6) For the purposes of subsection (5), where more than one issue is made of debentures in the series, there must be lodged within 30 days after each issue particulars of the date and amount of each issue, but an omission to do so does not affect the validity of the debentures issued.

(7) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in

consideration of the person (whether absolutely or conditionally) subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any debentures, the particulars required to be lodged under this section must include particulars as to the amount or rate per cent of the commission, allowance or discount so paid or made, but omission to do so does not affect the validity of the debentures issued.

(8) The deposit of any debentures as security for any debt of the company is not for the purposes of subsection (7) to be treated as the issue of the debentures at a discount.

(9) No charge or assignment to which this section applies (except a charge or assignment relating to land) need be filed or registered under any other written law.

(10) Where a charge requiring registration under this section is created before the lapse of 30 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge is not operative and does not have any validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

(11) In this section, "shipowner's lien" means a contractual lien on —

(*a*) sub-freights;

(*b*) sub-hires; or

(*c*) bill of lading freight,

created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter).

[35/2018]

Duty to register charges

132.—(1) Documents and particulars required to be lodged for registration in accordance with section 131 may be lodged for registration in the prescribed manner by the company concerned or by any person interested in the documents, but if default is made in complying with that section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

(2) Where registration is effected by some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by the person on the registration.

Duty of company to register charges existing on property acquired

133.—(1) Where —

(*a*) a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division;

(*b*) a foreign company becomes registered in Singapore and has prior to such registration created a charge which if it had been created by the company while it was registered in Singapore would have been required to be registered under this Division; or

(*c*) a foreign company becomes registered in Singapore and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in Singapore have been required to be registered under this Division,

the company must cause a statement of the prescribed particulars to be lodged with the Registrar for registration within 30 days after the date on which the acquisition is completed or the date of the registration of the company in Singapore, as the case may be.

(2) If default is made in complying with this section, the company or the foreign company and every officer of the company or foreign company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

Register of charges to be kept by Registrar

134.—(1) The Registrar must keep a register of all the charges lodged for registration under this Division and must enter in the register with respect to those charges the following particulars:

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled — such particulars as are required to be contained in a statement furnished under section 131(5);

(*b*) in the case of any other charge —

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company the date of the acquisition of the property;

(ii) the amount secured by the charge;

(iii) a description sufficient to identify the property charged; and

(iv) the name of the person entitled to the charge.

(2) The Registrar must issue a notice to the company concerned of the registration of a charge and the notice is conclusive evidence that the requirements as to registration have been complied with.

(3) Upon the application of the company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the registration of the charge and the certificate is conclusive evidence that the requirements as to registration have been complied with.

Endorsement of certificate of registration on debentures

135.—(1) The company must cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge so registered —

(*a*) a copy of the notice of registration; or

(*b*) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) does not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

Entries of satisfaction and release of property from charge

136.—(1) Where, with respect to any registered charge —

(*a*) the debt for which the charge was given has been paid or satisfied in whole or in part; or

(*b*) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,

the company may lodge with the Registrar in the prescribed form a statement of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be) and the Registrar must enter particulars of that statement in the register.

(2) The statement must be endorsed with a statement by the chargee of the payment, satisfaction, release or ceasing referred to in subsection (1) (as the case may be) and the second-mentioned

statement constitutes sufficient evidence of that payment, satisfaction, release or ceasing.

Extension of time and rectification of register of charges

137. The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a statement of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

Company to keep copies of charging instruments and register of charges

138.—(1) Every company must cause the instrument creating any charge requiring registration under this Division or a copy thereof to be kept at the registered office of the company for as long as the charge to which the instrument relates remains in force, but in the case of a series of debentures the keeping of a copy of one debenture of the series is sufficient for the purposes of this subsection.

[36/2014]

(1A) An instrument creating any charge or a copy thereof, or a copy of the series of debentures, as the case may be, that is required to be kept under subsection (1) —

(*a*) is deemed to form part of the records that are required to be kept under section 199(1); and

(*b*) for the purposes of section 199(2), must be retained by the company for a period of 5 years after —

(i) the date the debt for which the charge was given was paid or satisfied in whole;

(ii) the date the property or undertaking charged was released or ceased to form part of the company's property or undertaking; or

(iii) where both of the events referred to in sub-paragraphs (i) and (ii) occur in any particular case, the later of the dates.

[36/2014]

(2) Every company must keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and (except in the case of securities to bearer) the names of the persons entitled thereto.

(3) The instruments or copies thereof and the register of charges kept pursuant to this section must be open to the inspection of any creditor or member of the company without fee, and the register of charges must also be open to the inspection of any other person on payment of such fee not exceeding $2 for each inspection as is fixed by the company.

(3A) Any person may, on application to a company and on payment of a fee, not exceeding $1 for every page or part thereof, be furnished with a copy of any instrument or debenture kept by the company pursuant to this section within 3 days of the person making the application.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

Documents made out of Singapore

139. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified is, by force of this section, in

relation to an instrument, deed, statement or other document executed or made in a place out of Singapore, extended by 7 days or such further periods as the Registrar may from time to time allow.

Charges, etc., created before 29 December 1967

140. Except as is otherwise expressly provided, this Division applies to any charge that on 29 December 1967 was registrable under any of the repealed written laws but which at that date was not registered under any of those laws.

Application of Division

141. A reference in this Division to a company includes a reference to a foreign company if, and only if, it is registered under Division 2 of Part 11, but nothing in this Division applies to a charge on property outside Singapore of such foreign company.

[36/2014]

PART 5

MANAGEMENT AND ADMINISTRATION

Division 1 — Office and name

Registered office of company

142.—(1) A company must as from the date of its incorporation have a registered office within Singapore to which all communications and notices may be addressed and which must be open and accessible to the public for not less than 3 hours during ordinary business hours on each business day.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Office hours

143.—(1) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, must, in the case of a proposed company, be

lodged with the Registrar together with its constitution, at the time of lodgment for the incorporation of the proposed company and in the case of any subsequent change of the particulars therein be so lodged within 14 days after any such change, but no notice of the days and hours during which the office is open and accessible to the public is required if the office is open for at least 5 hours during ordinary business hours on each business day.

[36/2014]

(1A) In subsection (1), the word "particulars", in relation to the situation of the registered office, includes the address and designation of the situation or address of the registered office.

Penalty

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Publication of name and registration number

144.—(1) The name of a company must appear in legible romanised letters on —

(*a*) its seal, if any; and

(*b*) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company.

[15/2017]

(1A) The registration number of a company must appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.

(1B) A company shall be guilty of an offence if default is made in complying with subsection (1) or (1A).

(2) If an officer of a company or any person on its behalf —

(*a*) uses or authorises the use of any seal purporting to be a seal of the company whereon its name does not so appear;

(*b*) issues or authorises the issue of any business letter, statement of account, invoice or official notice or publication of the company wherein its name is not so mentioned; or

(*c*) signs, issues or authorises to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument or any indorsement, order, receipt or letter of credit wherein its name is not so mentioned,

he or she shall be guilty of an offence, and where he or she has signed, issued or authorised to be signed or issued on behalf of the company any bill of exchange, promissory note or other negotiable instrument or any indorsement thereon or order wherein that name is not so mentioned, he or she shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the company.

Division 2 — Directors and officers

Directors

145.—(1) Every company must have at least one director who is ordinarily resident in Singapore and, where the company only has one member, that sole director may also be the sole member of the company.

(2) No person other than a natural person who has attained the age of 18 years and who is otherwise of full legal capacity may be a director of a company.

[7/2009]

(3) [*Deleted by Act 12 of 2002*]

(4) Any provision in the constitution of a company which was in force immediately before 29 December 1967 and which operated to constitute a corporation as a director of the company is to be read and

construed as if it authorised that corporation to appoint a natural person to be a director of that company.

[36/2014]

(4A) Subject to subsection (5), unless the constitution otherwise provides, a director of a company may resign by giving the company a written notice of his or her resignation.

[36/2014]

(4B) Subject to subsection (5), the resignation of a director is not conditional upon the company's acceptance of his or her resignation.

[36/2014]

(5) Despite anything in this Act or in the constitution of the company, or in any agreement with the company, a director of a company must not resign or vacate his or her office unless there is remaining in the company at least one director who is ordinarily resident in Singapore; and any purported resignation or vacation of office in breach of this subsection is invalid.

[36/2014]

(6) Subsection (5) does not apply where a director of a company is required to resign or vacate his or her office —

(*a*) if the director has not within the period referred to in section 147(1) obtained his or her qualification;

(*b*) by virtue of his or her disqualification or removal or the revocation of his or her appointment as a director (as the case may be) under section 148, 149, 149A, 154, 155, 155A or 155C of this Act, section 50 or 54 of the Banking Act 1970, section 50 or 54 of the Banking Act 1970 as applied by section 55ZJ of that Act, section 46(7) of the Credit Bureau Act 2016, section 47 of the Finance Companies Act 1967, section 64 of the Financial Advisers Act 2001, section 62 or 63 of the Financial Holdings Companies Act 2013, section 48 of the Financial Services and Markets Act 2022, section 35, 36, 88 or 102(2)(*a*)(ii) of the Insurance Act 1966, section 40 of the Monetary Authority of Singapore Act 1970 as in force immediately before the date of commencement of section 205 of the Financial Services and Markets Act 2022, section 35 or 66 of the Payment Services Act 2019,

section 43, 46Z, 81P, 81ZJ, 97, 123Y, 123ZU or 292A of the Securities and Futures Act 2001 and section 14 of the Trust Companies Act 2005; or

[Act 18 of 2022 wef 10/05/2024]

(*c*) if the director, being a director of a Registered Fund Management Company as defined in the Securities and Futures (Licensing and Conduct of Business) Regulations, has been removed by the company as director in accordance with those Regulations.

[36/2014; 27/2016; 4/2017; 31/2017; 2/2019; 1/2020]

(7) If there is a contravention of subsection (1), the Registrar may, either of the Registrar's own motion or on the application of any person, direct the members of the company to appoint a director who is ordinarily resident in Singapore if the Registrar considers it to be in the interests of the company for such appointment to be made.

(8) If the direction under subsection (7) is not complied with, each member in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part thereof during which the offence continues after conviction.

(9) If there is a contravention of subsection (1) and —

(*a*) the Registrar fails to give the direction under subsection (7); or

(*b*) such direction has been given but is not complied with,

the Court may, on the application of the Registrar or any person, order the members of the company to make the appointment if it considers it to be in the interests of the company for such appointment to be made.

[40/2019]

(10) If a company carries on business without having at least one director who is ordinarily resident in Singapore for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months —

(*a*) is a member of the company; and

(*b*) knows that it is carrying on business in that manner,

shall be liable for the payment of all the debts of the company contracted during the period or that part of the period (as the case may be), and may be sued therefor.

Acting as nominee director

145A.—(1) Subject to subsection (2), a person must not, on or after the appointed day, act as a nominee director of a company by way of business, unless —

(*a*) the person is a registered corporate service provider for providing the corporate service of acting, or arranging for another person to act as a director of a corporation; or

(*b*) his or her so acting is arranged by a registered corporate service provider for that corporate service.

(2) Subsection (1) does not apply where —

(*a*) the person acts as a nominee director of his or her affiliated company; or

(*b*) the person had commenced acting as a nominee director of the company before the appointed day.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

(4) In this section —

"affiliated company", in relation to a person, means —

(*a*) a company that employs the person; or

(*b*) a company which by virtue of section 6 is deemed to be related to a corporation that employs the person;

"appointed day" means the date of commencement of section 38(*b*) of the Corporate Service Providers Act 2024;

"nominee director" means a director who is accustomed or under an obligation whether formal or informal to act in

accordance with the directions, instructions or wishes of any other person.

[Act 22 of 2024 wef 09/06/2025]

Restrictions on appointment or advertisement of director

146.—(1) A person must not be named as a director or proposed director in —

(*a*) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of a company; or

(*b*) the register of directors, chief executive officers and secretaries of a company,

unless, before —

(*c*) the incorporation of the company; or

(*d*) the filing of any return in the prescribed form containing the particulars required to be specified in the register of directors, chief executive officers and secretaries,

as the case may be, the person has complied with the conditions set out in subsection (1A).

[36/2014]

(1A) The conditions to be complied with by a person referred to in subsection (1) are the following:

(*a*) the person has, by himself or herself or through a registered qualified individual authorised by him or her, filed with the Registrar —

(i) a declaration that he or she has consented to act as a director;

(ii) a statement in the prescribed form that he or she is not disqualified from acting as a director under this Act; and

(iii) a statement in the prescribed form that he or she is not debarred under section 155B from acting as director of the company;

(*b*) the person has, by himself or herself or through a registered qualified individual authorised by him or her —

(i) filed with the Registrar a declaration that the person has agreed to take a number of shares of the company that is not less than the person's qualification, if any;

(ii) filed with the Registrar an undertaking that the person will take from the company and pay for his or her qualification shares, if any;

(iii) filed with the Registrar a declaration that a specified number of shares, not less than the person's qualification (if any), has been registered in the person's name; or

(iv) in the case of a company formed or intended to be formed by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations, filed with the Registrar a declaration that —

(A) the person was a shareholder in that other corporation or in one or more of the corporations of that group; and

(B) as a shareholder the person will be entitled to receive and have registered in his or her name a number of shares not less than his or her qualification, by virtue of the terms of an agreement relating to the reconstruction.

[36/2014]

(2) Where a person has undertaken to the Registrar under subsection (1A)(*b*)(ii) to take and pay for the person's qualification shares, the person is, as regards those shares, in the same position as if the person had signed the constitution for that number of shares.

[36/2014]

(3) Subsections (1) and (2) (other than the provisions relating to the signing of a consent to act as director) do not apply to —

(*a*) a company not having a share capital;

(*b*) a private company; or

(*c*) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company or to a constitution adopted by a company after the expiration of one year from the date on which the company was entitled to commence business.

[36/2014]

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty.

(5) The restrictions in this section on a director or proposed director of a company incorporated under this Act in relation to a prospectus apply in the same manner and extent to a director or proposed director of a foreign company as if the references in subsections (1) and (4) to a company included references to a foreign company.

Qualification of director

147.—(1) Without affecting the operation of sections 145 and 146, every director, who is by the constitution required to hold a specified share qualification and who is not already qualified, must obtain his or her qualification within 2 months after his or her appointment or such shorter period as is fixed by the constitution.

[36/2014]

(2) Unless otherwise provided by the constitution, the qualification of any director of a company must be held by him or her solely and not as one of several joint holders.

[36/2014]

(3) A director must vacate his or her office if he or she has not within the period referred to in subsection (1) obtained his or her qualification or if after so obtaining it he or she ceases at any time to hold his or her qualification.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000 and also to a default penalty.

(5) A person vacating office under this section is incapable of being re-appointed as director until the person has obtained his or her qualification.

Restriction on undischarged bankrupt

148.—(1) Every person who, being an undischarged bankrupt (whether the person was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the permission of the Court or the written permission of the Official Assignee, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(2) On an application by an undischarged bankrupt under subsection (1) to the Court or the Official Assignee (as the case may be) the Court or the Official Assignee may refuse the application or approve the application subject to such condition as the Court or the Official Assignee (as the case may be) may impose.

(3) The Court must not give permission under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Assignee and the Minister and the Official Assignee or either of them may be represented at the hearing of and may oppose the granting of the application.

[Act 25 of 2021 wef 01/04/2022]

(4) Any person who has been granted permission by the Court or written permission by the Official Assignee under subsection (1) must, within 14 days after the issue of the Court order or written permission, lodge a copy of the order or written permission with the Registrar.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

Disqualification of unfit directors of insolvent companies

149.—(1) The Court may —

(*a*) on the application of the Minister or the Official Receiver as provided for in subsection (9); and

(*b*) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or taking part in, the management of a company, during such period not exceeding 5 years after the date of the order as is specified in the order (called in this section a disqualification order).

(2) The Court must make a disqualification order under subsection (1) if it is satisfied that —

(*a*) the person against whom the order is sought has been given not less than 14 days' notice of the application; and

(*b*) in respect of the person —

(i) he or she is or has been a director of a company which has at any time gone into liquidation (whether while he or she was a director or within 3 years of his or her ceasing to be a director) and was insolvent at that time; and

(ii) his or her conduct as director of that company either taken alone or taken together with his or her conduct as a director of any other company or companies makes him or her unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a company.

(3) If in the case of a person who is or has been a director of a company which is —

(*a*) being wound up by the Court, it appears to the Official Receiver or to the liquidator (if the liquidator is not the Official Receiver); or

(*b*) being wound up otherwise than as mentioned in paragraph (*a*), it appears to the liquidator,

that the conditions mentioned in subsection (2)(*b*) are satisfied as respects that person, the Official Receiver or the liquidator (as the case may be) must immediately report the matter to the Minister.

(4) The Minister may require the Official Receiver or the liquidator or the former liquidator of a company —

(*a*) to furnish the Minister with such information with respect to any person's conduct as a director of the company; and

(*b*) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister may reasonably require for the purpose of determining whether to exercise, or of exercising, any of the Minister's functions under this section; and if default is made in complying with that requirement the Court may, on the application of the Minister, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(*a*) a company has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

(ii) where a provisional liquidator was appointed under section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018, at the time when the declaration made under that subsection was lodged with the Registrar; and

(iii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(*b*) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of that expression in section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018,

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

[40/2018]

(6) In deciding whether a person's conduct as a director of any particular company or companies makes him or her unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)(*b*), the Court must in relation to his or her conduct as a director of that company or (as the case may be) each of those companies have regard, generally to the matters referred to in paragraph (*a*), and, in particular, to the matters referred to in paragraph (*b*), even though the director has not been convicted or may be criminally liable in respect of any of these matters —

(*a*) as to —

(i) whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;

(ii) whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;

(iii) the extent of the director's responsibility for any failure by the company to comply with sections 138, 190, 191, 196B, 197, 199 and 201; and

(*b*) as to —

(i) the extent of the director's responsibility for the causes of the company becoming insolvent;

(ii) the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

(iii) the extent of the director's responsibility for the company entering into any transaction liable to be set

aside under section 130(1) of the Insolvency, Restructuring and Dissolution Act 2018;

(iv) whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

[36/2014; 40/2018]

(7) The Minister may, by notification in the *Gazette*, add to, vary or amend the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

(8) In this section, "company" includes a corporation and a foreign company but does not include a partnership or association to which Division 1 of Part 10 of the Insolvency, Restructuring and Dissolution Act 2018 applies.

[40/2018]

(9) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section is to be made by the Official Receiver but in any other case an application is to be made by the Minister.

(9A) On a hearing of an application under this section —

(*a*) the Minister or the Official Receiver (as the case may be) must appear and call the attention of the Court to any matter which appears to him or her to be relevant (and for this purpose the Minister may be represented) and may give evidence or call witnesses; and

(*b*) the person against whom an order is sought may appear and himself or herself give evidence or call witnesses.

(10) This section does not apply unless the company mentioned in subsection (2)(*b*) has gone into insolvent liquidation on or after 15 August 1984 and the conduct to which the Court is to have regard does not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as judicial manager, receiver or receiver manager shall not be liable to have a disqualification order made against the person in respect of acts done in the person's capacity as judicial manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(13) Nothing in this section prevents a person who is disqualified pursuant to an order made under subsection (1) from applying for permission of the Court to be concerned in or take part in the management of a company.

[Act 25 of 2021 wef 01/04/2022]

(14) On the hearing of an application made under subsection (13) or (15), the Minister or the Official Receiver must appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him or her to be relevant to the application and may himself or herself give evidence or call witnesses.

(15) Any right to apply for permission of the Court to be concerned or take part in the management of a company that was subsisting immediately before 23 March 1990 is, after that date, to be treated as subsisting by virtue of the corresponding provision made under this section.

[Act 25 of 2021 wef 01/04/2022]

Disqualification of directors of companies wound up on grounds of national security or interest

149A.—(1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court under section 125(1)(*n*) of the Insolvency, Restructuring and Dissolution Act 2018 on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, make an order (called in this section a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking

part in, the management of any company or foreign company for a period of 3 years from the date of the making of the winding up order.
[40/2018]

(2) The Court must not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister's application for the order.

(3) The Court must not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

(*a*) the company had been used for purposes against national security or interest without his or her consent or connivance; and

(*b*) he or she had exercised such diligence to prevent the company from being so used as he or she ought to have exercised having regard to the nature of his or her function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) In this section, "foreign company" means a foreign company to which Division 2 of Part 11 applies.

Appointment of directors by ordinary resolution

149B. Unless the constitution otherwise provides, a company may appoint a director by ordinary resolution passed at a general meeting.
[36/2014]

Appointment of directors to be voted on individually

150.—(1) At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution must not be made unless a resolution that it may be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed pursuant to a motion made in contravention of this section is void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment is to apply.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment is to be treated as a motion for the person's appointment.

(5) Nothing in this section —

(*a*) applies to a resolution altering the company's constitution;

(*b*) prevents the election of 2 or more directors by ballot or poll.

[36/2014]

Validity of acts of directors and officers

151. The acts of a director or chief executive officer or secretary are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

[36/2014]

Removal of directors

152.—(1) A public company may by ordinary resolution remove a director before the expiration of his or her period of office, despite anything in its constitution or in any agreement between it and the director but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove the director does not take effect until the director's successor has been appointed.

[36/2014]

(2) Special notice is required of any resolution to remove a director of a public company under subsection (1) or to appoint some person in place of a director so removed at the meeting at which the director is removed, and on receipt of notice of an intended resolution to remove a director under subsection (1) the company must

immediately send a copy thereof to the director concerned, and the director, whether or not he or she is a member of the company, is entitled to be heard on the resolution at the meeting.

[36/2014]

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the public company, not exceeding a reasonable length, and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so —

(*a*) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,

and if a copy of the representations is not so sent because they were received too late or because of the company's default the director may, without affecting the director's right to be heard orally, require that the representations must be read out at the meeting.

[36/2014]

(4) Despite subsections (1), (2) and (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the public company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, even though the director is not a party to the application.

[36/2014]

(5) A vacancy created by the removal of a director of a public company under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

[36/2014]

(6) A person appointed director of a public company in place of a person removed under this section is to be treated, for the purpose of

determining the time at which he or she or any other director is to retire, as if he or she had become a director on the day on which the person in whose place he or she is appointed was last appointed a director.

[36/2014]

(7) Nothing in subsections (1) to (6) is to be taken as depriving a person removed as a director of a public company thereunder of compensation or damages payable to him or her in respect of the termination of his or her appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

[36/2014]

(8) A director of a public company must not be removed by, or be required to vacate his or her office by reason of, any resolution, request or notice of the directors or any of them despite anything in the constitution or any agreement.

[36/2014]

(9) Subject to any provision to the contrary in the constitution, a private company may by ordinary resolution remove a director before the expiration of his or her period of office despite anything in any agreement between the private company and the director.

[36/2014]

153. [*Repealed by Act 36 of 2014*]

Disqualification to act as director on conviction of certain offences

154.—(1) A person is subject to the disqualifications provided in subsection (3) if —

(*a*) the person is convicted of any of the following offences:

(i) any offence, whether in Singapore or elsewhere, involving fraud or dishonesty punishable with imprisonment for 3 months or more;

(ii) any offence under Part 12 of the Securities and Futures Act 2001, where the conviction was on or after 1 July 2015; or

(*b*) the person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act 2001 on or after 1 July 2015.

[36/2014; 15/2017]

(2) The court may, in addition to any other sentence imposed, make a disqualification order against any person who is convicted in Singapore of any of the following offences:

(*a*) any offence in connection with the formation or management of a corporation;

(*b*) any offence under section 157 or 396B;

(*c*) any offence under section 237 or 239 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(3) Subject to any permission which the Court may give pursuant to an application under subsection (6), a person who —

(*a*) is disqualified under subsection (1); or

(*b*) has had a disqualification order made against him or her under subsection (2),

must not act as a director, or take part (whether directly or indirectly) in the management of a company, or of a foreign company to which Division 2 of Part 11 applies, during the period of the disqualification or disqualification order.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(4) The disqualifications in subsection (3) —

(*a*) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1) or (2) but has not been sentenced to imprisonment — take effect upon conviction and continue for a period of 5 years or for such shorter period as the court may order under subsection (2);

(*b*) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1) or (2) and has been sentenced to imprisonment — take effect upon conviction and continue for a period of 5 years after his or her release from prison; or

(*c*) in a case where the disqualified person is subject, on or after 1 July 2015, to the imposition of a civil penalty under section 232 of the Securities and Futures Act 2001 — take effect upon the imposition of the civil penalty and continue for a period of 5 years after the imposition of the civil penalty.

[36/2014; 15/2017]

(5) A person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(6) A person who —

(*a*) is disqualified under subsection (1); or

(*b*) has had a disqualification order made against him or her under subsection (2),

may apply to the Court for permission to act as a director, or to take part (whether directly or indirectly) in the management of a company, or of a foreign company to which Division 2 of Part 11 applies, during the period of the disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of his or her intention to apply for such permission.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(7) On the hearing of any application under subsection (6), the Minister may be represented at the hearing and may oppose the granting of the application.

[36/2014]

(8) Without affecting section 409, a District Court may make a disqualification order under this section.

(9) Any right to apply for permission of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 12 November 1993 is on or after that date to be treated as subsisting by virtue of the corresponding provision made under this section.

[Act 25 of 2021 wef 01/04/2022]

Disqualification for persistent default in relation to delivery of documents to Registrar

155.—(1) Where a person has been persistently in default in relation to relevant requirements of this Act and that person, within a period of 5 years after the person has last been adjudged guilty of any offence or has had made against the person an order under section 13 or 399 in relation to any such relevant requirements of this Act, without the permission of the Court, is a director or promoter of, or is in any way directly or indirectly concerned or takes part in the management of a company, that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 25 of 2021 wef 01/04/2022]

(2) Any provision of this Act which requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar is a relevant requirement of this Act for the purposes of this section.

(3) For the purposes of this section, the fact that a person has been persistently in default in relation to relevant requirements of this Act may, subject to subsection (8), be conclusively proved by showing that, within a period of 5 years, the person has been adjudged guilty of 3 or more offences in relation to any such requirements or has had 3 or more orders made against the person under section 13 or 399 in relation to those requirements.

(4) A person is to be treated as being adjudged guilty of 3 or more offences in relation to any such relevant requirements of this Act for the purpose of subsection (3) if the person is convicted of any 3 or more offences by virtue of any contravention of, or failure to comply with, any such requirements (whether on the person's own part or on the part of any company).

(5) For the purpose of this section, a conviction for an offence under section 154(2)(*a*) is not to be treated as an offence in relation to a relevant requirement of this Act.

(6) Where a person has had a third or subsequent order made against the person under section 13 or 399 and by virtue of the operation of this section that person is disqualified from being a

director or promoter of or from being in any way directly or indirectly concerned or taking part in the management of a company, nothing in this section is to be construed as preventing that person from complying with the order of the Court and for this purpose that person is deemed to have the same status, powers and duties as that person had at the time the act, matter or thing should have been done.

(7) For the purpose of this section, a certificate of the Registrar stating that a person has been adjudged guilty of 3 or more offences or has had made against the person 3 or more orders under section 13 or 399 in relation to the requirements of this Act shall in all courts be received as prima facie evidence of the facts stated therein.

(8) No account is to be taken for the purposes of this section of any offence which was committed or, in the case of a continuing offence, began before 15 May 1984.

(9) A person intending to apply for permission of the Court under this section must give to the Minister not less than 14 days' notice of the person's intention so to apply.

[Act 25 of 2021 wef 01/04/2022]

(10) On the hearing of any application under this section, the Minister may be represented and may oppose the granting of the application.

(11) In this section, company includes an unregistered company within the meaning of section 245(1) of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

Disqualification for being director in not less than 3 companies which were struck off within 5-year period

155A.—(1) A person who —

(*a*) had been a director of 3 or more companies which names had been struck off the register under section 344(4) read with section 344(1) within a period of 5 years; and

(*b*) was, at the time the name of each company mentioned in paragraph (*a*) was struck off the register under section 344(4) read with section 344(1), a director of the company,

must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any company or any foreign company to which Division 2 of Part 11 applies for the period specified in subsection (1A).

[Act 17 of 2023 wef 01/07/2023]

(1A) The period mentioned in subsection (1) is —

(*a*) where the person had previously been disqualified under this section (whether before, on or after the date of commencement of section 5 of the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act 2023) from acting as director of, or taking part in or being concerned in the management of, any company or any foreign company to which Division 2 of Part 11 applies, 5 years after the date on which the name (or names) of the last of the companies mentioned in subsection (1)(*a*) was (or were) struck off the register; or

(*b*) in any other case, 3 years after the date on which the name (or names) of the last of the companies mentioned in subsection (1)(*a*) was (or were) struck off the register.

[Act 17 of 2023 wef 01/07/2023]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(3) A person who is subject to a disqualification under subsection (1) may apply for permission to act as director of, or to take part in or be concerned in the management of, a company or a foreign company to which Division 2 of Part 11 applies during the period of disqualification to —

(*a*) the Registrar; or

(*b*) the Court, upon giving the Minister not less than 14 days' notice of the person's intention to apply for such permission.

[Act 17 of 2023 wef 01/07/2023]

(3A) An application under subsection (3)(*b*) cannot be made if an application has been made to the Registrar under subsection (3)(*a*) and the decision of the Registrar on the application is pending.

[Act 17 of 2023 wef 01/07/2023]

(3B) An application under subsection (3)(*a*) may be granted by the Registrar if the Registrar, having regard to such considerations as may be prescribed, thinks fit to do so.

[Act 17 of 2023 wef 01/07/2023]

(3C) An application under subsection (3)(*b*) may be granted by the Court if the Court thinks fit to do so.

[Act 17 of 2023 wef 01/07/2023]

(4) On the hearing of any application under this section, the Minister may be represented at the hearing and may oppose the granting of the application.

[36/2014]

(5) [*Deleted by Act 17 of 2023 wef 01/07/2023*]

Debarment for default of relevant requirement of this Act

155B.—(1) Where the Registrar is satisfied that a company is in default in relation to a relevant requirement of this Act, the Registrar may make a debarment order against any person who, at the time the order is made, is a director or secretary of the company.

[36/2014]

(2) Subject to subsection (3), a person who has a debarment order made against him or her must not —

(*a*) except in respect of a company of which the person is a director immediately before the order was made — act as director of any company; or

(*b*) except in respect of a company of which the person is a secretary immediately before the order was made — act as secretary of any company.

[36/2014]

(3) The debarment order applies from the date that the order is made and continues in force until the Registrar cancels or suspends the order.

[36/2014]

(4) The Registrar may, upon the application of a person who has a debarment order made against the person or on the Registrar's own accord, cancel or suspend such debarment order where the default in relation to the relevant requirements of this Act as at the time the debarment order is made has been rectified or on such other ground as may be prescribed, subject to such conditions as the Registrar may impose.

[36/2014]

(5) Where the Registrar imposes conditions on the suspension of a debarment order under subsection (4), the suspension of the debarment order operates so long as that person fulfils and continues to fulfil all such conditions imposed by the Registrar.

[36/2014]

(6) The Registrar must not make a debarment order under subsection (1) —

(*a*) unless the default in relation to a relevant requirement of this Act has persisted for a continuous period of 3 months or more and the person was a director or secretary of the company during that period; and

(*b*) unless the Registrar has, not less than 14 days before the order is made, sent the director or secretary concerned a notice of the Registrar's intention to make a debarment order under subsection (1) specifying the default in relation to the relevant requirement of this Act for which the debarment order is proposed to be made and giving the director or secretary an opportunity to show cause why the debarment order should not be made.

[36/2014]

(7) The Registrar must, in determining whether to make a debarment order, consider any representation from the director or secretary made pursuant to the notice under subsection (6)(*b*).

[36/2014]

(8) Any person who is aggrieved by a debarment order made under subsection (1), or the Registrar's refusal to cancel or suspend a debarment order under subsection (4), may appeal to the Minister.

[36/2014]

(9) An appeal under subsection (8) does not suspend the effect of the debarment order.

[36/2014]

(10) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(11) The Registrar may from time to time prepare and publish, in such form and manner as the Registrar may decide, the names and particulars of the persons against whom a debarment order has been made and which continues in force.

[36/2014]

(12) In this section —

"debarment order" means a debarment order made under subsection (1);

"relevant requirement of this Act" has the meaning given by section 155(2);

"secretary" means a secretary of the company appointed under section 171.

[36/2014]

Disqualification under Limited Liability Partnerships Act 2005

155C.—(1) Subject to any permission which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification or disqualification order under section 59, 60 or 61 of the Limited Liability Partnerships Act 2005 must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any company or any foreign company to which Division 2 of Part 11 applies during the period of disqualification or disqualification order.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

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

$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(3) A person who is subject to a disqualification or disqualification order under section 59 or 61 of the Limited Liability Partnerships Act 2005 may apply to the Court for permission to act as director of, or to take part in or be concerned in the management of, a company or a foreign company to which Division 2 of Part 11 applies during the period of disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of the person's intention to apply for such permission.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.

[36/2014]

Disqualification under VCC Act

155D.—(1) Subject to any permission which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification or disqualification order under section 56, 57, 58, 59 or 60 of the VCC Act must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any company or any foreign company to which Division 2 of Part 11 applies during the period of the disqualification or disqualification order.

[44/2018; 28/2019]

[Act 25 of 2021 wef 01/04/2022]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[44/2018]

(3) A person who is subject to a disqualification or disqualification order mentioned in sections 56, 58, 59 and 60 of the VCC Act may apply to the Court for permission to act as director of, or to take part in or be concerned in the management of, a company or a foreign

company to which Division 2 of Part 11 applies during the period of the disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of the person's intention to apply for such permission.

[44/2018; 28/2019]

[Act 25 of 2021 wef 01/04/2022]

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.

[44/2018]

Debarment under VCC Act

155E.—(1) A person who has a debarment order made against him or her under section 59 of the VCC Act must not —

(*a*) except in respect of a company of which the person is a director immediately before the order was made — act as director of any company; or

(*b*) except in respect of a company of which the person is a secretary immediately before the order was made — act as secretary of any company.

[28/2019]

(2) Subsection (1) applies from the date that the debarment order is made until such time as the Registrar cancels or suspends the order.

[28/2019]

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[28/2019]

Disclosure of interests in transactions, property, offices, etc.

156.—(1) Subject to this section, every director or chief executive officer of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company must as soon as is practicable after the relevant facts have come to his or her knowledge —

(*a*) declare the nature of his or her interest at a meeting of the directors of the company; or

(*b*) send a written notice to the company containing details on the nature, character and extent of his or her interest in the transaction or proposed transaction with the company.

[36/2014]

(2) A notice under subsection (1)(*b*) must be given as soon as is practicable after —

(*a*) the date on which the director or chief executive officer became a director or chief executive officer (as the case may be); or

(*b*) (if already a director or chief executive officer, as the case may be) the date on which the director or chief executive officer became, directly or indirectly, interested in a transaction or proposed transaction with the company,

as the case requires.

[36/2014]

(3) The requirements of subsection (1) do not apply in any case where the interest of the director or chief executive officer (as the case may be) consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the firstmentioned company if the interest of the director or chief executive officer (as the case may be) may properly be regarded as not being a material interest.

[36/2014]

(4) A director or chief executive officer of a company is not deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

(*a*) in the case where the transaction or proposed transaction relates to any loan to the company — that he or she has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(*b*) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is

deemed to be related to the company — that he or she is a director or chief executive officer (as the case may be) of that corporation,

and this subsection has effect not only for the purposes of this Act but also for the purposes of any other law, but does not affect the operation of any provision in the constitution of the company.

[36/2014]

(5) A declaration given by a director or chief executive officer under subsection (1)(*a*), or a written notice given by a director or chief executive officer under subsection (1)(*b*), is to be treated as a sufficient declaration or written notice under those provisions in relation to a transaction or proposed transaction if —

(*a*) in the case of a declaration, the declaration is given at a meeting of the directors or the director or chief executive officer (as the case may be) takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given;

(*b*) the declaration or written notice is to the effect that —

(i) he or she is an officer or a member of a specified corporation, a member of a specified firm, or a partner or officer of a specified limited liability partnership; and

(ii) he or she is to be regarded as interested in any transaction which may, after the date of the declaration or written notice, be made with the specified corporation, firm or limited liability partnership;

(*c*) the declaration or written notice specifies the nature and extent of his or her interest in the specified corporation, firm or limited liability partnership; and

(*d*) at the time any transaction is made with the specified corporation, firm or limited liability partnership, his or her interest is not different in nature or greater in extent than

the nature and extent specified in the declaration or written notice.

[36/2014]

(6) Every director and chief executive officer of a company who holds any office or possess any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with their duties or interests as director or chief executive officer (as the case may be) must —

(*a*) declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict; or

(*b*) send a written notice to the company setting out the fact and the nature, character and extent of the conflict.

[36/2014]

(7) A declaration under subsection (6)(*a*) must be made at the first meeting of the directors of the company held —

(*a*) after he or she becomes a director or chief executive officer (as the case may be); or

(*b*) (if already a director or chief executive officer, as the case may be) after he or she commenced to hold the office or to possess the property,

as the case requires.

[36/2014]

(8) A written notice under subsection (6)(*b*) must be given as soon as is practicable after —

(*a*) the date on which the director or chief executive officer became a director or chief executive officer (as the case may be); or

(*b*) (if already a director or chief executive officer, as the case may be) after he or she commenced to hold the office or to possess the property,

as the case requires.

[36/2014]

(9) The company must, as soon as practicable after the receipt of the written notice mentioned in subsection (1)(*b*) or (6)(*b*), send a copy of the notice to —

(*a*) in the case where the notice is given by a chief executive officer — all the directors; or

(*b*) in the case where the notice is given by a director — all the other directors.

[36/2014]

(10) Where a chief executive officer or a director of the company declares an interest or conflict by a written notice mentioned in subsection (1)(*b*) or (6)(*b*) (respectively) in accordance with this section —

(*a*) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given; and

(*b*) the provisions of section 188 (minutes of proceedings) apply as if the declaration had been made at that meeting.

[36/2014]

(11) The secretary of the company must record every declaration under this section in the minutes of the meeting at which it was made and keep records of every written resolution duly signed and returned to the company under this section.

[36/2014]

(12) The directors of a company must permit a chief executive officer of the company who is not a director to attend a meeting of the board of directors where such attendance is necessary for the chief executive officer to make a declaration for the purpose of complying with this section.

[36/2014]

(13) For the purposes of this section —

(*a*) an interest of a member of a director's family is treated as an interest of the director and the words "member of a director's family" include his or her spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter; and

(*b*) an interest of a member of a chief executive officer's family is treated as an interest of the chief executive officer and the words "member of the chief executive officer's

family" include his or her spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

[36/2014]

(14) Subject to subsection (4), this section is in addition to and not in derogation of the operation of any rule of law or any provision in the constitution restricting a director or chief executive officer from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as a director or chief executive officer (as the case may be).

[36/2014]

(15) Any director or chief executive officer of a company who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[36/2014]

As to the duty and liability of officers

157.—(1) A director must at all times act honestly and use reasonable diligence in the discharge of the duties of his or her office.

(2) An officer or agent of a company must not make improper use of his or her position as an officer or agent of the company or any information acquired by virtue of his or her position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the company.

[36/2014]

(3) An officer or agent who commits a breach of any of the provisions of this section shall be —

(*a*) liable to the company for any profit made by him or her or for any damage suffered by the company as a result of the breach of any of those provisions; and

(*b*) guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

"officer" includes a person who at any time has been an officer of the company;

"agent" includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company.

Powers of directors

157A.—(1) The business of a company is to be managed by, or under the direction or supervision of, the directors.

[36/2014]

(2) The directors may exercise all the powers of a company except any power that this Act or the constitution of the company requires the company to exercise in general meeting.

[36/2014]

Director declarations where company has one director

157B. Where a company only has one director, that director may make a declaration required or authorised to be made under this Act by recording the declaration and signing the record; and such recording and signing of the declaration satisfies any requirement in this Act that the declaration be made at a meeting of the directors.

Use of information and advice

157C.—(1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

(*a*) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(*b*) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;

(*c*) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) applies to a director only if the director —

(*a*) acts in good faith;

(*b*) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(*c*) has no knowledge that such reliance is unwarranted.

Disclosure of company information by certain directors

158.—(1) A director of a company may disclose information which the director has in his or her capacity as a director or an employee of a company, being information that would not otherwise be available to him or her, to the persons specified in subsection (2) if such disclosure is not likely to prejudice the company and is made with the authorisation of the board of directors.

[36/2014]

(2) The information referred to in subsection (1) may be disclosed to —

(*a*) a person whose interests the director represents; or

(*b*) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties.

(3) The authorisation mentioned in subsection (1) may be conferred in respect of disclosure of —

(*a*) all or any class of information; or

(*b*) only such information as may be specified in the authorisation.

[36/2014]

Power of directors to have regard to interest of its employees, members and rulings of Securities Industry Council

159. The matters to which the directors of a company are entitled to have regard in exercising their powers include —

(*a*) the interests of the company's employees generally, as well as the interests of its members; and

(*b*) the rulings of the Securities Industry Council on the interpretation of the principles and rules of and the practice to be followed under the Singapore Code on Take-overs and Mergers.

Approval of company required for disposal by directors of company's undertaking or property

160.—(1) Despite anything in a company's constitution, the directors must not carry into effect any proposals for disposing of the whole or substantially the whole of the company's undertaking or property unless those proposals have been approved by the company in general meeting.

[36/2014]

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) is, in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention, as valid as if that subsection had been complied with.

(4) This section does not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or a liquidator of a company appointed in a voluntary winding up.

160A. [*Repealed by Act 38 of 1998*]

160B. [*Repealed by Act 38 of 1998*]

160C. [*Repealed by Act 38 of 1998*]

160D. [*Repealed by Act 38 of 1998*]

Approval of company required for issue of shares by directors

161.—(1) Despite anything in a company's constitution, the directors must not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.
[36/2014]

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section continues in force until —

(*a*) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or

(*b*) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares even though an approval for the purposes of this section has ceased to be in force if the shares are issued pursuant to an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 186 applies to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section is void and consideration given for the shares is recoverable accordingly.

(7) Any director who knowingly contravenes, or permits or authorises the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the

person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs may be commenced after the expiration of 2 years from the date of the issue.

Loans and quasi-loans to directors, credit transactions and related arrangements

162.—(1) For the purposes of this section, a company makes a restricted transaction if it —

(*a*) makes a loan or quasi-loan to a director —

(i) of the company; or

(ii) of a company which by virtue of section 6 is deemed to be related to that company,

(called in this section a relevant director);

(*b*) enters into any guarantee or provides any security in connection with a loan or quasi-loan made to a relevant director by any other person;

(*c*) enters into a credit transaction as creditor for the benefit of a relevant director;

(*d*) enters into any guarantee or provides any security in connection with a credit transaction entered into by any person for the benefit of a relevant director;

(*e*) takes part in an arrangement under which —

(i) another person enters into a transaction that, if it had been entered into by the company, would have been a restricted transaction under paragraph (*a*), (*b*), (*c*), (*d*) or (*f*); and

(ii) that person, pursuant to the arrangement, obtains a benefit from the company or a company which by virtue of section 6 is deemed to be related to that company; or

(*f*) arranges the assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have been a restricted transaction under paragraphs (*a*) to (*e*).

[36/2014]

(2) Subject to subsections (3) and (4) and sections 163A and 163B, a company (other than an exempt private company) must not make a restricted transaction.

[36/2014]

(3) Subject to subsection (4), nothing in this section applies to any transaction which would otherwise be a restricted transaction that is —

(*a*) made to or for the benefit of a relevant director to meet expenditure incurred or to be incurred by him or her for the purposes of the company or for the purpose of enabling him or her to properly perform his or her duties as an officer of the company;

(*b*) made to or for the benefit of a relevant director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to the company, as the case may be, for the purpose of purchasing or otherwise acquiring a home occupied or to be occupied by the director, except that not more than one such restricted transaction may be outstanding at any time;

(*c*) made to or for the benefit of a relevant director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to that company (as the case may be) where the company has at a general meeting approved of a scheme for the making of such transaction to or for the benefit of employees of the company and the restricted transaction is in accordance with that scheme; or

(*d*) made to or for the benefit of a relevant director in the ordinary course of business of a company whose ordinary business includes the lending of money or the giving of

guarantees in connection with loans, quasi-loans or credit transactions made or entered into by other persons if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

[36/2014]

(4) Subsection (3)(*a*) or (*b*) does not authorise the making of any restricted transaction, except —

(*a*) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount or extent of the restricted transaction are disclosed; or

(*b*) on condition that, if the prior approval of the company is not given as aforesaid at or before the next following annual general meeting, the amount of or liability under the restricted transaction must be repaid or discharged (as the case may be) within 6 months from the conclusion of that meeting.

[36/2014]

(5) Where the prior approval of the company is not given as required by the condition mentioned in subsection (4)(*b*), the directors authorising the making of the restricted transaction are jointly and severally liable to indemnify the company against any loss arising therefrom.

[36/2014]

(6) Where a company contravenes this section, any director who authorises the making of the restricted transaction shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years.

[36/2014]

(7) Nothing in this section operates to prevent the company from recovering the amount of any loan, quasi-loan, credit transaction or arrangement or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

[36/2014]

(8) For the purpose of subsection (1), a reference to a director or relevant director therein includes a reference to the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

[36/2014]

(9) In determining for the purposes of this section whether a transaction is a restricted transaction under subsection (1)(*e*), the transaction is to be treated as having been entered into on the date of the arrangement.

[36/2014]

(10) For the purposes of this section, a reference to prior approval does not include any approval of the company that is given after the restricted transaction has been made, provided for or entered into (as the case may be).

[36/2014]

(11) In this section and section 163 —

"conditional sale agreement" has the meaning given by section 2 of the Hire-Purchase Act 1969;

"credit transaction" means a transaction under which one party (called in this section and section 163 the creditor) —

(*a*) supplies any goods or disposes of any immovable property under a hire-purchase agreement or a conditional sale agreement;

(*b*) leases or hires any immovable property or goods in return for periodic payments; or

(*c*) otherwise disposes of immovable property or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodic payments or otherwise) is to be deferred;

"quasi-loan" means a transaction under which one party (called in this section and section 163 the creditor) agrees to pay, or pays otherwise than pursuant to an agreement, a sum for another (called in this section the borrower) or agrees to reimburse, or reimburses otherwise than pursuant to an

agreement, expenditure incurred by another party for another (called in this section and section 163 the borrower) —

(*a*) on terms that the borrower (or a person on the borrower's behalf) will reimburse the creditor; or

(*b*) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

"services" means any thing other than goods or immovable property.

[36/2014]

(12) For the purposes of subsection (11) —

(*a*) a reference to the person to whom a quasi-loan is made is a reference to the borrower;

(*b*) the liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower;

(*c*) a reference to the person for whose benefit a credit transaction is entered into is a reference to the person to whom goods, immovable property or services are supplied, sold, leased, hired or otherwise disposed of under the transaction; and

(*d*) a reference to the supply of services means the supply of anything other than goods or immovable property and includes the transfer or disposal of choses in action or of intellectual property rights.

Approval of company required for loans and quasi-loans to, and credit transactions for benefit of, persons connected with directors of lending company, etc.

163.—(1) Subject to this section and sections 163A and 163B, it is not lawful for a company (other than an exempt private company) —

(*a*) to make a loan or quasi-loan to another company, a limited liability partnership or a VCC;

(*b*) to enter into any guarantee or provide any security in connection with a loan or quasi-loan made to another

company, a limited liability partnership or a VCC by a person other than the firstmentioned company;

(*c*) to enter into a credit transaction as creditor for the benefit of another company, a limited liability partnership or a VCC; or

(*d*) to enter into any guarantee or provide any security in connection with a credit transaction entered into by any person for the benefit of another company, a limited liability partnership or a VCC,

if a director or directors of the firstmentioned company is or together are interested in 20% or more of the total voting power in the other company, the limited liability partnership or the VCC (as the case may be), unless there is prior approval by the company in general meeting for the making of, provision for or entering into the loan, quasi-loan, credit transaction, guarantee or security (as the case may be) at which the interested director or directors, and his, her or their family members, abstained from voting.

[36/2014; 44/2018]

(2) Subsection (1) also applies to —

(*a*) a loan or quasi-loan made by a company (other than an exempt private company) to another company or a limited liability partnership;

(*b*) a credit transaction made by a company (other than an exempt private company) for the benefit of another company or to a limited liability partnership; and

(*c*) a guarantee entered into or security provided by a company (other than an exempt private company) in connection with a loan or quasi-loan made to another company or a limited liability partnership by a person other than the firstmentioned company or with a credit transaction made for the benefit of another company or a limited liability partnership entered into by a person other than the firstmentioned company,

where such other company or such limited liability partnership is incorporated or formed (as the case may be) outside Singapore, if a

director or directors of the firstmentioned company have an interest in the other company or the limited liability partnership, as the case may be.

[36/2014]

(3) For the purposes of subsection (2), a director or directors of a company —

(*a*) have an interest in the other company if —

(i) in the case of a company with a share capital — the director or directors is or together are interested in 20% or more of the total voting power in the other company; or

(ii) in the case of a company without a share capital — the director or directors exercises or together exercise control over the other company (whether by reason of having the power to appoint directors or otherwise); or

(*b*) have an interest in a limited liability partnership if the director or directors is or together are interested in 20% or more of the total voting power in the limited liability partnership.

[36/2014]

(3A) Subject to this section and sections 163A and 163B, a company (other than an exempt private company) must not —

(*a*) take part in an arrangement under which —

(i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under this section; and

(ii) that person, pursuant to the arrangement, obtains a benefit from the company or a related company; or

(*b*) arrange the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval,

unless there is prior approval by the company in general meeting for taking part in such an arrangement or for arranging the assignment or assumption of rights, obligations or liabilities under such a transaction at which the interested director or directors, or his, her or their family members, abstained from voting.

[36/2014]

(3B) In determining for the purposes of subsection (3A) whether a transaction is one that would have required approval under this section if it had been entered into by the company, the transaction is to be treated as having been entered into on the date of the arrangement.

[36/2014]

(3C) The requirement in subsections (1) and (3A) that the interested director or directors, or his, her or their family members, abstain from voting at the general meeting of the company does not apply where all the shareholders of the company have each voted to approve the arrangement.

[36/2014]

(3D) For the purposes of this section —

(*a*) where a company makes a loan or quasi-loan to another company or VCC, enters into a credit transaction for the benefit of another company or VCC, gives a guarantee or provides security in connection with a loan, quasi-loan or credit transaction made to or entered into for the benefit of another company or VCC, or enters into an arrangement referred to in subsection (3A), a director or directors of the firstmentioned company are not to be taken to have an interest in shares in that other company or VCC by reason only that the firstmentioned company has an interest in shares in that other company or VCC and a director or directors have an interest in shares in the firstmentioned company;

(*b*) the expression "interest in shares", in relation to a company, has the meaning assigned to it in section 7 and, in relation to a VCC, has the meaning assigned to it in section 7 as applied by section 2(6) of the VCC Act and read with section 2(7) of that Act;

(*c*) a person who has an interest in a share of a company or a VCC is to be treated as having an interest in the voting power conferred on the holder by that share;

(*d*) a reference to prior approval of the company in subsection (1) does not include any approval of the company that is given after the loan, quasi-loan, credit transaction, guarantee or security mentioned in that subsection has been made, provided for or entered into (as the case may be); and

(*e*) a reference to prior approval of the company in subsection (3A) does not include any approval of the company that is given after the arrangement referred to in that subsection has been entered into.

[36/2014; 44/2018]

(4) This section does not apply —

(*a*) to anything done by a company where the other company (whether that company is incorporated in Singapore or otherwise) or VCC is its subsidiary or holding company or a subsidiary of its holding company; or

(*b*) to a company, whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

[44/2018]

(5) For the purposes of this section —

(*a*) an interest of a member of a director's family is treated as the interest of the director; and

(*b*) a reference to a member of a director's family includes the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

[36/2014]

(6) Nothing in this section operates to prevent the recovery of the amount of any loan, quasi-loan, credit transaction or arrangement or the enforcement of any guarantee or security whether made or given by the company or any other person.

[36/2014]

(7) Where a company contravenes this section, any director who authorises the making of any loan or quasi-loan, the entering into of any credit transaction, the entering into of any guarantee, the providing of any security or the entering into of any arrangement contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 2 years.

[36/2014]

Exception for expenditure on defending proceedings, etc.

163A.—(1) Sections 162 and 163 do not apply to anything done by a company —

(*a*) to provide a director of the company with funds by way of any loan to meet expenditure incurred or to be incurred by the director —

(i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company; or

(ii) in connection with an application for relief; or

(*b*) to enable any such director to avoid incurring such expenditure,

if it is done on the terms provided in subsection (2).

[36/2014]

(2) The terms referred to in subsection (1) are —

(*a*) that the loan is to be repaid, or (as the case may be) any liability of the company incurred under any transaction connected with the thing done is to be discharged, in the event of —

(i) the director being convicted in the proceedings;

(ii) judgment being given against the director in the proceedings; or

(iii) the court refusing to grant the director relief on the application; and

(*b*) that it is to be repaid or discharged not later than 14 days after —

(i) the date when the conviction becomes final;

(ii) the date when the judgment becomes final; or

(iii) the date when the refusal of relief becomes final.

[36/2014]

(3) For the purposes of this section —

(*a*) a conviction, judgment or refusal of relief becomes final —

(i) if it is not appealed against, at the end of the period for bringing an appeal; or

(ii) if it is appealed against, when the appeal (or any further appeal) is disposed of;

(*b*) an appeal or further appeal is disposed of —

(i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or

(ii) if it is abandoned or otherwise ceases to have effect; and

(*c*) a reference to the repayment of a loan includes the payment of any interest which is chargeable under the terms on which the loan was given.

[36/2014]

(4) The reference in this section to an application for relief is to an application for relief under section 76A(13) or 391.

[36/2014]

Exception for expenditure in connection with regulatory action or investigation

163B. Sections 162, 163 and 172 do not apply to anything done by a company —

(*a*) to provide a director of the company with funds by way of any loan to meet expenditure incurred or to be incurred by the director in defending himself or herself —

(i) in an investigation by a regulatory authority; or

(ii) against any action proposed to be taken by a regulatory authority,

in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company; or

(*b*) to enable any such director to avoid incurring such expenditure.

[36/2014]

Register of director's and chief executive officer's shareholdings

164.—(1) A company must keep a register showing with respect to each director of the company particulars of —

(*a*) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he or she has an interest and the nature and extent of that interest;

(*c*) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and

(*d*) contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

[36/2014]

(1A) A company must keep a register showing with respect to each chief executive officer of the company particulars of —

(*a*) shares in that company, being shares of which the chief executive officer is their registered holder or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures of the company which are held by the chief executive officer or in which he or she has an interest and the nature and extent of that interest;

(*c*) rights or options of the chief executive officer or of the chief executive officer and another person or other persons in respect of the acquisition or disposal of shares in the company; and

(*d*) contracts to which the chief executive officer is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company.

[36/2014]

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company is deemed to have complied with this section in relation to a director or chief executive officer of that other company (whether or not he or she is also a director of that company) if the particulars required by this section to be shown in the registers of the firstmentioned company with respect to the director or chief executive officer (as the case may be) are shown in the registers of the second-mentioned company.

[36/2014]

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the firstmentioned company is a person other than —

(*a*) the second-mentioned company;

(*b*) a nominee of the second-mentioned company;

(*c*) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or

(*d*) a nominee of such a subsidiary.

(5) A company must, within 3 days after receiving notice from a director or chief executive officer under section 165(1)(*a*) of this Act or section 133(1)(*a*), (*b*), (*c*), (*d*) or (*e*) of the Securities and Futures Act 2001, enter in its register in relation to the director or chief executive officer (as the case may be) the particulars referred to in subsection (1) or (1A) (as the case may be) including the number and description of shares, debentures, participatory interests (if applicable), rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests (if applicable), rights or options acquired or contracts entered into after he or she became a director or chief executive officer (as the case may be) —

(*a*) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section; and

(*b*) the date of —

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

[36/2014]

(6) A company must, within 3 days after receiving a notice from a director or chief executive officer (as the case may be) under

section 165(1)(*b*) of this Act or section 133(1)(*g*) (in respect of a change in the particulars of any matter referred to in section 133(1)(*a*) to (*e*)) of the Securities and Futures Act 2001, enter in its register the particulars of the change referred to in the notice.

[2/2009; 36/2014]

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of or participatory interest made available by the company.

(8) A company must, subject to this section, keep its register at the registered office of the company and the register must be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of $3 or such lesser sum as the company requires.

(9) A person may request a company to furnish the person with a copy of its register or any part thereof on payment in advance of a sum of $1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company must send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

(10) The Registrar may by written notice require a company to send to the Registrar within such time as may be specified in the notice a copy of its register or any part thereof.

(11) A company must produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(12) It is a defence to a prosecution for failing to comply with subsection (1), (1A) or (5) in respect of particulars relating to a director or chief executive officer if the defendant proves that the failure was due to the failure of the director or chief executive officer to comply with section 165 of this Act, or (as the case may be) section 133 of the Securities and Futures Act 2001 with respect to those particulars.

[36/2014]

(13) In this section —

(*a*) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001; and

(*b*) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(14) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share is a reference to a debenture or participatory interest.

(15) For the purposes of the application of this section —

(*a*) a director or chief executive officer of a company is deemed to hold or have an interest or a right in or over any shares or debentures if —

(i) a wife or husband of the director or chief executive officer (as the case may be) (not being herself or himself a director or chief executive officer thereof) holds or has an interest or a right in or over any shares or debentures; or

(ii) a child of less than 18 years of age of that director or chief executive officer (as the case may be) (not being himself or herself a director or chief executive officer) holds or has an interest in shares or debentures; and

(*b*) any contract, assignment or right of subscription is deemed to have been entered into or exercised or made by, or a grant is deemed as having been made to, the director or chief executive officer (as the case may be) if —

(i) the contract, assignment or right of subscription is entered into, exercised or made by, or a grant is made to, the wife or husband of a director or chief executive officer of a company (not being herself or himself a director or chief executive officer thereof); or

(ii) the contract, assignment or right of subscription is entered into, exercised or made by, or a grant is made to, a child of less than 18 years of age of a director or chief executive officer of a company (not being himself or herself a director or chief executive officer thereof).

[36/2014]

(16) In subsection (15), "child" includes stepson, adopted son, stepdaughter and adopted daughter.

[36/2014]

(17) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of $1,000 for every day during which the offence continues after conviction.

Power to require disclosure of directors' emoluments

164A.—(1) If a company is served with a notice sent by or on behalf of —

(*a*) at least 10% of the total number of members of the company (excluding the company itself if it is registered as a member); or

(*b*) a member or members with at least 5% of the total number of issued shares of the company (excluding treasury shares),

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company must —

(*c*) within 14 days or such longer period as the Registrar may allow, prepare or cause to be prepared and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary; including any amount paid by way of salary, for the financial year immediately preceding the service of the notice;

(*d*) when the statement mentioned in paragraph (*c*) has been audited, within 14 days send a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(*e*) lay the statement before the next general meeting of the company held after the statement is audited.

(2) If default is made in complying with this section, the company and every director of the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000.

General duty to make disclosure

165.—(1) Every director and chief executive officer of a company must give written notice to the company —

(*a*) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the firstmentioned company with section 164 that are applicable in relation to him or her;

(*b*) of particulars of any change in respect of the particulars referred to in paragraph (*a*) of which notice has been given to the company including the consideration (if any) received as a result of the event giving rise to the change; and

(*c*) of such events and matters affecting or relating to himself or herself as are necessary for the purposes of compliance by the company with section 173A that are applicable in relation to him or her.

[36/2014]

(2) A notice under subsection (1) must be given —

(*a*) in the case of a notice under subsection (1)(*a*), within 2 business days after —

(i) the date on which the director became a director or the chief executive officer became a chief executive officer, as the case may be; or

(ii) the date on which the director or chief executive officer (as the case may be) became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs; and

(*b*) in the case of a notice under subsection (1)(*b*), within 2 business days after the occurrence of the event giving rise to the change mentioned in that paragraph.

[36/2014]

(3) A company must, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors or chief executive officers of the company.

[36/2014]

(4) It is a defence to a prosecution for failing to comply with subsection (1)(*a*) or (*b*) or with subsection (2) if the defendant proves that his or her failure was due to his or her not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(*a*) he or she was not so aware on the date of the information or summons; or

(*b*) he or she became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person is conclusively presumed to have been aware at a particular time of a fact or occurrence —

(*a*) of which the person would, if the person had acted with reasonable diligence in the conduct of his or her affairs, have been aware at that time; or

(*b*) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he or she had acted with reasonable diligence in the conduct of his or her master's or principal's affairs, have been aware at that time.

(6) In this section —

(*a*) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001; and

(*b*) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

(7) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share is a reference to a debenture or participatory interest.

(8) Nothing in section 164 or this section requires a company to enter in its register or requires a director to give notice to the company of matters that are shown in the register kept by the company in accordance with the repealed section 134 as in force immediately before 5 October 1973.

(9) Any director or chief executive officer who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of $1,000 for every day during which the offence continues after conviction.

[36/2014]

(10) Subsection (1)(*a*) and (*b*) does not apply to a person —

(*a*) who is a director or chief executive officer of a listed company; and

(*b*) who is required to make disclosure of the matters referred to in subsection (1)(*a*) and (*b*) of this section under section 133 of the Securities and Futures Act 2001.

[2/2009; 36/2014]

166. [*Repealed by Act 2 of 2009*]

167. [*Repealed by Act 13 of 1987*]

Payments to director for loss of office, etc.

168.—(1) It is not lawful —

(*a*) for a company to make to any director any payment by way of compensation for loss of office as an officer of the company or of a subsidiary of the company or as consideration for or in connection with his or her retirement from any such office; or

(*b*) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director is deemed to have been received by him or her in trust for the company.

(1A) The requirement for approval by the company in subsection (1) does not apply in respect of any payment to a director holding a salaried employment or office in the company by way of compensation for termination of employment pursuant to an

existing legal obligation arising from an agreement made between the company and the director if —

(*a*) the amount of the payment does not exceed the total emoluments of the director for the year immediately preceding his or her termination of employment; and

(*b*) the particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company upon or prior to the payment.

[36/2014]

(1B) For the purposes of subsection (1A) —

(*a*) an existing legal obligation is an obligation of the company, or any corporation which is by virtue of section 6 deemed to be related to the company, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office; and

(*b*) if paragraph (*a*) or (*b*) of that subsection is not complied with, the amount received by the director is deemed to have been received by him or her on trust for the company.

[36/2014]

(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director must take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, are included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of any requirement of law relating to take-over offers or any requirement of the Take-over Code mentioned in section 139 of the Securities and Futures Act 2001.

(3) A director who fails to comply with subsection (2) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails to do so shall be guilty of an offence, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment is deemed to have

been received by him or her in trust for any person who has sold the person's shares as a result of the offer made.

(4) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration (as the case may be) is for the purposes of this section deemed to have been a payment made to the director by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

As to payments to directors

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office does not include —

(*a*) any payment under an agreement entered into before 1 January 1967;

(*b*) any payment under an agreement particulars of which have been disclosed to and approved by special resolution of the company;

(*c*) any bona fide payment by way of damages for breach of contract;

(*d*) any bona fide payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment, except insofar as it is attributable to contributions made by the director, does not exceed the total emoluments of the director in the 3 years immediately preceding his or her retirement or death; or

(*e*) any payment to a director pursuant to an agreement made between the company and him or her before he or she became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(6) This section is in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

(7) In this section, "director" includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company.

Provision and improvement of director's emoluments

169.—(1) A company must not at any meeting or otherwise provide emoluments or improve emoluments for a director of a company in respect of his or her office as such unless the provision is approved by a resolution that is not related to other matters and any resolution passed in breach of this section is void.

(2) In this section, "emoluments" in relation to a director includes fees and percentages, any sums paid by way of expenses allowance insofar as those sums are charged to income tax in Singapore, any contribution paid in respect of a director under any pension scheme and any benefits received by him or her otherwise than in cash in respect of his or her services as director.

170. [*Repealed by Act 36 of 2014*]

Secretary

171.—(1) Every company must have one or more secretaries each of whom must be a natural person who has his or her principal or only place of residence in Singapore and who is not debarred under section 155B from acting as secretary of the company.

[36/2014]

(1A) It is the duty of the directors of a company to take all reasonable steps to secure that each secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

(1AA) In addition, it is the duty of the directors of a public company to take all reasonable steps to secure that each secretary of the company is a person who —

(*a*) on 15 May 1987 held the office of secretary in that company and continued to hold that office on 15 May 2003; or

(*b*) satisfies such requirements relating to experience, professional and academic requirements and membership of professional associations, as may be prescribed.

[36/2014]

(1AB) The Registrar may require a private company to appoint a person who satisfies subsection (1AA)(*b*) as its secretary if the Registrar is satisfied that the company has failed to comply with any provision of this Act with respect to the keeping of any register or other record.

[36/2014]

(1B) Any person who is appointed by the directors of a company as a secretary must, at the time of his or her appointment, by himself or herself or through a registered qualified individual authorised by him or her, file with the Registrar a declaration in the prescribed form that he or she consents to act as secretary and providing the prescribed particulars.

[36/2014]

(1C) A person to whom subsection (1AA)(*a*) applies who, after 15 May 1987, becomes a secretary of another company and is not qualified to act as secretary under subsection (1AA)(*b*) is not to be regarded as being a person who is qualified to discharge the functions of secretary under this subsection.

[36/2014]

(1D) In this section and sections 173 to 173I, "secretary" includes an assistant or deputy secretary.

[36/2014]

(1E) Where a director is the sole director of a company, he or she must not act or be appointed as the secretary of the company.

(2) Subsection (1) does not operate to prevent a corporation which was acting as the secretary of a company immediately before

29 December 1967 from continuing to act as secretary of that company for a period of 12 months after that date.

(3) The secretary or secretaries are to be appointed by the directors and at least one of those secretaries must be present at the registered office of the company by himself or herself or his or her agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.

(3A) Despite subsection (3), a secretary or his or her agent or clerk of a private company need not be physically present at the registered office during the times specified in that subsection if a secretary or his or her agent or clerk of the private company is readily contactable by a person at the registered office by telephone or other means of instantaneous communication during those times.

[36/2014]

(4) Subject to subsection (4A), anything required or authorised to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorised generally or specially in that behalf by the directors.

(4A) The office of secretary must not be left vacant for more than 6 months at any one time.

(5) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

Provision protecting officers from liability

172.—(1) Any provision that purports to exempt an officer of a company (to any extent) from any liability that would otherwise attach to him or her in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

[36/2014]

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for an officer of the company

against any liability attaching to him or her in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void, except as permitted by section 172A or 172B.

[36/2014]

(3) This section applies to any provision, whether contained in a company's constitution or in any contract with the company or otherwise.

[36/2014]

Provision of insurance

172A. Section 172(2) does not prevent a company from purchasing and maintaining for an officer of the company insurance against any such liability mentioned in that subsection.

[36/2014]

Third party indemnity

172B.—(1) Section 172(2) does not apply where the provision for indemnity is against liability incurred by the officer to a person other than the company, except when the indemnity is against —

(*a*) any liability of the officer to pay —

(i) a fine in criminal proceedings; or

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

(*b*) any liability incurred by the officer —

(i) in defending criminal proceedings in which he or she is convicted;

(ii) in defending civil proceedings brought by the company or a related company in which judgment is given against him or her; or

(iii) in connection with an application for relief referred to in subsection (4) in which the court refuses to grant him or her relief.

[36/2014]

(2) The references in subsection (1)(*b*) to a conviction, judgment or refusal of relief are references to the final decision in the proceedings.
[36/2014]

(3) For the purposes of subsection (2) —

(*a*) a conviction, judgment or refusal of relief becomes final —

(i) if it is not appealed against — at the end of the period for bringing an appeal; or

(ii) if it is appealed against — at the time when the appeal (or any further appeal) is disposed of; and

(*b*) an appeal (or further appeal) is disposed of —

(i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or

(ii) if it is abandoned or otherwise ceases to have effect.
[36/2014]

(4) The reference in subsection (1)(*b*)(iii) to an application for relief is to an application for relief under section 76A(13) or 391.
[36/2014]

Registers of directors, chief executive officers, secretaries and auditors

173.—(1) The Registrar must, in respect of each company, keep a register of the company's —

(*a*) directors;

(*b*) chief executive officers;

(*c*) secretaries; and

(*d*) auditors (if any).

[36/2014]

(2) The register under subsection (1) is to be kept in such form as the Registrar may determine.

[36/2014]

(3) Subject to subsection (4), the register of a company's directors must contain the following information in respect of each director of the company:

(*a*) full name and any former name;

(*b*) residential address;

[Act 21 of 2024 wef 09/12/2024]

(*ba*) contact address;

[Act 21 of 2024 wef 09/12/2024]

(*c*) nationality;

(*d*) identification;

(*e*) date of appointment;

(*f*) date of cessation of appointment.

[36/2014]

(4) The Registrar need only keep any former name of a director in the register of the company for a period of 5 years from the date on which the name was furnished to the Registrar.

[36/2014]

(5) The register of a company's chief executive officers must contain the following information in respect of each chief executive officer of the company:

(*a*) full name;

(*b*) residential address;

[Act 21 of 2024 wef 09/12/2024]

(*ba*) contact address;

[Act 21 of 2024 wef 09/12/2024]

(*c*) nationality;

(*d*) identification;

(*e*) date of appointment;

(*f*) date of cessation of appointment.

[36/2014]

(6) The register of a company's secretaries must contain the following information in respect of each secretary of the company:

(*a*) full name;

(*b*) residential address;

[Act 21 of 2024 wef 09/12/2024]

(*ba*) contact address;

[Act 21 of 2024 wef 09/12/2024]

(*c*) identification;

(*d*) date of appointment;

(*e*) date of cessation of appointment.

[36/2014]

(7) The register of a company's auditors must contain the following information in respect of each auditor of the company:

(*a*) full name;

(*b*) an address at which the auditors may be contacted;

(*c*) identification, if any;

(*d*) date of appointment;

(*e*) date of cessation of appointment.

[36/2014]

(8) An entry in the register of directors, register of chief executive officers, register of secretaries and register of auditors required to be kept by the Registrar under this section, is prima facie evidence of the truth of any matters which are by this Act directed or authorised to be entered or inserted in the respective register.

[36/2014]

(9) A certificate of the Registrar setting out any of the particulars required to be entered or inserted in the register of directors, register of chief executive officers, register of secretaries or register of auditors required to be kept by the Registrar under this section shall in all courts and before all persons and bodies authorised by law to receive evidence be received as prima facie evidence of the entry of such particulars in the respective register.

[36/2014]

(10) A certificate of the Registrar stating that, at the time specified in the certificate, a person was named as director, chief executive officer, secretary or auditor of the company in the register of directors, register of chief executive officers, register of secretaries or register of auditors (as the case may be) shall in all courts and before all persons and bodies authorised by law be received as prima facie evidence of the fact, until by a notification of change given to the

Registrar it appears that the person has ceased to be or becomes disqualified to act as such a director, chief executive officer, secretary or auditor, as the case may be.

[36/2014]

(11) For the purposes of this section, a director includes an alternate, a substitute or a local director.

[Act 21 of 2024 wef 09/12/2024]

(12) [*Deleted by Act 21 of 2024 wef 09/12/2024*]

(13) [*Deleted by Act 21 of 2024 wef 09/12/2024*]

(14) Any document required to be served under this Act on any person who is a director, chief executive officer or secretary is sufficiently served if addressed to the person and left at or sent by post to his or her residential address or contact address (as the case may be) which is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under this section.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(15) Any document required to be served under this Act on a person who is for the time being an auditor of a company is sufficiently served if addressed to the person and left at or sent by post to the address which is entered in the register of auditors kept by the Registrar under this section.

[36/2014]

Duty of company to provide information on directors, chief executive officers, secretaries and auditors

173A.—(1) A company must by notice furnish to the Registrar —

(*a*) within 14 days after a person becomes a director, chief executive officer, secretary or auditor, the information required under section 173(3), (5), (6) or (7), as the case may be; and

(*b*) within 14 days after any change in —

(i) the appointment of any director, chief executive officer, secretary or auditor; or

(ii) any information required to be contained in the registers of directors, chief executive officers, secretaries and auditors referred to in section 173(3), (5), (6) or (7).

[36/2014]

(2) [*Deleted by Act 21 of 2024 wef 09/12/2024*]

(3) The information to be furnished to the Registrar under subsection (1) must be given in a notice in such form as may be prescribed or, if not prescribed, in such form as the Registrar may determine.

[36/2014]

Duty of directors, chief executive officers, secretaries and auditors to provide information to company

173B.—(1) A director, a chief executive officer, a secretary or an auditor (as the case may be) must give the company —

(*a*) any information the company needs to comply with section 173A(1)(*a*) as soon as practicable but not later than 14 days after his or her initial appointment unless he or she has previously given the information to the company in writing; and

(*b*) any information the company needs to comply with section 173A(1)(*b*) as soon as practicable but not later than 14 days after any change to the information referred to in section 173(3), (5), (6) and (7).

[36/2014]

(2) Despite subsection (1), a director, a chief executive officer, a secretary or an auditor (as the case may be) must, subject to subsection (3), provide any information referred to in section 173(3), (5), (6) or (7) for the purpose of enabling the company to confirm its record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

[36/2014]

(3) The director, chief executive officer, secretary or auditor (as the case may be) mentioned in subsection (2) must furnish the information to the company as soon as practicable but not later

than 14 days after receipt of a written request for such information from the company.

[36/2014]

(4) [*Deleted by Act 21 of 2024 wef 09/12/2024*]

Duty of company to keep consents of directors and secretaries

173C. Every company must keep at its registered office —

(*a*) in respect of each director —

(i) a signed copy of his or her consent to act as director;

(ii) a statement that he or she is not disqualified to act as director under this Act or under any other written law; and

(iii) documentary evidence (if any) of any change in his or her name; and

(*b*) in respect of a secretary, a signed copy of his or her consent to act as secretary.

[36/2014]

Saving and transitional provisions for existing particulars of directors, chief executive officers, secretaries and auditors before 3 January 2016

173D.—(1) In the case of a company incorporated before 3 January 2016 the name and particulars of the persons who were lodged with the Registrar as a director, a secretary or an auditor of the company under section 173 in force immediately before that date, must be entered in the company's register of directors, register of secretaries or register of auditors (whichever may be applicable) referred to in section 173, until a notification of any change to the information referred to in section 173(3), (6) or (7) is received by the Registrar under section 173A(1)(*b*).

[36/2014]

(2) Where a company mentioned in subsection (1) has lodged the name and particulars of one or more managers with the Registrar as a manager or managers (as the case may be) of the company under section 173 in force immediately before 3 January 2016, the name and particulars of the manager or managers (as the case may be) must

be entered in the company's register of chief executive officers referred to in section 173, until a notification of any change in the information referred to in section 173(5) is received by the Registrar under section 173A(1)(*b*).

[36/2014]

(3) For the purposes of subsections (1) and (2) —

(*a*) the address lodged with the Registrar in respect of any director or secretary under section 173 in force immediately before 3 January 2016 must be entered as his or her residential address;

(*b*) the address lodged with the Registrar in respect of any manager under section 173 in force immediately before 3 January 2016 must be entered as his or her residential address in his or her capacity as chief executive officer of the company; and

(*c*) the address lodged with the Registrar in respect of any auditor under section 173 in force immediately before 3 January 2016, must be entered as the auditor's address.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

Self-notification in certain circumstances

173E.—(1) A director who ceases to qualify to act as director by virtue of section 148 or 155 —

(*a*) must, without affecting section 165(1)(*c*), notify the company of his or her disqualification as soon as practicable but not later than 14 days after the disqualification; and

(*b*) may give the notice referred to in section 173A(1)(*b*) to the Registrar if the director has reasonable cause to believe that the company will not do so.

[36/2014]

(2) A director who resigns from office and who has given notice of his or her resignation to the company, or a director who is removed or retires from office, may give the notice referred to in

section 173A(1)(*b*) to the Registrar if the director has reasonable cause to believe that the company will not do so.

[36/2014]

(3) A secretary who resigns from office and who has given notice of his or her resignation to the company, or a secretary who is removed or retires from office, may give the notice referred to in section 173A(1)(*b*) to the Registrar if the secretary has reasonable cause to believe that the company will not do so.

[36/2014]

(4) A director, chief executive officer or secretary who has changed his or her residential address or contact address (as the case may be) which is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173, or an auditor who has changed the auditor's address which is entered in the register of auditors kept by the Registrar under section 173, may give the notice referred to in section 173A(1)(*b*) to the Registrar if he or she has reasonable cause to believe that the company will not do so.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

Amendment of register by Registrar to indicate death or disqualification

173F.—(1) Where the Registrar has reasonable cause to believe that a director of a company has been disqualified, under or by virtue of section 148, 149, 149A, 154, 155, 155A, 155C or 155D —

(*a*) from being a director of the company; or

(*b*) from acting as a director of the company,

the Registrar may on his or her own initiative amend the register of directors of the company kept by the Registrar under section 173 to indicate that the person has been disqualified from being or acting as a director (as the case may be) by virtue of that fact.

[Act 21 of 2024 wef 09/12/2024]

(1A) Where the Registrar has reasonable cause to believe that a director of a company is dead, the Registrar may on his or her own initiative amend the register of directors of the company kept by the

Registrar under section 173 to indicate that the person has ceased to be a director by virtue of that fact.

[Act 21 of 2024 wef 09/12/2024]

(2) Where the Registrar has reasonable cause to believe that a chief executive officer of a company is dead, the Registrar may on his or her own initiative amend the register of chief executive officers of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a chief executive officer of the company by virtue of that fact.

[36/2014]

(3) Where the Registrar has reasonable cause to believe that a secretary of a company is dead, the Registrar may on his or her own initiative amend the register of secretaries of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a secretary of the company by virtue of that fact.

[36/2014]

(4) Where the Registrar has reasonable cause to believe that the auditor of a company —

(*a*) has had its registration as an accounting entity suspended or removed; or

(*b*) being an individual is dead,

the Registrar may on his or her own initiative amend the register of auditors of the company kept by the Registrar under section 173 to indicate that the person has ceased to be an auditor of the company by virtue of that fact.

[36/2014]

(5) Where the Registrar has reasonable cause to believe that he or she has made an amendment to the relevant register under subsection (1), (1A), (2), (3) or (4) under a mistaken belief that a director, a chief executive officer, a secretary or an auditor (as the case may be) of a company has ceased to be a director, a chief executive officer, a secretary or an auditor (as the case may be) of the company, the Registrar may on his or her own initiative amend the register of directors, register of chief executive officers, register of

secretaries or register of auditors to restore the name of the person in such register.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

Transitional provision on keeping of contact address and residential address of director, chief executive officer or secretary

173G.—(1) Where, immediately before the commencement date, there is an alternate address of a director, chief executive officer or secretary entered in the register of directors, register of chief executive officers or register of secretaries, respectively, of any company, the Registrar must, as from that date, cause —

(*a*) the alternate address to be kept as the contact address of the director, chief executive officer or secretary in that register, instead of as the alternate address of that director, chief executive officer or secretary, until notice of a change in the individual's contact address is lodged under any ACRA administered Act on or after that date; and

(*b*) that contact address to be made available for public inspection and access under section 12(2)(*c*) as the address of that director, chief executive officer or secretary.

(2) Where, immediately before the commencement date —

(*a*) there is no alternate address of a director, chief executive officer or secretary entered in the register of directors, register of chief executive officers or register of secretaries (as the case may be) of a company kept by the Registrar under section 173(1)(*a*), (*b*) or (*c*), respectively; and

(*b*) the residential address of the director, chief executive officer or secretary is entered in the register of directors, register of chief executive officers or register of secretaries (as the case may be) of the company,

the Registrar must, as from the commencement date, cause —

(*c*) the residential address to be kept as the contact address of that director, chief executive officer or secretary in that

register until notice of a change in the individual's contact address is lodged under any ACRA administered Act on or after that date, in addition to being kept as the residential address of that director, chief executive officer or secretary; and

(*d*) the contact address to be made available for public inspection and access under section 12(2)(*c*) as the address of that director, chief executive officer or secretary.

(3) Where —

(*a*) before the commencement date, the residential address of a director, chief executive officer or secretary of a company (called in this subsection the individual) has been entered in the register of directors, register of chief executive officers or register of secretaries, of the company; and

(*b*) on the commencement date, those registers do not show that the individual holds any of the positions mentioned in paragraph (*a*) in the same company,

the Registrar must, as from the commencement date, cause the individual's residential address to be excluded from public inspection or access of that register of that company under section 12(2)(*c*).

(4) Subsection (5) applies to a notice or information required to be furnished or given under section 173A or 173B (as the case may be) relating to an appointment or change in the appointment of a director, chief executive officer or secretary of a company which occurred before the commencement date.

(5) Where the notice or information mentioned in subsection (4) is furnished or given on or after the commencement date, the notice or information must provide the information required under section 173 as in force when the notice or information is furnished or given, despite the appointment or the change in the appointment having occurred before the commencement date.

(6) In this section, "commencement date" means the date of commencement of section 40 of the ACRA (Registry and Regulatory Enhancements) Act 2024.

[Act 21 of 2024 wef 09/12/2024]

Penalty for breach under sections 173, 173A, 173B and 173C

173H.—(1) If default is made by a company in section 173A(1) or 173C, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[36/2014]

(2) A director, a chief executive officer, a secretary or an auditor who fails to comply with any requirement under section 173B shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[Act 21 of 2024 wef 09/12/2024]

(3) [*Deleted by Act 21 of 2024 wef 09/12/2024*]

(4) [*Deleted by Act 21 of 2024 wef 09/12/2024*]

Transitional provisions for old registers of directors, managers, secretaries and auditors

173I.—(1) A company must continue to keep the following information for the periods set out in subsection (2):

(*a*) with respect to each person who is a director of the company immediately before 3 January 2016 —

(i) the signed copy of the person's consent to act as a director mentioned in section 173(2)(*a*) in force immediately before that date; and

(ii) documentary evidence (if any) of any change in the person's name mentioned in section 173(2)(*c*) in force immediately before that date;

(*b*) with respect to each person who is a secretary of the company immediately before 3 January 2016, the signed copy of the person's consent to act as a secretary mentioned in section 173(4A) in force immediately before that date.

[36/2014]

(2) The period mentioned in subsection (1) commences on 3 January 2016 and ceases on —

(*a*) in the case of subsection (1)(*a*), the date on which the person ceases to be a director of the company; or

(*b*) in the case of subsection (1)(*b*), the date on which the person ceases to be a secretary of the company.

[36/2014]

(3) Section 173(8) in force immediately before 3 January 2016 continues to apply in respect of any information lodged with the Registrar under section 173 in force immediately before that date.

[36/2014]

Division 3 — Meetings and proceedings

Arrangements for meetings

173J.—(1) This section applies to the following types of meetings:

(*a*) an annual general meeting of a company;

(*b*) an extraordinary general meeting of a company;

(*c*) a statutory meeting of a company;

(*d*) a general meeting of an amalgamating company mentioned in section 215C or 215D;

(*e*) a meeting of a class of members of the company;

(*f*) any of the following meetings ordered by the Court, if the Court so directs:

(i) a meeting ordered by the Court under section 182;

(ii) a meeting of creditors, members of a company, holders of units of shares of a company, or a class of such persons, ordered by the Court under section 210.

(2) Unless excluded under subsection (5) or (7), a meeting to which this section applies may be held —

(*a*) at a physical place;

(*b*) at a physical place and using virtual meeting technology; or

(*c*) using virtual meeting technology only.

(3) Where a meeting to which this section applies under subsection (2)(*b*) or (*c*) is held, the meeting may be held without any number of those participating in the meeting being together at the same place.

(4) Unless excluded or modified under subsection (5) or excluded under subsection (7), where a meeting to which this section applies is held (whether wholly or partly) using virtual meeting technology —

(*a*) a reference in this Act to any person (including any member of a company) attending a meeting includes a person who is attending the meeting using virtual meeting technology;

(*b*) a reference in this Act to any person (including any member of a company) present or personally present at a meeting includes a person who attends the meeting using virtual meeting technology;

(*c*) subject to paragraph (*f*), a reference in this Act to a vote of a member of a company at a meeting (including a vote for the purposes of electing a chairperson of a meeting), includes a vote by electronic means or any other means permitted by the constitution of the company;

(*d*) subject to paragraph (*f*), a reference in this Act to voting by a member of the company at a meeting (including voting for the purposes of electing a chairperson of a meeting), includes voting by electronic means or any other means permitted by the constitution of the company;

(*e*) subject to paragraph (*f*), a reference in this Act to the entitlement or right of a person to vote at a meeting includes, where the person is present by virtual meeting technology, the entitlement or right to vote by electronic means or any other means permitted by the constitution of the company;

(*f*) a reference in this Act to voting by a person on a show of hands at a meeting includes, where the person is present by virtual meeting technology, voting by the person by electronic means or any other means permitted by the

constitution of the company but only if the person can be identified —

(i) by any method that may be prescribed relating to the verification or authentication of the identity of persons attending the meeting; or

(ii) if no method is so prescribed, by any method that the directors of the company may determine;

(*g*) a reference in this Act to the entitlement or right of a person to be heard at a meeting includes, where the person is present by virtual meeting technology, the entitlement or right to be heard by any means of synchronous communication that the directors of the company may determine;

(*h*) a reference in this Act to the right of a person to speak on any resolution before a meeting includes, where the person is present by virtual meeting technology, the right to communicate by any means of synchronous communication that the directors of the company may determine;

(*i*) a reference in this Act to the right of a person to speak at a meeting includes, where the person is present by virtual meeting technology, the right to communicate by any means of synchronous communication that the directors of the company may determine;

(*j*) a reference in this Act to members of a company present at a meeting being at liberty to discuss any matter includes the discussion by members present by virtual meeting technology of the matter by any means of synchronous communication that the directors of the company may determine;

(*k*) a reference in this Act to any representation being read out or declaration being made at a meeting includes the communication of that representation or declaration at the meeting by any means of synchronous communication that the directors of the company may determine;

(*l*) a reference in this Act to an auditor's report being read before the company in general meeting includes the communication of the contents of that auditor's report at the general meeting by any means of synchronous communication that the directors of the company may determine;

(*m*) a reference in this Act to a document being available for inspection at a meeting includes making the document available —

(i) on a website during the meeting; or

(ii) by any other means during the meeting that the company may by ordinary resolution determine;

(*n*) a reference in this Act to the production of the company's register at the commencement of the annual general meeting and to the keeping of the register open and accessible during the meeting to all persons attending the meeting includes making the register available —

(i) on a website during the meeting; or

(ii) by any other means during the meeting that the company may by ordinary resolution determine;

(*o*) a reference in this Act to the keeping of the list showing the names and addresses of the members of a company and the number of shares held by them respectively open and accessible to any member during the continuance of the meeting includes making the list available —

(i) on a website during the meeting; or

(ii) by any other means during the meeting that the company may by ordinary resolution determine;

(*p*) a reference in this Act to the laying of a statement, financial statement, consolidated financial statement, balance sheet, auditor's report or other document before a meeting of the company includes producing or making available the relevant document —

(i) on a website; or

(ii) by any other means that the company may by ordinary resolution determine; and

(*q*) a reference in this Act to any statement, financial statement, consolidated financial statement, balance sheet, auditor's report or other document being laid or caused to be laid before the company at a meeting includes the relevant document being produced or made available or caused to be produced or made available —

(i) on a website; or

(ii) by any other means that the company may by ordinary resolution determine.

(5) This section applies despite the provisions contained in a company's constitution, except where —

(*a*) in the case of a company incorporated before 1 July 2023, the company on or after that date amends, alters or adds to its constitution —

(i) to exclude the application of paragraph (*b*) or (*c*) of subsection (2) (or both) in respect of all or any meetings to which this section applies; or

(ii) to exclude or modify the application of paragraphs (*a*) to (*q*) of subsection (4) (or any of those paragraphs) in respect of all or any meetings to which this section applies; or

(*b*) in the case of a company incorporated on or after 1 July 2023 —

(i) the constitution of the company —

(A) excludes the application of paragraph (*b*) or (*c*) of subsection (2) (or both) in respect of all or any meetings to which this section applies; or

(B) excludes or modifies the application of paragraphs (*a*) to (*q*) of subsection (4) (or any of those paragraphs) in respect of all or any meetings to which this section applies; or

(ii) the company at any time after its incorporation amends, alters or adds to its constitution —

(A) to exclude the application of paragraph (*b*) or (*c*) of subsection (2) (or both) in respect of all or any meetings to which this section applies; or

(B) to exclude or modify the application of paragraphs (*a*) to (*q*) of subsection (4) (or any of those paragraphs) in respect of all or any meetings to which this section applies.

(6) In subsection (4), a reference to a member of a company includes, where appropriate, the member's proxy or the member's representative.

(7) The Minister may, by order in the *Gazette*, exclude the application of subsection (2)(*c*) in respect of any prescribed class of companies.

(8) To avoid doubt and subject to the constitution of the company, nothing in this Act prohibits a meeting of the board of directors of a company, or a committee consisting of one or more directors of a company, from being held —

(*a*) at a physical place and using virtual meeting technology; or

(*b*) using virtual meeting technology only.

[Act 17 of 2023 wef 01/07/2023]

Statutory meeting and statutory report

174.—(1) Every public company that is a limited company and has a share capital must, within a period of not less than one month and not more than 3 months after the date at which it is entitled to commence business, hold a general meeting of the members of the company to be called the "statutory meeting".

(2) The directors must at least 7 days before the day on which the meeting is to be held forward a report to be called the "statutory report" to every member of the company.

(3) The statutory report must be certified by not less than 2 directors of the company and must state —

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

(*c*) an abstract of the receipts of the company and of the payments made thereout up to a date within 7 days of the date of the report exhibiting under distinctive headings the receipts from shares and debentures and other sources the payments made thereout and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;

(*d*) the names and addresses and descriptions of the directors, trustees for holders of debentures (if any), auditors (if any), chief executive officers (if any) and secretaries of the company; and

(*e*) the particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

[36/2014]

(4) The statutory report must, so far as it relates to the shares allotted and to the cash received in respect of such shares and to the receipts and payments on capital account, be examined and reported upon by the auditors, if any.

(5) The directors must cause a copy of the statutory report and the auditor's report (if any) to be lodged with the Registrar at least 7 days before the date of the statutory meeting.

(6) The directors must cause a list showing the names and addresses of the members and the number of shares held by them respectively to be produced at the commencement of the meeting and to remain open and accessible to any member during the continuance of the meeting.

(7) The members present at the meeting are at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the constitution may be passed.

[36/2014]

(8) The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the constitution either before or subsequently to the former meeting may be passed and the adjourned meeting has the same powers as an original meeting.

[36/2014]

(9) The meeting may by ordinary resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, despite any other provision of this Act, at least 7 days' notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of any default in complying with this section every officer of the company who is in default and every director of the company who fails to take all reasonable steps to secure compliance with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

Annual general meeting

175.—(1) Subject to this section and section 175A, a general meeting of every company to be called the "annual general meeting" must, in addition to any other meeting, be held after the end of each financial year within —

(*a*) 4 months in the case of a public company that is listed; or

(*b*) 6 months in the case of any other company.

[15/2017]

(2) The Registrar may extend the period mentioned in subsection (1)(*a*) or (*b*) —

(*a*) upon an application by the company, if the Registrar thinks there are special reasons to do so; or

(*b*) in respect of any prescribed class of companies.

[15/2017]

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held is the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

(*a*) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty; and

(*b*) the Court may on the application of any member order a general meeting to be called.

(5) The Minister may, by order in the *Gazette*, specify such other period in substitution of the period mentioned in subsection (1)(*a*) or (*b*), or both.

[15/2017]

When private company need not hold annual general meeting

175A.—(1) A company need not hold an annual general meeting for a financial year —

(*a*) if it is a private company in respect of which there is in force a resolution passed in accordance with subsection (2) to dispense with the holding of annual general meetings;

(*b*) if, at the end of that financial year, it is a private company and has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1) within the period specified in section 203(1)(*b*); or

(*c*) if, at the end of that financial year, it is both a private company and a dormant relevant company the directors of

which are, under section 201A, exempt from the requirements of section 201 for the financial year.

[15/2017]

(2) Despite any other provision of this Act, a resolution mentioned in subsection (1)(*a*) is only treated as passed at a general meeting if it has been passed by all of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at the meeting.

[15/2017]

(3) A resolution under subsection (1)(*a*) has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

[15/2017]

(4) In any year in which an annual general meeting would be required to be held but for this section, and in which no such meeting has been held, any member of the company may, by notice to the company not later than 14 days before the date by which an annual general meeting would have been required under section 175 to be held, require the holding of an annual general meeting in that year.

[15/2017]

(5) The power of a member under subsection (4) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.

(6) If such a notice is given or electronic communication is transmitted, section 175(1) and (4) applies with respect to the calling of the meeting and the consequences of default.

(7) A resolution mentioned in subsection (1)(*a*) ceases to be in force if the company is converted to a public company.

[15/2017]

(8) If the resolution mentioned in subsection (1)(*a*) ceases to be in force but less than 3 months remain to the date on which the company

is required under section 175 to hold an annual general meeting, the company need not hold that annual general meeting.

[15/2017]

(9) Subsection (8) does not affect any obligation of the company to hold an annual general meeting in that year pursuant to a notice given under subsection (4) or an electronic communication transmitted under subsection (5).

(10) Unless the contrary intention appears, if a company need not hold an annual general meeting for a financial year then for that financial year —

(*a*) a reference in any provision of this Act to the doing of anything at an annual general meeting is to be read as a reference to the doing of that thing by way of a resolution by written means under section 184A;

(*b*) a reference in any provision of this Act to the date or conclusion of an annual general meeting is, unless the meeting is held, to be read as a reference to the date of expiry of the period by which an annual general meeting would have been required under section 175 to be held;

(*c*) the reference in section 197(1) or (1A) to the lodging of a return with the Registrar after its annual general meeting is to be read as a reference to the lodging of that return —

(i) in the case of a company mentioned in subsection (1)(*a*) or (*b*) — after the company has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1); or

(ii) in the case of a company mentioned in subsection (1)(*c*) — after the end of its financial year.

[15/2017]

(11) In this section, an address of a person includes any number or address used for electronic communication.

Convening of extraordinary general meeting on requisition

176.—(1) The directors of a company, despite anything in its constitution, must, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than 10% of the total voting rights of all members having at that date a right to vote at general meetings, immediately proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than 2 months after the receipt by the company of the requisition.

[36/2014]

(1A) For the purposes of subsection (1), any of the company's paid-up shares held as treasury shares are to be disregarded.

[36/2014]

(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened must not be held after the expiration of 3 months from that date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting must be paid to the requisitionists by the company, and any sum so paid must be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(5) A meeting at which a special resolution is to be proposed is deemed not to be duly convened by the directors if they do not give

such notice thereof as is required by this Act in the case of special resolutions.

Calling of meetings

177.—(1) Two or more members holding not less than 10% of the total number of issued shares of the company (excluding treasury shares) or, if the company has not a share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the constitution may call a meeting of the company.

[36/2014]

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, must be called by written notice of not less than 14 days or such longer period as is provided in the constitution.

[36/2014]

(3) A meeting is, even though it is called by notice shorter than is required by subsection (2), deemed to be duly called if it is so agreed —

(*a*) in the case of a meeting called as the annual general meeting — by all the members entitled to attend and vote thereat; or

(*b*) in the case of any other meeting — by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.

(4) So far as the constitution does not make other provision in that behalf, notice of every meeting must be served on every member having a right to attend thereat in the manner in which notices are required to be served by the model constitution prescribed under section 36(1) for the type of company to which the company belongs, if any.

[36/2014]

Right to demand a poll

178.—(1) Any provision in a company's constitution is void insofar as it would have the effect —

(*a*) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting;

(*b*) of making ineffective a demand for a poll on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting that is made —

(i) by not less than 5 members having the right to vote at the meeting;

(ii) by a member or members representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5% of the total sum paid up on all the shares conferring that right; or

(*c*) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than 72 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

[36/2014]

(1A) Despite subsection (1)(*b*), where any provision of the constitution of a company incorporated before 3 January 2016 is void under subsection (1)(*b*)(ii) or (iii), a demand for a poll on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting may be made —

(*a*) by a member or members representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting; or

(*b*) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less

than 5% of the total sum paid up on all the shares conferring that right.

[36/2014]

(2) The instrument appointing a proxy to vote at a meeting of a company is deemed to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member of the company is deemed to be the same as a demand by the member.

(3) A person entitled to vote on a poll at a meeting is deemed to be a person entitled to vote for the purposes of this Act.

Quorum, chairperson, voting, etc., at meetings

179.—(1) So far as the constitution does not make other provision in that behalf and subject to sections 64 and 64A —

(*a*) 2 members of the company personally present form a quorum;

(*b*) any member elected by the members present at a meeting may be chairperson thereof;

(*c*) in the case of a company having a share capital —

(i) on a show of hands, each member who is personally present and entitled to vote has one vote; and

(ii) on a poll, each member has one vote in respect of each share held by the member and where all or part of the share capital consists of stock or units of stock each member has one vote in respect of the stock or units of stock held by the member which is or are or were originally equivalent to one share; and

(*d*) in the case of a company not having a share capital every member has one vote.

[36/2014]

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if the person votes, use all the person's votes or cast all the votes the person uses in the same way.

(3) A corporation may by resolution of its directors or other governing body —

(*a*) if it is a member of a company — authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members; or

(*b*) if it is a creditor, including a holder of debentures, of a company — authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorised is, in accordance with the person's authority and until the person's authority is revoked by the corporation, entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.

(4) Where —

(*a*) a person present at a meeting is authorised to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3); and

(*b*) the person is not otherwise entitled to be present at the meeting as a member or proxy or as a corporate representative of another member,

the corporation is, for the purposes of subsection (1), deemed to be personally present at the meeting.

[36/2014]

(5) Subject to section 41(8) and (9), a certificate under the seal of the corporation is prima facie evidence of the appointment or of the revocation of the appointment (as the case may be) of a representative pursuant to subsection (3).

(6) Where a holding company is beneficially entitled to the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (3) stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act or by the constitution of the

subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing, or resolution is, for all purposes, deemed to have been duly made, performed, or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

[36/2014]

(7) Where by or under any provision of this Act any notice, copy of a resolution or other document relating to any matter is required to be lodged by a company with the Registrar, and a minute mentioned in subsection (6) is signed by the representative pursuant to that subsection and the minute relates to such a matter the company must within 14 days after the signing of the minute lodge a copy thereof with the Registrar.

[36/2014]

(8) For the purposes of this section, any reference to a member of a company does not include the company itself where it is such a member by virtue of its holding shares as treasury shares.

As to member's rights at meetings

180.—(1) A member has, despite any provision in the constitution of the company, a right to attend any general meeting of the company and to speak on any resolution before the meeting.

[36/2014]

(2) In the case of a company limited by shares, the holder of a share may vote on a resolution before a general meeting of the company if, in accordance with the provisions of section 64, the share confers on the holder a right to vote on that resolution.

[36/2014]

(3) In the case of a company other than a company limited by shares, a member may vote on a resolution before a general meeting of the company if the right to vote on that resolution is conferred on the member under the constitution of the company.

[36/2014]

(4) Despite subsection (2), a preference share issued after 15 August 1984 but before 3 January 2016 carries, in addition to

any other right conferred by this Act, the right in a poll at any general meeting to at least one vote in respect of each such share held during such period as the preferential dividend or any part thereof remains in arrears and unpaid, such period starting from a date not more than 12 months, or such lesser period as the constitution may provide, after the due date of the dividend.

[36/2014]

(5) For the purposes of subsection (4) —

(*a*) "preference share" means a share, by whatever name called, which does not entitle the holder thereof —

(i) to the right to vote at a general meeting (except in the circumstances specified in subsection (4)); or

(ii) to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise; and

(*b*) a dividend is deemed to be due on the date appointed in the constitution for the payment of the dividend for any year or other period or, if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend has been earned or declared.

[36/2014]

Proxies

181.—(1) Subject to this section, a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint another person, whether a member or not, as the member's proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member also has the same right as the member to speak at the meeting.

[36/2014]

(1A) Subject to this section, unless the constitution otherwise provides —

(*a*) a proxy is not entitled to vote except on a poll;

(*b*) a member is not entitled to appoint more than 2 proxies to attend and vote at the same meeting; and

(*c*) where a member appoints 2 proxies, the appointments are invalid unless the member specifies the proportions of the member's holdings to be represented by each proxy.

[36/2014]

(1B) Despite anything to the contrary in the constitution of a company, a member may appoint a proxy under this section by depositing with the company an instrument of appointment by electronic means.

[Act 17 of 2023 wef 01/07/2023]

(1BA) The electronic means by which an instrument of appointment may be deposited under subsection (1B) must be specified by the company in the notice of meeting.

[Act 17 of 2023 wef 01/07/2023]

(1C) A member of a company having a share capital who is a relevant intermediary may appoint more than 2 proxies in relation to a meeting to exercise all or any of the member's rights to attend and to speak and vote at the meeting, but each proxy must be appointed to exercise the rights attached to a different share or shares held by the member (which number and class of shares must be specified).

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(1D) A proxy appointed under subsection (1C) has at a meeting the right to vote on a show of hands.

[36/2014]

(2) In every notice calling a meeting of a company or a meeting of any class of members of a company there must appear with reasonable prominence a statement as to the rights of the member to appoint a proxy or proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence.

[36/2014]

(3) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the

invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

(4) No person shall be guilty of an offence under subsection (3) by reason only of the issue to a member at the member's request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which entitles the member to direct the proxy to vote either for or against the resolution.

(6) In this section, "relevant intermediary" means —

(*a*) a banking corporation licensed under the Banking Act 1970 or a wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity;

(*b*) a person holding a capital markets services licence to provide custodial services under the Securities and Futures Act 2001 and who holds shares in that capacity; or

(*c*) the Central Provident Fund Board established by the Central Provident Fund Act 1953, in respect of shares purchased under the subsidiary legislation made under that Act providing for the making of investments from the contributions and interest standing to the credit of members of the Central Provident Fund, if the Board holds those shares in the capacity of an intermediary pursuant to or in accordance with that subsidiary legislation.

[36/2014; 4/2017]

Power of Court to order meeting

182. If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the constitution or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy is deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he or she were present at the meeting.

[36/2014]

Circulation of members' resolutions, etc.

183.—(1) Subject to this section, a company must on the requisition of such number of members of the company as is specified in subsection (2) and, unless the company otherwise resolves, at the expense of the requisitionists —

(*a*) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting or (if the resolution is proposed to be passed by written means under section 184A) for which agreement is sought; and

(*b*) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) is —

(*a*) any number of members representing not less than 5% of the total voting rights of all the members having at the date

of the requisition a right to vote at the meeting to which the requisition relates; or

(*b*) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than $500.

(3) Subject to subsection (3A), notice of a resolution referred to in subsection (1) must be given, and any statement so referred to must be circulated, to members of the company entitled to have notice of the meeting sent to them by serving on each member, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.

(3A) Where the resolution is proposed to be passed by written means under section 184A, the notice of the resolution and statement must be given and circulated to members of the company entitled to have notice of the meeting sent to them by serving on each member —

(*a*) a copy of the resolution and statement; and

(*b*) a notification that formal agreement to the resolution is being sought under section 184A.

(3B) Notice of the resolution must be given to any other member of the company by serving on the member notice of the general effect of the resolution in any manner permitted for giving the member notice of meetings of the company.

(3C) Except where the resolution is proposed to be passed by written means under section 184A, the copy of the resolution mentioned in subsection (3) must be served, or notice of the general effect of the resolution mentioned in subsection (3B) must be given (as the case may be) in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it must be served or given as soon as practicable thereafter.

(4) Subject to subsection (4A), a company is not bound under this section to give notice of any resolution or to circulate any statement unless —

(*a*) a copy of the requisition signed by the requisitionists, or 2 or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company —

(i) in the case of a requisition requiring notice of a resolution — not less than 6 weeks before the meeting; and

(ii) in the case of any other requisition — not less than one week before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto,

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection is deemed to have been properly deposited for the purposes thereof.

(4A) A company is not bound under this section to give notice of any resolution which is proposed to be passed by written means under section 184A, or to circulate any statement relating thereto, unless —

(*a*) the requisition setting out the text of the resolution and the statement is received by a director of the company in legible form or a permitted alternative form; and

(*b*) the notice states that formal agreement to the resolution is sought under section 184A.

(4B) Where the requisition under subsection (4A)(*a*) requests that the date of its receipt by a company be notified to a specified person, the directors must, without delay after it is first received by a director in legible form or a permitted alternative form, notify that person of the date when it was first so received.

(5) The company is not bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the

rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, even though they are not parties to the application.

(6) Despite anything in the company's constitution, the business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice is deemed to have been so given despite the accidental omission, in giving it, of one or more members.

[36/2014]

(7) In the event of any default in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

(8) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

(*a*) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

(*b*) in another form that —

(i) is currently agreed between the company and the person as a form in which the thing may be sent or otherwise supplied to the company; and

(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

Special resolutions

184.—(1) A resolution is a special resolution when it has been passed by a majority of not less than three-fourths of such members

as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting of which —

(*a*) in the case of a private company — not less than 14 days' written notice; or

(*b*) in the case of a public company — not less than 21 days' written notice,

specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Despite subsection (1), if it so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under subsection (1) has been given.

(3) At any meeting at which a special resolution is submitted, a declaration of the chairperson that the resolution is carried is unless a poll is demanded conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted, a poll is deemed to be effectively demanded if demanded —

(*a*) by such number of members for the time being entitled under the constitution to vote at the meeting as is specified in the constitution, but it is not in any case necessary for more than 5 members to make the demand;

(*b*) if no such provision is made by the constitution — by 3 members so entitled, or by one or 2 members so entitled, if —

(i) that member holds or those 2 members together hold not less than 10% of the total number of paid-up shares of the company (excluding treasury shares); or

(ii) that member represents or those 2 members together represent not less than 10% of the total voting rights of all the members having a right to vote at that meeting.

[36/2014]

(4A) For the purposes of subsection (4), any reference to a member does not include a reference to a company itself where it is registered as a member.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed, reference must be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the constitution of the company.

[36/2014]

(6) For the purposes of this section, notice of a meeting is deemed to be duly given and the meeting is deemed to be duly held when the notice is given and the meeting held in the manner provided by this Act or by the constitution.

[36/2014]

(7) Any extraordinary resolution, duly and appropriately passed before 29 December 1967 is for the purposes of this Act treated as a special resolution.

(8) Where in the case of a company incorporated before 29 December 1967 any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

Passing of resolutions by written means

184A.—(1) Despite any other provision of this Act, a private company or an unlisted public company may pass any resolution by written means in accordance with the provisions of this section and sections 184B to 184F.

[36/2014]

(2) Subsection (1) does not apply to a resolution mentioned in section 175A(1)(*a*) or a resolution for which special notice is required.

[15/2017]

(3) A special resolution is passed by written means if the resolution indicates that it is a special resolution and if it has been formally agreed on any date by one or more members of the company who on that date represent —

(*a*) at least 75%; or

(*b*) if the constitution of the company requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the company.

[36/2014]

(4) An ordinary resolution is passed by written means if the resolution does not indicate that it is a special resolution and if it has been formally agreed on any date by one or more members of the company who on that date represent —

(*a*) a majority; or

(*b*) if the constitution of the company requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the company.

[36/2014]

(4A) A resolution mentioned in section 76(9B)(*e*) is passed by written means if the resolution indicates that it is a resolution mentioned in that provision and if it has been formally agreed on any date by all the members of the company who on that date would have the right to vote on that resolution at a general meeting of the company.

(5) For the purposes of this section, a resolution of a company is formally agreed by a member if —

(*a*) the company receives from the member (or the member's proxy if this is allowed) a document that —

(i) is given to the company in legible form or a permitted alternative form;

(ii) indicates the member's agreement (or agreement on the member's behalf) to the resolution by way of the member's signature (or the member's proxy's signature if that is allowed), or such other method as the constitution may provide; and

(iii) includes the text of the resolution or otherwise makes clear that it is that resolution that is being agreed to; and

(*b*) the member (or the member's proxy) had a legible text of the resolution before giving that document.

[36/2014]

(6) Nothing in subsection (3), (4) or (4A) is to be construed as requiring the requisite number of members to formally agree to the resolution on a single day.

(6A) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

(*a*) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

(*b*) in another form that —

(i) is currently agreed between the company and the person as a form in which the thing may be sent or otherwise supplied to the company; and

(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

(7) Any reference in this Act or any other law to the passing or making of a resolution, or the passing or making of a resolution at a meeting, includes a reference to the passing of the resolution by written means in accordance with this section.

(8) Any reference in this Act or any other law to the doing of anything at a general meeting of a company includes a reference to

the passing of a resolution authorising the doing of that thing by written means in accordance with this section.

(9) In this section and sections 184B to 184F, "unlisted public company" means a public company the securities of which are not listed for quotation or quoted on an approved exchange in Singapore or any securities exchange outside Singapore.

[36/2014; 4/2017]

Requirements for passing of resolutions by written means

184B.—(1) A resolution of a private company or an unlisted public company may only be passed by written means if —

(*a*) either —

(i) agreement to the resolution was first sought by the directors of the company in accordance with section 184C; or

(ii) a requisition for that resolution was first given to the company in accordance with section 183 and, by reason of that notice, the documents referred to in section 183(3A) in respect of the resolution were served on members of the company in accordance with section 183(3A);

(*b*) the constitution of the company does not prohibit the passing of resolutions (either generally or for the purpose in question) by written means; and

(*c*) all conditions in the company's constitution relating to the passing of the resolution by written means are met.

[36/2014]

(2) Any resolution that is passed in contravention of subsection (1) is invalid.

Where directors seek agreement to resolution by written means

184C.—(1) The directors of a private company or an unlisted public company who wish to seek agreement to a resolution of the company and for it to be passed by written means must send to each

member, having the right to vote on that resolution at a general meeting, a copy of the text of the resolution.

[36/2014]

(2) As far as practicable, the directors must comply with subsection (1) as respects every member at the same time and without delay.

(3) Without limiting any other means of complying with subsections (1) and (2), the directors have complied with those subsections if they secure that the same paper document containing the text of the resolution is sent without delay to each member in turn.

(4) Subject to section 184D, if the resolution is passed before the directors have complied with subsection (1) as respects every member, that fact does not affect the validity of the resolution or any obligation already incurred by the directors under subsections (1) and (2).

Members may require general meeting for resolution

184D.—(1) Any member or members of a private company or an unlisted public company representing at least 5% of the total voting rights of all the members having the right to vote on a resolution at a general meeting of the company may, within 7 days after —

(*a*) the text of the resolution has been sent to the member or members in accordance with section 184C; or

(*b*) the documents referred to in section 183(3A) in respect of the resolution have been served on the member or members,

as the case may be, give notice to the company requiring that a general meeting be convened for that resolution.

[36/2014]

(2) Where notice is given under subsection (1) —

(*a*) the resolution is invalid even though it may have in the meantime been passed in accordance with section 184A; and

(*b*) the directors must proceed to convene a general meeting for the resolution.

Period for agreeing to written resolution

184DA.—(1) Unless the constitution of a company otherwise provides, a resolution proposed to be passed by written means lapses if it is not passed before the end of the period of 28 days beginning with the date on which the written resolution is circulated to the members of the company.

[36/2014]

(2) The agreement to a resolution is ineffective if indicated after the expiry of that period.

[36/2014]

Company's duty to notify members that resolution passed by written means

184E.—(1) Where a resolution of a private company or an unlisted public company is passed by written means, the company must —

(*a*) notify every member that it has been passed; and

(*b*) do so within 15 days from the earliest date on which a director or secretary of the company is aware that it has been passed.

[36/2014]

(2) Non-compliance with this section does not render the resolution invalid.

Recording of resolutions passed by written means

184F.—(1) Where a resolution of a private company or an unlisted public company is passed by written means, the company must cause a record of the resolution, and the indication of each member's agreement (or agreement on the member's behalf) to it, to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

[36/2014]

(2) Non-compliance with subsection (1) does not render the resolution invalid.

(3) Any such record, if purporting to be signed by a director or the secretary of the company, is evidence of the proceedings in passing the resolution.

(4) Where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings are deemed to have been complied with.

(5) Section 189 applies in relation to a record made in accordance with this section as it applies in relation to minutes of proceedings of a general meeting.

Resolutions of one member companies

184G.—(1) Despite anything in this Act, a company that has only one member may pass a resolution by the member recording the resolution and signing the record.

(2) If this Act requires information or a document relating to the resolution to be lodged with the Registrar, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Resolution requiring special notice

185. Where by this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company must give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, must give them notice thereof, in any manner allowed by the constitution, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, is deemed to be properly given.

[36/2014]

Registration and copies of certain resolutions

186.—(1) A copy of —

(*a*) every special resolution; and

(*b*) every resolution, including any resolution passed under section 175A(1)(*a*), which effectively binds any class of

shareholders whether agreed to by all the members of that class or not,

must, except where otherwise expressly provided by this Act within 14 days after the passing or making thereof, be lodged by the company with the Registrar.

[36/2014; 15/2017]

(2) Where the constitution of a company has not been registered, a copy of every resolution to which this section applies must be forwarded to any member at the member's request on payment of $1 or such less sum as the company directs.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(3) In the event of any default in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(4) In the event of any default in complying with subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine of $50 for each copy in respect of which default is made.

Resolutions at adjourned meetings

187. Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors the resolution is for all purposes treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Minutes of proceedings

188.—(1) Every company must cause —

(*a*) minutes of all proceedings of general meetings and of meetings of its directors and of its chief executive officers (if any) to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and

(*b*) those minutes to be signed by the chairperson of the meeting at which the proceedings were had or by the chairperson of the next succeeding meeting.

[36/2014]

(2) Any minutes so entered that purport to be signed as provided in subsection (1) are evidence of the proceedings to which they relate, unless the contrary is proved.

(3) Where minutes have been so entered and signed, then, until the contrary is proved —

(*a*) the meeting is deemed to have been duly held and convened;

(*b*) all proceedings had thereat are deemed to have been duly had; and

(*c*) all appointments of officers or liquidators made thereat are deemed to be valid.

(3A) Every company must keep minute books in which it must cause to be entered the following matters:

(*a*) if the company has only one director —

(i) the passing of resolutions by that director; and

(ii) the making of declarations by that director;

(*b*) resolutions passed by written means under section 184A,

within one month of the passing or making of each resolution or declaration.

(3B) The company must ensure that minutes of the passing of a resolution mentioned in subsection (3A)(*b*) are signed by a director within a reasonable time after the resolution is passed.

(3C) The director of a company with only one director who has passed a resolution or made a declaration must sign the minutes thereof within a reasonable time after the resolution is passed or the declaration is made.

(3D) Minutes entered in accordance with subsection (3A) and purportedly signed in accordance with subsection (3B) or (3C) (as the

case may be) are evidence of the resolution or declaration to which they relate, unless the contrary is proved.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

Inspection of minute books

189.—(1) The books mentioned in section 188(1) and (3A) must be kept by the company at the registered office or the principal place of business in Singapore of the company, and must be open to the inspection of any member without charge.

(2) Any member is entitled to be furnished within 14 days after the member has made a request in writing in that behalf to the company with a copy of any minutes specified in section 188(1) or (3A) at a charge not exceeding $1 for every page thereof.

(2A) Subsection (1) does not apply to books containing minutes of proceedings of meetings of a company's directors and of its chief executive officers, or (as the case may be) books containing minutes of the passing of resolutions and the making of declarations by the director of a company that has only one director; and subsection (2) does not apply to any of those minutes.

[36/2014]

(3) If any copy required under this section is not so furnished the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $400 and also to a default penalty.

Division 4 — Register of members kept by public company

[36/2014]

Application and interpretation of Division

189A.—(1) This Division applies only in relation to a public company.

[36/2014]

(2) In this Division, a reference to the register means the register of members required to be kept by a public company under section 190(1).

[36/2014]

Register and index of members of public companies

190.—(1) Every public company must keep a register of its members and enter therein —

(*a*) the names and addresses of the members, and in the case of a public company having a share capital a statement of the shares held by each member, distinguishing each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which the name of each person was entered in the register as a member;

(*c*) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and

(*d*) in the case of a public company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

[36/2014]

(2) Despite anything in subsection (1), where the public company has converted any of its shares into stock and given notice of the conversion to the Registrar, the company must alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (1)(*a*).

[36/2014]

(2A) Where a public company purchases one or more of its own shares or stocks in circumstances in which section 76H applies —

(*a*) the requirements of subsections (1)(*a*), (*b*) and (*c*) and (2) must be complied with unless the public company cancels all of the shares or stocks immediately after the purchase in accordance with section 76K(1); but

(*b*) any share or stock which is so cancelled is to be disregarded for the purposes of subsections (1)(*a*) and (2).

[36/2014]

(3) Despite anything in subsection (1), a public company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless the person specifically requests the names and particulars of former members.

[36/2014]

(4) The register of members is prima facie evidence of any matters inserted therein as required or authorised by this Act.

Index of members of public company

(5) Every public company having more than 50 members must, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and must, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

[36/2014]

(6) The index must in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(7) If default is made in complying with this section, the public company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Where register to be kept

191.—(1) The register of members and index (if any) must be kept at the registered office of the public company, but —

(*a*) if the work of making them up is done at another office of the company in Singapore they may be kept at that other office; or

(*b*) if the company arranges with some other person to make up the register and index (if any) on its behalf they may be kept at the office of that other person at which the work is done if that office is in Singapore.

[36/2014]

(2) Every public company must, within 14 days after the register and index, if any, are first kept at a place other than the registered office, lodge with the Registrar notice of the place where the register and index (if any) are kept and must, within 14 days after any change in the place at which the register and index (if any) are kept, lodge with the Registrar notice of the change.

[36/2014]

(3) If default is made in complying with this section, the public company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Inspection and closing of register

192.—(1) A public company may close the register of members or any class of members for one or more periods not exceeding 30 days in the aggregate in any calendar year.

[36/2014]

(2) The register and index must be open to the inspection of any member without charge and of any other person on payment for each inspection of $1 or such less sum as the public company requires.

[36/2014]

(3) Any member or other person may request the public company to furnish that member or other person with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of $1 or such less sum as the company requires for every page thereof required to be copied and the company must cause any copy so requested by any person to be sent to that person within a period of 21 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

[36/2014]

(4) If any copy so requested is not sent within the period prescribed by subsection (3), the public company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $400 and also to a default penalty.

[36/2014]

Consequences of default by agent

193. Where, by virtue of section 191(1)(*b*), the register of members is kept at the office of some person other than the public company, and by reason of any default of the person the company fails to comply with section 191(1) or (2) or with section 192 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if that other person were an officer of the company who was in default, and the power of the Court under section 399 extends to the making of orders against that other person and that other person's officers and employees.

[36/2014]

Power of Court to rectify register

194.—(1) If —

(*a*) the name of any person is without sufficient cause entered in or omitted from the register; or

(*b*) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

the person aggrieved or any member or the public company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

[36/2014]

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

(*a*) any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises

between members or alleged members or between members or alleged members on the one hand and the public company on the other hand; and

(*b*) generally, any question necessary or expedient to be decided for the rectification of the register.

[36/2014]

(3) The Court when making an order for rectification of the register must by its order direct a notice of the rectification to be so lodged.

(4) No application for the rectification of a register in respect of an entry which was made in the register more than 30 years before the date of the application may be entertained by the Court.

Limitation of liability of trustee, etc., registered as holder of shares

195.—(1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register as the holder of a share in any company may become registered as the holder of that share as trustee, executor or administrator of that estate and is in respect of that share subject to the same liabilities and no more as he or she would have been subject to if the share had remained registered in the name of the deceased person.

[15/2017]

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any company being a share registered in a register may with the consent of the company and of the registered holder of that share become registered as the holder of the share as trustee, executor or administrator of that estate and is in respect of the share subject to the same liabilities and no more as he or she would have been subject to if the share had been registered in the name of the deceased person.

[15/2017]

(3) Shares in a company registered in a register and held by a trustee in respect of a particular trust must at the request of the trustee be marked in the register in such a way as to identify them as being held in respect of the trust.

[15/2017]

(4) Subject to this section, no notice of any trust expressed, implied or constructive may be entered in a register or be receivable by the Registrar and no liabilities are affected by anything done pursuant to subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the company concerned is not affected by notice of any trust by anything so done.

[15/2017]

Branch registers

196.—(1) A public company having a share capital may cause to be kept in any place outside Singapore a branch register of members which is deemed to be part of the company's register of members.

[36/2014]

(2) The public company must lodge with the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice must be lodged within 14 days after the opening of the office or of the change or discontinuance, as the case may be.

[36/2014]

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

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

[36/2014]

(5) Subject to this section with respect to the duplicate register, the shares registered in a branch register must be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register may during the continuance of that registration be registered in any other register.

(6) A public company may discontinue a branch register and thereupon all entries in that register must be transferred to some other

branch register kept by the company in the same place or to the principal register.

[36/2014]

(7) This section applies to all public companies incorporated in Singapore.

[36/2014]

(8) If by virtue of the law in force in any other country any corporation incorporated under that law keeps in Singapore a branch register of its members, the Minister may by order declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members apply, subject to any modifications specified in the order, to and in relation to any such branch register kept in Singapore as they apply to and in relation to the registers of companies under this Act and thereupon those provisions are to apply accordingly.

(9) If default is made in complying with this section, the public company and every officer of the company who is in default and every person who, pursuant to section 191, has arranged to make up the principal register, and who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Division 4A — Electronic register of members kept by Registrar

Electronic register of members

196A.—(1) On and after 3 January 2016, the Registrar must, in respect of every private company, keep and maintain an electronic register of members of that company containing such information notified to the Registrar on or after that date.

[36/2014]

(2) The electronic register of members of a private company must be kept in such form as the Registrar may determine and must contain —

(*a*) the following information:

(i) the names of the members;

(ii) the residential address and contact address (if the member is an individual) or address (if otherwise) of each member;

[Act 21 of 2024 wef 09/12/2024]

(iii) in the case of a company having a share capital —

(A) a statement of the shares held by each member of the amount paid or agreed to be considered as paid on the shares of each member; and

(B) the date of every allotment of shares to members (including any deemed allotment as defined in section 63(3)) and the number of shares comprised in each allotment;

(iv) the date on which the name of each person was entered in the register as a member;

(v) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member; and

(*b*) any change to the information referred to in paragraph (*a*)(i), (ii) and (iii) that occurs on or after 3 January 2016.

[36/2014]

(3) Where a private company has converted any of its shares into stock and the company notifies the Registrar of this fact, the register must show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (2)(*a*).

[36/2014]

(4) Particulars of any change in the information referred to in subsection (2) must be given to the Registrar where a private company purchases one or more of its shares or stocks in circumstances in which section 76H applies unless the company cancels all the shares or stocks immediately after the purchase in accordance with section 76K(1).

[36/2014]

(5) The Registrar must update the electronic register of members in accordance with any change that is required or authorised by any

provision of this Act to be lodged with the Registrar, including section 31(1), 63(1), 70(6), 71(1B), 74A(3), 76B(7), 76K(1A), 126(2) or 128(1)(*a*).

[36/2014]

(6) An entry in the register of members required to be kept by the Registrar under this section is prima facie evidence of the truth of any matters which are by this Act directed or authorised to be entered or inserted in the register of members.

[36/2014]

Information to be provided by pre-existing private companies

196B.—(1) A private company incorporated, or converted from a public company, before 3 January 2016 must lodge with the Registrar the information necessary to be included in the company's electronic register of members under section 196A within the earlier of the following dates:

(*a*) 6 months after 3 January 2016;

(*b*) the date on which the first return under section 197 is required to be lodged with the Registrar after 3 January 2016.

[36/2014]

(2) If a private company to which subsection (1) applies fails to lodge any of the information that it is required to lodge under that subsection, the Registrar may, in place of the omitted information, enter in the electronic register of members the corresponding information contained in the register of members kept by the company under section 190 in force immediately before 3 January 2016.

[36/2014]

(3) The Registrar may extend the time for furnishing the information under subsection (1) if the Registrar considers it fair and reasonable to do so in the circumstances of the case.

[36/2014]

Application of sections 194 and 195

196C.—(1) Section 194 applies in respect of the electronic register of members of a private company required to be kept by the Registrar

under section 196A as if a reference to a register under section 194 referred to the electronic register of members of the private company in question.

[36/2014]

(2) Section 195 applies in respect of the electronic register of members of a private company required to be kept by the Registrar under section 196A but with the following modifications:

(*a*) a reference to a register under section 194 refers to the electronic register of members of the private company in question;

(*b*) the reference to any branch register were omitted;

(*c*) the company is required to notify the Registrar of any request made by a trustee under section 195(3) for the relevant shares to be marked in the electronic register of members as to identify the shares being held in respect of a trust within 14 days after the request.

[36/2014]

Maintenance of old register of members

196D.—(1) Subject to subsections (2) and (3), a private company incorporated, or which was converted from a public company before 3 January 2016 must —

(*a*) continue to keep any branch register of members under section 196 in force immediately before 3 January 2016 for a period of 7 years after that date; and

(*b*) continue to keep its register of members under section 190(1) in force immediately before 3 January 2016 for a period of 7 years after the last member referred to in the register ceases to be a member of the company.

[36/2014]

(2) A private company is not required to update the branch register or the register of members required to be kept under subsection (1) with any changes in the particulars therein that occurred on or after the date on which the company furnishes the information required to be furnished to the Registrar under section 196B(1).

[36/2014]

(3) Until the expiry of the period for which any branch register and register of members is required to be kept under subsection (1) but subject to subsection (2) —

(*a*) sections 190, 191, 192(2), (3) and (4), 194, 195 and 196 in force immediately before 3 January 2016 continue, with the necessary modifications, to apply in relation to the branch register and register of members required to be kept under subsection (1); and

(*b*) any non-compliance with the sections mentioned in paragraph (*a*) may be dealt with and punished in accordance with those provisions as if they were in force immediately before 3 January 2016.

[36/2014]

Transitional provision on keeping of residential address and contact address of members of private company

196E. As from the date of commencement of section 43 of the ACRA (Registry and Regulatory Enhancements) Act 2024, the Registrar must cause —

(*a*) the address contained in the electronic register of members of each member who is an individual to be kept as the residential address of that member and, until notice of a change in the individual's contact address is lodged under any ACRA administered Act on or after that date, also as the contact address of that member; and

(*b*) that contact address to be made available for public inspection and access under section 12(2)(*d*) as the address of that member.

[Act 21 of 2024 wef 09/12/2024]

Division 5 — Annual return

Annual return by companies

197.—(1) Every company, other than a company mentioned in subsection (1A), must lodge a return with the Registrar after its annual general meeting —

(*a*) in the case of a listed company — within 5 months after the end of its financial year; and

(*b*) in any other case — within 7 months after the end of its financial year.

[15/2017]

(1A) A company having a share capital and keeping a branch register in any place outside Singapore must lodge a return with the Registrar after its annual general meeting —

(*a*) in the case of a listed company — within 6 months after the end of its financial year; and

(*b*) in any other case — within 8 months after the end of its financial year.

[15/2017]

(1B) The Registrar may, if the Registrar thinks there are special reasons to do so, extend any period within which a company must lodge a return under subsection (1) or (1A) —

(*a*) upon an application by the company; or

(*b*) in respect of any prescribed class of companies.

[15/2017]

(2) The return mentioned in subsections (1) and (1A) —

(*a*) must be in such form;

(*b*) must contain such particulars and information; and

(*c*) must be accompanied by such documents,

as may be prescribed.

[36/2014; 15/2017]

(3) The particulars to be contained in, and the documents that are to accompany, the return mentioned in subsection (1) may differ according to the class or description of company prescribed.

[36/2014]

(4) If a private company is required under section 175A(4) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the company must lodge a notice

of the date on which the annual general meeting was held with the Registrar within 14 days after that date.

[15/2017]

(5) [*Deleted by Act 15 of 2017*]

(6) If a company fails to comply with this section, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[36/2014]

Financial year of company

198.—(1) Where a company is incorporated on or after 31 August 2018 —

(*a*) the company's first financial year starts on the company's date of incorporation and, subject to subsection (4), ends on the last day of the company's first financial year as furnished under section 19(1)(*b*); and

(*b*) each of the company's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

[15/2017]

(2) A company's first financial year must not be longer than 18 months unless the Registrar on the application of the company otherwise approves.

[15/2017]

(3) Where a company was incorporated before 31 August 2018 —

(*a*) the last day of the financial year for the company's first financial year ending on or after 31 August 2018 is —

(i) where the company had, before 31 August 2018, lodged an annual return, or lodged a notification with the Registrar informing the Registrar of the end of the company's financial year — the anniversary of the last day of the financial year as indicated by the company in the last annual return or last such notification with the Registrar; or

(ii) where the company had not, before 31 August 2018, lodged an annual return, or lodged a notification with the Registrar informing the Registrar of the end of the company's financial year — the anniversary of the date of incorporation of the company; and

(*b*) each of the company's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

[15/2017]

(4) Despite subsections (1) and (3), but subject to subsections (5) and (6), a company may by notice lodged with the Registrar in the prescribed form specify a new date as the last day of the company's financial year to apply to its previous or current financial year.

[15/2017]

(5) The Registrar's approval must be obtained if the notice mentioned in subsection (4) —

(*a*) results in a financial year being longer than 18 months; or

(*b*) is lodged less than 5 years after the end of an earlier financial year that ended on a date on or after 31 August 2018, if the end of that earlier financial year was changed under this section.

[15/2017]

(6) The notice under subsection (4) cannot specify a new date as the last day of the company's financial year —

(*a*) after the expiry of the period under section 175 within which an annual general meeting of the company must be held after that financial year;

(*b*) after the expiry of the period under section 197 within which an annual return of the company must be lodged with the Registrar after that financial year; or

(*c*) after the expiry of the period under section 203 within which a copy of the financial statements, or consolidated financial statements, balance sheet, and documents mentioned in section 203(1) are required to be sent to all

persons entitled to receive notice of general meetings of the company.

[15/2017]

(7) For the purposes of —

(*a*) subsection (3)(*a*)(i), where the last day of the financial year of a company as indicated in the last annual return or in the last notification with the Registrar informing the Registrar of the last day of the company's financial year falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February; and

(*b*) subsection (3)(*a*)(ii), where the date of incorporation of a company falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February.

[15/2017]

PART 6

FINANCIAL STATEMENTS AND AUDIT

[36/2014]

Division 1 — Financial statements

[36/2014]

Accounting records and systems of control

199.—(1) Every company must cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and must cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

[36/2014]

(2) The company must retain the records referred to in subsection (1) for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

[2/2007]

(2A) Every public company and every subsidiary company of a public company must devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

(*a*) assets are safeguarded against loss from unauthorised use or disposition; and

(*b*) transactions are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements and to maintain accountability of assets.

[36/2014]

(3) The records referred to in subsection (1) must be kept at the registered office of the company or at such other place as the directors think fit and must at all times be open to inspection by the directors.

(4) If accounting and other records are kept by the company at a place outside Singapore there must be sent to and kept at a place in Singapore and be at all times open to inspection by the directors such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair financial statements and any documents required to be attached thereto.

[36/2014]

(5) The Court may in any particular case order that the accounting and other records of a company be open to inspection by a public accountant acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the public accountant during his or her inspection must not be disclosed by the public accountant except to that director.

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

[36/2014]

200. [*Repealed by Act 36 of 2014*]

200A. [*Repealed by Act 39 of 2007*]

Financial statements and consolidated financial statements

201.—(1) The directors of every company must lay before the company at its annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held.

[15/2017]

(2) Subject to subsections (12) to (15), the financial statements mentioned in subsection (1) must comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the company.

[36/2014]

(3) [*Deleted by Act 15 of 2017*]

(4) [*Deleted by Act 15 of 2017*]

(5) Subject to subsections (12) to (15), the directors of a company that is a parent company at the end of its financial year need not comply with subsection (1) but must cause to be made out and laid before the company at its annual general meeting —

(*a*) consolidated financial statements dealing with the financial position and performance of the group for the financial year in respect of which the annual general meeting is held; and

(*b*) a balance sheet dealing with the state of affairs of the parent company at the end of its financial year,

each of which complies with the requirements of the Accounting Standards and gives a true and fair view of the matters referred to in paragraph (*a*) or (*b*) (as the case may be) so far as it concerns members of the parent company.

[36/2014; 15/2017]

(6) [*Deleted by Act 15 of 2017*]

(7) The directors must (before the financial statements mentioned in subsection (1) and the balance sheet mentioned in subsection (5)(*b*) are made out) take reasonable steps —

(*a*) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be

written off and adequate provision to be made for doubtful debts;

(*b*) to ascertain whether any current assets (other than current assets to which paragraph (*a*) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(*c*) to ascertain whether any non-current asset is shown in the books of the company at an amount which, having regard to its value to the company as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the financial statements such information and explanations as will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.

[36/2014]

(8) The financial statements must be duly audited before they are laid before the company at its annual general meeting as required by this section, and the auditor's report required by section 207 must be attached to or endorsed upon those financial statements.

[36/2014]

(9) The directors of the company must —

(*a*) take reasonable steps to ensure that the financial statements are audited as required by this Part not less than 14 days before the annual general meeting of the company, unless all the persons entitled to receive notice of general meetings of the company agree that the financial statements may be audited as required by this Part less

than 14 days before the annual general meeting of the company; and

(*b*) cause to be attached to those financial statements the auditor's report that is furnished to the directors under section 207(1A).

[36/2014]

(10) In subsections (8) and (9), "financial statements", in relation to a company, means —

(*a*) in the case where the company is not a parent company — the financial statements required to be laid before the company at its annual general meeting under subsection (1); or

(*b*) in the case where the company is a parent company — the consolidated financial statements of the group and the balance sheet of the parent company required to be laid before the company at its annual general meeting under subsection (5).

[36/2014]

(11) Where at the end of a financial year a company is the subsidiary company of another corporation, the directors of the company must state in, or in a note as a statement annexed to, the financial statements laid before the company at its annual general meeting the name of the corporation which is its ultimate parent corporation.

[36/2014]

(12) The financial statements or consolidated financial statements of a company need not comply with any requirement of the Accounting Standards for the purposes of subsection (1) or (5), if the company has obtained the approval of the Registrar to such non-compliance.

[36/2014]

(13) Where financial statements or consolidated financial statements prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (1) or (5), would not give a true and fair view of any matter required by this section to be dealt with in the financial statements or consolidated financial statements, the financial statements or consolidated financial

statements need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.
[36/2014]

(14) In the event of any non-compliance with a requirement of the Accounting Standards mentioned in subsection (13), there must be included in the financial statements or consolidated financial statements, as the case may be —

(*a*) a statement by the auditor of the company that the auditor agrees that such non-compliance is necessary for the financial statements or consolidated financial statements (as the case may be) to give a true and fair view of the matter concerned;

(*b*) particulars of the departure, the reason therefor and its effect, if any; and

(*c*) such further information and explanations as will give a true and fair view of that matter.

[36/2014]

(15) The Minister may, by order in the *Gazette*, in respect of companies of a specified class or description, substitute other accounting standards for the Accounting Standards, and the provisions of this section and sections 207 and 209A apply accordingly in respect of such companies.

[36/2014]

(16) The financial statements laid before a company at its general meeting (including any consolidated financial statements annexed to the balance sheet of a parent company) must be accompanied, before the auditor reports on the financial statements under this Part, by a statement signed on behalf of the directors by 2 directors of the company containing the information set out in the Twelfth Schedule.
[36/2014]

(17) Any document (other than any financial statements or a balance sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of a company (other than a banking corporation) must not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied —

(*a*) if the reserve is invested outside the business of the company — by a statement showing the manner in which and the security upon which it is invested; or

(*b*) if the reserve is being used in the business of the company — by a statement to the effect that the reserve is being so used.

[36/2014]

(18) The provisions of this Act relating to the form and content of the statement of directors and the annual financial statements apply to a banking corporation with such modifications and exceptions as are determined either generally or in any particular case by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act 1970.

[36/2014]

(19) In respect of a company that is registered as a charity or approved as an institution of a public character under the Charities Act 1994, the requirements of this section as to the form and content of a company's financial statements or consolidated financial statements being in compliance with the Accounting Standards apply subject to any modification prescribed under section 12(1)(*f*) of that Act in respect of such a company.

[36/2014]

(20) For the purposes of subsections (1) and (5), a reference to the preceding financial statements includes the profit and loss account, balance sheet and consolidated accounts required to be laid before the company at its annual general meeting under section 201 in force before 1 July 2015.

[36/2014]

(21) For the purposes of subsections (1) and (5), a reference to the requirement to lay financial statements before a company includes the laying of the profit and loss account, balance sheet and consolidated accounts prepared in accordance with section 201 in force immediately before 1 July 2015, where such profit and loss account, balance sheet and consolidated accounts have been prepared in respect of a financial year which ended before 1 July 2015.

[36/2014]

(22) Subsection (16) does not apply to any company in respect of any financial year which ended before 1 July 2015; and section 201(5) to (8), (11), (12) and (15) in force immediately before that date continues to apply to such company for that financial year.

[36/2014]

(23) Without limiting section 197(2), a company referred to in subsection (22) must, when lodging a return with the Registrar under section 197, attach a copy of the report prepared in accordance with section 201(5) in force immediately before 1 July 2015.

[36/2014]

Certain dormant companies exempted from duty to prepare financial statements

201A.—(1) Subject to subsection (3), the directors of a dormant relevant company are exempt from the requirements of section 201 for a financial year if the requirements set out in subsection (2) are satisfied.

[36/2014]

(2) The requirements referred to in subsection (1) are —

(*a*) that the relevant company has been dormant —

(i) from the time of its formation; or

(ii) since the end of the previous financial year;

(*b*) that the directors of the relevant company have lodged with the Registrar a statement by the directors that —

(i) the company has been dormant for the period set out in paragraph (*a*)(i) or (ii), as the case may be;

(ii) no notice has been received under subsection (3) in relation to the financial year; and

(iii) the accounting and other records required by this Act to be kept by the company have been kept in accordance with section 199; and

(*c*) that the statement mentioned in paragraph (*b*) has been lodged with the Registrar at the same time that the annual return is required to be lodged under section 197(1).

[36/2014]

(3) A relevant person may by written notice require the directors of a dormant relevant company to comply with any or all of the requirements of section 201 in respect of a financial year but the written notice must be issued to the directors not less than 3 months before the end of the financial year.

[36/2014]

(4) In subsection (3), "relevant person" means —

(*a*) the Registrar;

(*b*) one or more members holding not less than 5% of the total number of issued shares of the company (excluding treasury shares); or

(*c*) not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member).

[36/2014]

(5) For the purposes of this section —

(*a*) "relevant company" means a company —

(i) which is not a listed company or a subsidiary company of a listed company;

(ii) whose total assets at any time during the financial year in question does not exceed —

(A) $500,000 in value; or

(B) such other amount as may be prescribed in substitution by the Minister; and

(iii) which, if it is a parent company (which is not itself a subsidiary company of another corporation), belongs to a group the consolidated total assets of which at any time during the financial year in question does not exceed —

(A) $500,000 in value; or

(B) such other amount as may be prescribed in substitution by the Minister; and

(*b*) section 205B(2) and (3) applies in determining whether a relevant company is dormant.

[36/2014]

(6) This section does not apply to the directors of any company in respect of a financial year which ended before 3 January 2016 and the directors of such company must prepare the accounts or consolidated accounts for that financial year and lay the accounts or consolidated accounts of the company at its annual general meeting for that financial year, in accordance with Part VI in force immediately before that date.

[36/2014]

(7) Without limiting section 197(2), a company referred to in subsection (6) must, when lodging a return with the Registrar under section 197, attach a copy of the accounts or consolidated accounts so prepared.

[36/2014]

Retention of documents laid before company at annual general meeting

201AA.—(1) Every company must cause to be kept at the company's registered office, or such other place as the directors think fit —

(*a*) a copy of each of the documents that was laid before the company at its annual general meeting under section 201 for a period of not less than 5 years after the date of the annual general meeting, being a date on or after 3 January 2016; or

(*b*) in respect of any financial year for which the company need not hold an annual general meeting because of section 175A(1) —

(i) a copy of the financial statements; or

(ii) in the case of a parent company, a copy of the consolidated financial statements and balance sheet

(including every document required by law to be attached thereto),

and a copy of the auditors' report where such financial statements or consolidated financial statements are duly audited, that were sent to all persons entitled to receive notice of general meetings of the company in accordance with section 203(1) for a period of not less than 5 years after the date on which the documents were sent, being a date on or after 3 January 2016.

[36/2014; 15/2017]

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

[36/2014]

(3) The Registrar or an authorised officer may at any time require the company to furnish any document kept under subsection (1), and may, without fee or reward, inspect, make copies of or extracts from such document.

[36/2014]

(4) Any person who —

(*a*) without lawful excuse, refuses to produce any document required of the person by the Registrar or an authorised officer under subsection (3); or

(*b*) assaults, obstructs, hinders or delays the Registrar or the authorised officer in the course of inspecting or making copies or extracts from the document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(5) In this section, "authorised officer" means an officer of the Authority authorised by the Registrar for the purposes of this section.

[36/2014]

Audit committees

201B.—(1) Every listed company must have an audit committee.

(2) An audit committee must be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and must be composed of 3 or more members of whom a majority must not be —

(*a*) executive directors of the company or any related corporation;

(*b*) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or

(*c*) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

(3) The members of an audit committee must elect a chairperson from among their number who is not an executive director or employee of the company or any related corporation.

(4) If a member of an audit committee resigns, dies or for any other reason ceases to be a member with the result that the number of members is reduced below 3, the board of directors must, within 3 months of that event, appoint such number of new members as may be required to make up the minimum number of 3 members.

(5) The functions of an audit committee are —

(*a*) to review —

(i) with the auditor, the audit plan;

(ii) with the auditor, the auditor's evaluation of the system of internal accounting controls;

(iii) with the auditor, the auditor's audit report;

(iv) the assistance given by the company's officers to the auditor;

(v) the scope and results of the internal audit procedures; and

(vi) the financial statements of the company and, if it is a parent company, the consolidated financial statements, submitted to it by the company or the parent company, and thereafter to submit them to the directors of the company or parent company; and

(*b*) to nominate a person or persons as auditor, despite anything contained in the constitution or under section 205,

together with such other functions as may be agreed to by the audit committee and the board of directors.

[36/2014]

(6) The auditor has the right to appear and be heard at any meeting of the audit committee and must appear before the committee when required to do so by the committee.

(7) Upon the request of the auditor, the chairperson of the audit committee must convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders.

(8) Each audit committee may regulate its own procedure and in particular the calling of meetings, the notice to be given of such meetings, the voting and proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

(9) Where the directors of a company or of a parent company are required to make a statement under section 201(16) and the company is a listed company, the directors must describe in the statement the nature and extent of the functions performed by the audit committee pursuant to subsection (5).

[36/2014]

(10) [*Deleted by Act 36 of 2014*]

(11) Any reference in this section to a director who is not an executive director of a company is a reference to a director who is not an employee of, and does not hold any other office of profit in, the company or in any related corporation of that company in conjunction with his or her office of director and his or her membership of any

audit committee, and any reference to an executive director is to be read accordingly.

When directors need not lay financial statements before company

201C.—(1) The directors of a private company need not comply with the requirement in section 201 to lay before the company at its annual general meeting financial statements or consolidated financial statements of the company if the company need not hold an annual general meeting because of section 175A(1).

[15/2017]

(2) Where the financial statements or consolidated financial statements are not laid before the company at its annual general meeting under subsection (1), the reference in section 207(1) to financial statements required to be laid before the company in general meeting is to be read as a reference to the documents required to be sent to persons entitled to receive notice of general meetings of the company under section 203(1).

[15/2017]

Relief from requirements as to form and content of financial statements and directors' statement

202.—(1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) or to the form and content of the statement required by section 201(16) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

[36/2014]

(2) The Registrar may, where the Registrar considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of financial statements or consolidated financial statements (other than a

requirement of the Accounting Standards) or to the form and content of the statement required by section 201(16) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

[36/2014]

(3) The Registrar must not make an order under subsection (1) unless he or she is of the opinion that compliance with the requirements of this Act would render the financial statements or consolidated financial statements or directors' statement (as the case may be) misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

[36/2014]

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in which case the Registrar must give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

Voluntary revision of defective financial statements, or consolidated financial statements or balance sheet

202A.—(1) Subject to subsection (3), this section applies at any time —

(*a*) in the case where the holding of annual general meetings is dispensed with under section 175A — after the financial statements or, in the case of a parent company, consolidated financial statements and balance sheet are sent to the members of the company under section 203; or

(*b*) in any other case — after the financial statements or, in the case of a parent company, consolidated financial statements and balance sheet are laid before the company at an annual general meeting.

[36/2014]

(2) Where this section applies, if it appears to the directors of the company that the financial statements or, in the case of a parent company, consolidated financial statements or balance sheet do not comply with the requirements of this Act (including compliance with the Accounting Standards), the directors may cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised and make necessary consequential revisions to the summary financial statement or directors' statement.

[36/2014]

(3) The revision of the financial statements, or consolidated financial statements or balance sheet (as the case may be), under subsection (2) must be confined to —

(*a*) those aspects in which the financial statements, or consolidated financial statements or balance sheet (as the case may be), did not comply with this Act (including compliance with the Accounting Standards); and

(*b*) the making of any necessary consequential revisions.

[36/2014]

(4) Where the Registrar has given the directors of the company a notice under section 202B(1), the directors may not cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised unless the Registrar agrees with the directors on the manner in which to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), referred to in section 202B(2)(*b*).

[36/2014]

(5) The Minister may make regulations under section 411 in respect of the revision of financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement, including but not limited to the following:

(*a*) the manner of revision of financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement;

(*b*) the application of any provision of this Act to such financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial

statement subject to such additions, exceptions and modifications as may be specified in the regulations;

(*c*) the taking of steps by the directors to bring any revision of the financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement;

(*d*) the requirement to lodge the revised financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement with the Registrar and the payment of any filing fee pursuant to such lodgment.

[36/2014]

Registrar's application to Court in respect of defective financial statements, or consolidated financial statements and balance sheet

202B.—(1) If it appears to the Registrar that there is, or may be, a question whether the financial statements or, in the case of a parent company, consolidated financial statements and balance sheet comply with the requirements of this Act (including compliance with the Accounting Standards), the Registrar may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise, and specify the period within which the directors must respond.

[36/2014]

(2) The directors of the company to whom notice under subsection (1) is given must at the end of the period mentioned in subsection (1), or such longer period as the Registrar may allow —

(*a*) give the Registrar an explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), if the directors do not propose to revise the financial statements, or consolidated financial statements or balance sheet, as the case may be; or

(*b*) inform the Registrar how the directors propose to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), to address the questions in respect of which the Registrar has given notice.

[36/2014]

(3) If the Registrar is satisfied with the explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), mentioned in subsection (2)(*a*), no further action need be taken by the directors in respect of the notice under subsection (1).

[36/2014]

(4) If the Registrar agrees with the directors on the manner in which to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), referred to in subsection (2)(*b*), the directors may cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised in the manner provided in section 202A.

[36/2014]

(5) The Registrar may apply to Court under subsection (6) if —

(*a*) the Registrar does not receive a response from the directors after giving the notice mentioned in subsection (1);

(*b*) the Registrar is not satisfied with the explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), mentioned in subsection (2)(*a*); or

(*c*) the Registrar does not agree with the directors on the manner in which the financial statements, or consolidated financial statements or balance sheet (as the case may be), referred to in subsection (2)(*b*) are to be revised.

[36/2014]

(6) An application to Court referred to in subsection (5) may be for —

(*a*) a declaration that the financial statements, or consolidated financial statements or balance sheet (as the case may be),

do not comply with the requirements of this Act (including compliance with the Accounting Standards); and

(*b*) an order requiring the directors of the company to cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised.

[36/2014]

(7) Where the Court orders the preparation of revised financial statements, or consolidated financial statements or balance sheet, under subsection (6), it may give directions as to —

(*a*) the auditing of the financial statements, or consolidated financial statements or balance sheet, as the case may be;

(*b*) the making of revisions to the financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement in such manner as the Court considers necessary within a specified period;

(*c*) where the Court has given directions under paragraph (*b*) to make revisions to the summary financial statement, the review by the auditors of the revised summary financial statement;

(*d*) the making of necessary consequential revisions to any other document;

(*e*) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement; and

(*f*) such other matters as the Court thinks fit.

[36/2014]

(8) If the Court finds that the financial statements, or consolidated financial statements or balance sheet (as the case may be), did not comply with the requirements of this Act (including the Accounting Standards), it may order that all or part of —

(*a*) the costs of or incidental to the application; and

(*b*) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised financial statements, or consolidated financial statements or balance sheet, as the case may be,

must be borne by any or all the directors who were directors of the company as at the date of the directors' statement which accompanied the defective financial statements, or consolidated financial statements and balance sheet, as the case may be.

[36/2014]

(9) The provisions of this section apply equally to revised financial statements, or consolidated financial statements or balance sheet (as the case may be), in which case they have effect as if the references to revised financial statements, or consolidated financial statements or balance sheet (as the case may be), were references to further revised financial statements, or consolidated financial statements or balance sheet, as the case may be.

[36/2014]

Members of company entitled to financial statements, etc.

203.—(1) A copy of the financial statements or, in the case of a parent company, a copy of the consolidated financial statements and balance sheet (including every document required by law to be attached thereto), which is duly audited and which (or which but for section 201C) is to be laid before the company in general meeting accompanied by a copy of the auditor's report thereon must be sent to all persons entitled to receive notice of general meetings of the company —

(*a*) unless subsection (2) applies — not less than 14 days before the date of the meeting; or

(*b*) if the company is not required to hold an annual general meeting because of section 175A(1)(*a*) — not later than 5 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance sheet, relate.

[36/2014; 15/2017]

(2) The financial statements, or consolidated financial statements, balance sheet and documents referred to in subsection (1) may be sent

less than 14 days before the date of the meeting as required under subsection (1)(*a*) if all the persons entitled to receive notice of general meetings of the company so agree.

[36/2014]

(3) Any member of a company (whether or not entitled to have sent to the member copies of the financial statements, or consolidated financial statements and balance sheet) to whom copies have not been sent and any holder of a debenture must, on a request being made by the member or debenture holder to the company, be furnished by the company without charge with a copy of the last financial statements, or consolidated financial statements and balance sheet (including every document required by this Act to be attached thereto) together with a copy of the auditor's report thereon.

[36/2014]

(3A) If default is made in complying with subsection (1) or (3), the company and every officer of the company who is in default shall, unless it is proved that the member or holder of a debenture in question has already made a request for and been furnished with a copy of the financial statements, or consolidated financial statements and balance sheet, and all documents referred to in subsection (1) or (3), each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[36/2014]

(4) In a case referred to in subsection (1)(*b*), any member or auditor of the company may, by notice to the company not later than 14 days after the day on which the documents referred to in subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the company.

[36/2014]

(4A) Where a company is not required to hold an annual general meeting because of section 175A(1)(*b*), any member or auditor of the company may, by notice to the company not later than 14 days after the day on which the documents referred to in subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the company.

[15/2017]

(5) Section 175A(5) applies, with the necessary modifications, to the giving of a notice under subsection (4) or (4A).

[15/2017]

(6) The directors of the company must, within 14 days after the date of giving of the notice mentioned in subsection (4) or (4A), convene a meeting for the purpose referred to in that subsection.

[36/2014; 15/2017]

(7) If default is made in convening the meeting under subsection (6) —

(*a*) each director in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000; and

(*b*) the Court may, on application of the member or auditor, order a general meeting to be called.

Provision of summary financial statement to members

203A.—(1) Despite section 203 and anything in its constitution, a company may, in such cases as may be specified by regulations and provided all the conditions so specified are complied with, send a summary financial statement instead of copies of the documents referred to in section 203(1) to members of the company.

[36/2014]

(2) Where a company sends to its members a summary financial statement under subsection (1), any member of the company, and any holder of a debenture, entitled to be furnished by the company with a copy of the documents referred to in section 203(3) may instead request for a summary financial statement.

[36/2014]

(3) A summary financial statement need not be sent to any member of the company who does not wish to receive the statement.

(4) Copies of the documents referred to in section 203(1) must be sent to any member of the company who wishes to receive them.

(5) The summary financial statement must be derived from the company's annual financial statements or consolidated financial

statements, and directors' statement and must be in such form and contain such information as may be specified by regulations.

[36/2014]

(6) Every summary financial statement must —

(*a*) state that it is only a summary of information in the company's annual financial statements or consolidated financial statements, and directors' statement; and

(*b*) contain a statement by the company's auditors (if any) of their opinion as to whether the summary financial statement is consistent with the financial statements or consolidated financial statements, and the directors' statement and complies with the requirements of this section and any regulations made under subsection (9).

[36/2014]

(6A) The directors of the company must ensure that the summary financial statements comply with the requirements referred to in subsections (5) and (6).

[36/2014]

(7) If default is made in complying with this section other than subsection (6A) or any regulations made under subsection (9), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[36/2014]

(8) [*Deleted by Act 36 of 2014*]

(9) The Minister may make regulations to give effect to this section, including making provision as to the manner in which it is to be ascertained whether a member of the company wishes to receive copies of the documents referred to in section 203(1) or does not wish to receive the summary financial statement under this section.

Penalty

204.—(1) If any director of a company fails to comply with section 201(2) or (5), he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(1AA) If any director of a company fails to comply with section 201(16), he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[Act 17 of 2023 wef 01/07/2023]

(1A) If any director of a company —

(*a*) fails to comply with any provision of this Division (other than section 201(2), (5) or (16));

(*b*) fails to take all reasonable steps to secure compliance by the company with any such provision; or

(*c*) has by his or her own wilful act been the cause of any default by the company of any such provision,

he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

[36/2014]

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the financial statements of a company or consolidated financial statements of a parent company by reason of an omission from the financial statements or consolidated financial statements, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 201 to be dealt with in the financial statements or consolidated financial statements.

[36/2014]

(3) If an offence under this section is committed with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction —

(*a*) in the case of an offence under subsection (1), to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both;

[Act 17 of 2023 wef 01/07/2023]

(*aa*) in the case of an offence under subsection (1AA), to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both; or

[Act 17 of 2023 wef 01/07/2023]

(*b*) in the case of an offence under subsection (1A), to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the Court dealing with the case the offence was committed wilfully.

Division 2 — Audit

Appointment and remuneration of auditors

205.—(1) The directors of a company must, within 3 months after incorporation of the company, appoint an accounting entity or accounting entities to be the auditor or auditors of the company, and any auditor or auditors so appointed hold office, subject to this section, until the conclusion of the first annual general meeting.

[36/2014]

(2) A company must at each annual general meeting of the company appoint an accounting entity or accounting entities to be the auditor or auditors of the company, and any auditor or auditors so appointed hold office, subject to this section, until the conclusion of the next annual general meeting of the company.

[36/2014]

(3) Subject to subsections (7) and (8) and section 205AF, the directors may appoint an accounting entity to fill any casual vacancy in the office of auditor of the company, but while such a vacancy continues the surviving or continuing auditor or auditors (if any) may act.

[36/2014]

(4) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by a company —

(*a*) it must immediately send a copy of the notice to the auditor concerned and to the Registrar; and

(*b*) the auditor may, within 7 days after the receipt by the auditor of the copy of the notice, make representations in writing to the company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6) Unless the Registrar on the application of the company otherwise orders, the company must send a copy of the representations as so requested and the auditor may, without affecting the auditor's right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a company is removed from office pursuant to subsection (4) at a general meeting of the company —

(*a*) the company may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled to do so vote in person or, where proxies are allowed, by proxy immediately appoint another accounting entity nominated at the meeting as auditor; or

(*b*) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the company may, by ordinary resolution, appoint another accounting entity as auditor, being an accounting entity notice of whose nomination as auditor has, at least 10 days before the resumption of the adjourned meeting, been received by the company.

[36/2014]

(8) A company must, immediately after the removal of an auditor from office pursuant to subsection (4), give written notice of the removal to the Registrar and, if the company does not appoint another auditor under subsection (7), the Registrar may appoint an auditor.

[36/2014]

(9) An auditor appointed pursuant to subsection (7) or (8) must, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

(10) If the directors do not appoint an auditor or auditors as required by this section, the Registrar may on the application in writing of any member of the company make the appointment.

(11) Subject to subsection (7), an accounting entity is not capable of being appointed auditor of a company at an annual general meeting unless it held office as auditor of the company immediately before the meeting or notice of its nomination as auditor was given to the company by a member of the company not less than 21 days before the meeting.

[36/2014]

(12) Where notice of nomination of an accounting entity as an auditor of a company is received by the company whether for appointment at an adjourned meeting under subsection (7) or at an annual general meeting, the company must, not less than 7 days before the adjourned meeting or the annual general meeting, send a copy of the notice to the accounting entity nominated, to each auditor (if any) of the company and to each person entitled to receive notice of general meetings of the company.

[36/2014]

(12A) Where a company need not hold an annual general meeting for a financial year because of section 175A(1) and the auditor or auditors of the company is or are to be appointed by a resolution by written means under section 184A by virtue of section 175A(10), references in subsections (11) and (12) to the date of an annual general meeting are references to the time —

(*a*) agreement to that resolution is sought in accordance with section 184C; or

(*b*) documents referred to in section 183(3A) in respect of the resolution are served or made accessible in accordance with section 183(3A),

as the case may be.

[15/2017]

(13) If, after notice of nomination of an accounting entity as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date 21 days or less after the notice has been given, subsection (11) does not apply in relation to the accounting entity and, if the annual general meeting is called for a date not more than 7 days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under subsection (12), it is required to be sent, the company is deemed to have complied with that subsection in relation to the notice.

[36/2014]

(14) [*Deleted by Act 36 of 2014*]

(15) [*Deleted by Act 36 of 2014*]

(16) The fees and expenses of an auditor of a company —

(*a*) in the case of an auditor appointed by the company at a general meeting — must be fixed by the company in general meeting or, if so authorised by the members at the last preceding annual general meeting, by the directors; and

(*b*) in the case of an auditor appointed by the directors or by the Registrar under this section or under section 205AF — may be fixed by the directors or by the Registrar, as the case may be, and, if not so fixed, must be fixed as provided in paragraph (*a*) as if the auditor had been appointed by the company.

[36/2014]

(17) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Resignation of non-public interest company auditors

205AA.—(1) An auditor of a non-public interest company (other than a company which is a subsidiary company of a public interest company) may resign before the end of the term of office for which

the auditor was appointed by giving the company a notice of resignation in writing.

[36/2014]

(2) Where a notice of resignation is given under subsection (1), the auditor's term of office expires —

(*a*) at the end of the day on which notice is given to the company; or

(*b*) if the notice specifies a time on a later day for the purpose, at that time.

[36/2014]

(3) Within 14 days beginning on the date on which a company receives a notice of resignation under subsection (1), the company must lodge with the Registrar a notification of that fact in such form as the Registrar may require.

[36/2014]

(4) In this section and sections 205AB, 205AC and 205AF —

"non-public interest company" means a company other than a public interest company;

"public interest company" means a company which is listed or in the process of issuing its debt or equity instruments for trading on an approved exchange in Singapore, or such other company as the Minister may prescribe.

[36/2014; 4/2017]

Resignation of auditor of public interest company or subsidiary company of public interest company

205AB.—(1) An auditor of a public interest company, or a subsidiary company of a public interest company, may by giving the company a notice of resignation in writing, resign before the end of the term of office for which the auditor was appointed, if —

(*a*) the auditor has applied for consent from the Registrar to the resignation and provided a written statement of the auditor's reasons for resigning and, at or about the same time as the application, notified the company in writing of the application to the Registrar and provided the company

with the written statement of the auditor's reasons for resigning; and

(*b*) the consent of the Registrar has been given.

[36/2014]

(2) The Registrar must, as soon as practicable after receiving the application from an auditor under subsection (1), notify the auditor and the company whether it consents to the resignation of the auditor.

[36/2014]

(3) A statement made by an auditor in an application to the Registrar under subsection (1)(*a*) or in answer to an inquiry by the Registrar relating to the reasons for the application —

(*a*) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(*b*) subject to subsection (4), may not be made the ground of a prosecution, an action or a suit against the auditor,

and a certificate by the Registrar that the statement was made in the application or in the answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

[36/2014]

(4) Despite subsection (3), the statement referred to therein may be used in any disciplinary proceedings commenced under the Accountants Act 2004 against the auditor.

[36/2014]

(5) The resignation of an auditor of a public interest company, or subsidiary company of a public interest company, takes effect —

(*a*) on the day (if any) specified for the purpose in the notice of resignation;

(*b*) on the day on which the Registrar notifies the auditor and the company of the Registrar's consent to the resignation; or

(*c*) on the day (if any) fixed by the Registrar for the purpose,

whichever last occurs.

[36/2014]

Written statement to be disseminated unless application to Court made

205AC.—(1) Where an auditor of a public interest company, or a subsidiary company of a public interest company, gives the company a notice of resignation under section 205AB, the company must within 14 days after receiving the notice of resignation and the written statement of the auditor's reasons for resigning (called in this section and sections 205AD and 205AE the written statement) send a copy of the written statement to every member of the company.

[36/2014; 40/2019]

(2) Copies of the written statement need not be sent out if an application is made to the Court within 14 days, beginning on the date on which the company received the written statement, by either the company or any other person who claims to be aggrieved by the written statement, for a determination that the auditor has abused the use of the written statement or is using the provisions of this section to secure needless publicity for defamatory matter.

[36/2014; 40/2019]

(3) In the case where an application is made under subsection (2) by —

(*a*) the company — the company must give notice of the application to the auditor of the company; or

(*b*) any other person — that person must give notice of the application to the company and the auditor of the company.

[36/2014]

(4) If default is made in complying with subsection (1), the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

[36/2014]

Court may order written statement not to be sent out

205AD.—(1) This section applies if an application has been made under section 205AC(2) in relation to a written statement given by an auditor.

[36/2014]

(2) If the Court is satisfied that the auditor has abused the use of the written statement or is using the written statement to secure needless publicity for any defamatory matter, the Court —

(*a*) must direct that copies of the written statement are not to be sent under section 205AC(1); and

(*b*) may order the auditor, though not a party to the application, to pay the applicant's costs on the application in whole or in part.

[36/2014]

(3) If the Court gives directions under subsection (2)(*a*), the company must, within 14 days beginning on the date on which the directions are given send a notice setting out the effect of the directions to —

(*a*) every member of the company; and

(*b*) unless already named as a party to the proceedings, the auditor who gave the written statement.

[36/2014]

(4) If the Court decides not to grant the application, the company must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reasons —

(*a*) give notice of the decision to the auditor who has given the written statement; and

(*b*) send a copy of the written statement to every member of the company and to that auditor.

[36/2014]

(5) If default is made in complying with subsection (3) or (4), the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

[36/2014]

Privilege against defamation

205AE. A person is not liable to any action for defamation at the suit of any person —

(*a*) in the absence of malice, in respect of the publication of the written statement to the member of the company pursuant to section 205AC(1); or

(*b*) in respect of the publication of the written statement to the member of the company pursuant to section 205AD(4)(*b*).

[36/2014]

Appointment of new auditor in place of resigning auditor

205AF.—(1) Subject to subsection (3), if —

(*a*) an auditor of a non-public interest company (other than a subsidiary company of a public interest company) gives notice of resignation under section 205AA(1); or

(*b*) an auditor of a public interest company, or a subsidiary company of a public interest company, gives notice of resignation under section 205AB(1), and the Registrar approves the resignation of the auditor under section 205AB(2),

the directors of the company in question —

(*c*) must call a general meeting of the company as soon as is practicable, and in any case not more than 3 months after the date of the auditor's resignation, for the purpose of appointing an auditor in place of the auditor who desires to resign or has resigned; and

(*d*) upon appointment of the new auditor, must lodge with the Registrar a notification of such appointment within 14 days of the appointment.

[36/2014]

(2) If the directors of a company fail to appoint an auditor in place of the auditor who desires to resign or has resigned, the Registrar may, on the application in writing of any member of the company, make the appointment.

[36/2014]

(3) Subsections (1) and (2) do not apply if the financial statements of the company are not required to be audited under this Act, or where the resigning auditor is not the sole auditor of the company.

[36/2014]

(4) An auditor appointed pursuant to subsection (1) or (2) must, unless the auditor is removed or resigns, hold office until the conclusion of the next annual general meeting of the company.

[36/2014]

(5) If default is made in complying with subsection (1), the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

[36/2014]

Certain companies exempt from obligation to appoint auditors

205A.—(1) Despite section 205, a company which is exempt from audit requirements under section 205B or 205C, and its directors, are exempt from section 205(1) or (2), as the case may be.

(2) Where a company ceases to be so exempt, the company must appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting; and the auditors so appointed hold office until the conclusion of that meeting.

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Dormant company exempt from audit requirements

205B.—(1) A company is exempt from audit requirements if —

(*a*) it has been dormant from the time of its formation; or

(*b*) it has been dormant since the end of the previous financial year.

(2) A company is dormant during a period in which no accounting transaction occurs; and the company ceases to be dormant on the occurrence of such a transaction.

(3) For the purpose of subsection (2), transactions of a company arising from any of the following are to be disregarded:

(*a*) the taking of shares in the company by a subscriber to the constitution pursuant to an undertaking of the subscriber in the constitution;

(*b*) the appointment of a secretary of the company under section 171;

(*c*) the appointment of an auditor under section 205;

(*d*) the maintenance of a registered office under sections 142, 143 and 144;

(*e*) the keeping of registers and books under sections 88, 131, 173, 189 and 191;

(*f*) the payment of any fee or charge (including any fee, penalty or interest for late payment) payable under any written law;

(*fa*) the payment of any composition amount payable under section 409B or any other written law;

(*fb*) the payment or receipt by the company of such nominal sum not exceeding such amount as may be prescribed;

(*g*) such other matter as may be prescribed.

[36/2014]

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) —

(*a*) the copies of the financial statements or consolidated financial statements and balance sheet of the company to be sent under section 203 need not be audited;

(*b*) section 203 has effect with the omission of any reference to the auditor's report or a copy of the report;

(*c*) copies of an auditor's report need not be laid before the company in a general meeting; and

(*d*) the annual return of the company to be lodged with the Registrar must be accompanied by a statement by the directors —

(i) that the company is a company referred to in subsection (1)(*a*) or (*b*) as at the end of the financial year;

(ii) that no notice has been received under subsection (6) in relation to that financial year; and

(iii) as to whether the accounting and other records required by this Act to be kept by the company have been kept in accordance with section 199.

[36/2014]

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it thereupon ceases to be so exempt; but it remains so exempt in relation to accounts for the financial year in which it was dormant throughout.

(6) Any member or members holding not less than 5% of the total number of issued shares of the company (excluding treasury shares) or any class of those shares (excluding treasury shares), or not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member) may, by written notice to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

(8) In this section, "accounting transaction" means a transaction the accounting or other record of which is required to be kept under section 199(1).

Small company exempt from audit requirements

205C.—(1) Subject to subsections (3), (4) and (6), a company that is a small company in respect of a financial year is exempt from audit requirements for that financial year.

[36/2014]

(2) Section 205B(4), (6) and (7) applies, with the necessary modifications, to a small company so exempt.

[36/2014]

(3) Subsection (1) does not apply to a parent company unless the parent company —

(*a*) is a small company; and

(*b*) is part of a small group.

[36/2014]

(4) Subsection (1) does not apply to a subsidiary company unless the subsidiary company —

(*a*) is a small company; and

(*b*) is part of a small group.

[36/2014]

(5) In this section, "small company" and "small group" have the meanings given in the Thirteenth Schedule.

[36/2014]

(6) This section does not apply to a company with respect to its financial statements for a financial year commencing before 1 July 2015 and such a company must prepare its accounts or consolidated accounts and its directors must lay them at its annual general meeting in accordance with Part VI in force immediately before that date.

[36/2014]

(7) Without limiting section 197(2), a company mentioned in subsection (6) must, when lodging a return with the Registrar under section 197, attach a copy of the accounts or consolidated accounts so prepared.

[36/2014]

Registrar may require company exempt from audit requirements to lodge audited financial statements

205D. Despite sections 205B and 205C, the Registrar may, if he or she is satisfied that there has been a breach of any provision of section 199 or 201 or that it is otherwise in the public interest to do so, by written notice to a company exempt under either of those sections, require that company to lodge with the Registrar, within such time as may be specified in that notice —

(*a*) its financial statements duly audited by the auditor or auditors of the company or, where none has been

appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and

(*b*) an auditor's report mentioned in section 207 in relation to those financial statements prepared by the auditor or auditors of the company.

[36/2014]

Auditors' remuneration

206.—(1) If a company is served with a notice sent by or on behalf of —

(*a*) at least 5% of the total number of members of the company; or

(*b*) the holders in aggregate of not less than 5% of the total number of issued shares of the company (excluding treasury shares),

requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary corporation in respect of services other than auditing services rendered to the company, the company must immediately —

(*c*) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;

(*d*) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(*e*) lay such statement before the company in general meeting.

[36/2014]

(1A) Without affecting subsection (1), a public company must, under prescribed circumstances, undertake a review of the fees, expenses and emoluments of its auditor to determine whether the independence of the auditor has been compromised, and the outcome of the review must be sent to all persons entitled to receive notice of general meetings of the company.

(2) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Powers and duties of auditors as to reports on financial statements

207.—(1) An auditor of a company must report to the members —

(*a*) on the financial statements required to be laid before the company in general meeting and on the company's accounting and other records relating to those financial statements; and

(*b*) where the company is a parent company for which consolidated financial statements are prepared, on the consolidated financial statements.

[36/2014]

(1A) A report by an auditor of a company under subsection (1) must be furnished by the auditor to the directors of the company in sufficient time to enable the company to comply with the requirements of section 203(1) in relation to that report but no offence is committed by an auditor under this subsection if the directors have not submitted the financial statements for audit as required under this Part in sufficient time, having regard to the complexity of the financial statements, for the auditor to make the auditor's report.

[36/2014]

(2) An auditor must, in a report under this section, state —

(*a*) whether the financial statements and, if the company is a parent company for which consolidated financial statements are prepared, the consolidated financial statements are in the auditor's opinion —

(i) in compliance with the requirements of the Accounting Standards; and

(ii) give a true and fair view of —

(A) the financial position and performance of the company; and

(B) if consolidated financial statements are required, the financial position and performance of the group;

(*aa*) if the financial statements or consolidated financial statements do not comply with any requirement of the Accounting Standards and the approval of the Registrar under section 201(12) to such non-compliance has not been obtained, whether such non-compliance is, in the opinion of the auditor, necessary for the financial statements or consolidated financial statements to give a true and fair view of any matter required by section 201 to be dealt with in them;

(*b*) whether the accounting and other records required by this Act to be kept by the company and, if it is a parent company, by the subsidiary corporations other than those of which the auditor has not acted as auditor have been, in the auditor's opinion, properly kept in accordance with this Act;

(*c*) [*Deleted by Act 5 of 2004*]

(*d*) any defect or irregularity in the financial statements or consolidated financial statements and any matter not set out in the financial statements or consolidated financial statements without regard to which a true and fair view of the matters dealt with by the financial statements or consolidated financial statements would not be obtained; and

(*e*) if the auditor is not satisfied as to any matter referred to in paragraph (*a*), (*aa*) or (*b*), the auditor's reasons for not being so satisfied.

[36/2014]

(3) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

(*a*) whether the auditor has obtained all the information and explanations that the auditor required;

(*b*) whether proper accounting and other records, excluding registers, required to be kept under section 199(1), have been kept by the company as required by this Act;

(*c*) whether the returns received from branch offices of the company are adequate;

(*d*) [*Deleted by Act 36 of 2014*]

(*e*) where consolidated financial statements are prepared otherwise than as one set of consolidated financial statements for the group, whether the auditor agrees with the reasons for preparing them in the form in which they are prepared, as given by the directors in the financial statements,

and the auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

[36/2014]

(4) An auditor is not required to form an opinion in the auditor's report as to whether the accounting and other records of subsidiary corporations (which are not incorporated in Singapore) of a Singapore parent company have been kept in accordance with this Act.

[36/2014]

(5) An auditor of a company has a right of access at all times to the accounting and other records, including registers, of the company, and is entitled to require from any officer of the company and any auditor of a related company such information and explanations as the auditor desires for the purposes of audit.

(6) An auditor of a parent company for which consolidated financial statements are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary corporation, and is entitled to require from any officer or auditor of any subsidiary corporation, at the expense of the parent company, such information and explanations in relation to the affairs

of the subsidiary corporation as the auditor requires for the purpose of reporting on the consolidated financial statements.

[36/2014]

(7) The auditor's report must be attached to or endorsed on the financial statements or consolidated financial statements and must, if any member so requires, be read before the company in general meeting and must be open to inspection by any member at any reasonable time.

[36/2014]

(8) An auditor of a company or an agent authorised by the auditor in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which the auditor attends on any part of the business of the meeting which concerns the auditor in such capacity as auditor.

(9) If an auditor, in the course of the performance of such duties as auditor of a company, is satisfied that —

(*a*) there has been a breach or non-observance of any of the provisions of this Act; and

(*b*) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in the auditor's report on the financial statements or consolidated financial statements or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary company, of the directors of the parent company,

the auditor must immediately report the matter in writing to the Registrar.

[36/2014]

(9A) Despite subsection (9), if an auditor of a public company or a subsidiary corporation of a public company, in the course of the performance of the auditor's duties as such, has reason to believe that a serious offence involving fraud or dishonesty is being or has been committed against the company by officers or employees of the

company, the auditor must immediately report the matter to the Minister.

[36/2014]

(9B) No duty to which an auditor of a company may be subject is to be regarded as having been contravened by reason of the auditor reporting the matter mentioned in subsection (9A) in good faith to the Minister.

(9C) An auditor who is under a legal duty under any other written law to make a report to the Monetary Authority of Singapore in relation to an offence involving fraud or dishonesty that the auditor becomes aware of in the course of the performance of the auditor's duties as such, is not required to make a report to the Minister under subsection (9A) if the auditor has already made a report in relation to the same offence under that written law to the Monetary Authority of Singapore.

(9D) In subsection (9A), "a serious offence involving fraud or dishonesty" means —

(*a*) an offence that is punishable by imprisonment for a term that is not less than 2 years; and

(*b*) the value of the property obtained or likely to be obtained from the commission of such an offence is not less than $100,000.

[36/2014]

(10) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its parent company access, in accordance with this section, to any accounting and other records, including registers, of the corporation in the officer's or auditor's custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of the auditor's duties or the exercise of the auditor's powers, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000.

[36/2014]

(11) The reference to the registers of —

(*a*) a company in subsection (5);

(*b*) a subsidiary corporation of a parent company in subsection (6); or

(*c*) a corporation in subsection (10),

does not include any register kept by the company, subsidiary corporation of a parent company or corporation (as the case may be) under Part 11A.

[15/2017]

Auditors and other persons to enjoy qualified privilege in certain circumstances

208.—(1) An auditor shall not, in the absence of malice on the auditor's part, be liable to any action for defamation at the suit of any person in respect of any statement which the auditor makes in the course of the auditor's duties as such, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on the person's part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of the auditor's duties and required by this Act to be lodged with the Registrar.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

Provisions indemnifying auditors

208A.—(1) Any provision, whether in the constitution or in any contract with a company or otherwise, for exempting any auditor of the company from, or indemnifying the auditor against, any liability which by law would otherwise attach to the auditor in respect of any negligence, default, breach of duty or breach of trust of which the auditor may be guilty in relation to the company is void.

[36/2014]

(2) This section does not prevent a company from indemnifying such auditor against any liability incurred or that will be incurred by the auditor —

(*a*) in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or in which the auditor is acquitted; or

(*b*) in connection with any application under section 76A(13) or 391 or any other provision of this Act, in which relief is granted to the auditor by the court.

[36/2014]

Duties of auditors to trustee for debenture holders

209.—(1) The auditor of a borrowing corporation must within 7 days after furnishing the corporation with any financial statements or any report, certificate or other document which the auditor is required by this Act or by the debentures or trust deed to give to the corporation, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof.

[36/2014]

(2) Where, in the performance of the auditor's duties as auditor of a borrowing corporation, the auditor becomes aware of any matter which is in the auditor's opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the corporation, the auditor must, within 7 days after so becoming aware of the matter, send by post a report in writing on such matter to the borrowing corporation and a copy thereof to the trustee.

(3) If any person fails to comply with subsection (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

Interpretation of this Part

209A. In this Part, unless the contrary intention appears —

"balance sheet", in relation to a company, means the balance sheet, by whatever name called, prepared in accordance with the Accounting Standards;

"consolidated financial statements" has the meaning given by the Accounting Standards;

"consolidated total assets" —

(*a*) in the case where consolidated financial statements are prepared in relation to a group — are determined in accordance with the accounting standards applicable to the group; or

(*b*) in the case where consolidated financial statements are not prepared in relation to a group — means the aggregate total assets of all the members of the group;

"directors' statement" means the statement of the directors mentioned in section 201(16);

"entity" means an entity that is referred to in the Accounting Standards in relation to the preparation of financial statements and the requirements for the preparation of financial statements;

"financial statements" means the financial statements of a company required to be prepared by the Accounting Standards;

"group" has the meaning given by the Accounting Standards;

"parent company" means a company that is required under the Accounting Standards to prepare financial statements in relation to a group;

"subsidiary company" means a company that is a subsidiary as defined in the Accounting Standards;

"subsidiary corporation" means a corporation that is a subsidiary as defined in the Accounting Standards;

"ultimate parent corporation" means a corporation which is a parent but is not a subsidiary, within the meaning of the Accounting Standards.

[36/2014]

209B. [*Repealed by Act 5 of 2004*]

PART 7

ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

Power to compromise with creditors, members and holders of units of shares

210.—(1) Where a compromise or an arrangement is proposed between —

(*a*) a company and its creditors or any class of them;

(*b*) a company and its members or any class of them; or

(*c*) a company and holders of units of shares of the company or any class of them,

the Court may, on the application in a summary way of any person referred to in subsection (2), order a meeting of the creditors, the members of the company, the holders of units of shares of the company, or a class of such persons, to be summoned in such manner as the Court directs.

[36/2014]

(2) The persons referred to in subsection (1) are —

(*a*) in the case of a company being wound up — the liquidator; and

(*b*) in any other case —

(i) the company; or

(ii) any creditor, member or holder of units of shares of the company.

[36/2014]

(3) A meeting held pursuant to an order made under subsection (1) may be adjourned from time to time if the resolution for the adjournment is approved by a majority in number representing three-fourths in value of —

(*a*) the creditors or class of creditors;

(*b*) the members or class of members; or

(*c*) the holders of units of shares or class of holders of units of shares,

present and voting either in person or by proxy at the meeting.

[36/2014]

(3AA) If the conditions set out in subsection (3AB) are satisfied, a compromise or an arrangement is binding —

(*a*) in the case of a company in the course of being wound up, on the liquidator and contributories of the company, and on all —

(i) the creditors or class of creditors;

(ii) the members or class of members; or

(iii) the holders of units of shares or class of holders of units of shares,

as the case may be; or

(*b*) in the case of any other company, on the company and on all —

(i) the creditors or class of creditors;

(ii) the members or class of members; or

(iii) the holders of units of shares or class of holders of units of shares,

as the case may be.

[36/2014; 35/2018]

(3AB) The conditions referred to in subsection (3AA) are as follows:

(*a*) unless the Court orders otherwise, a majority in number of —

(i) the creditors or class of creditors;

(ii) the members or class of members; or

(iii) the holders of units of shares or class of holders of units of shares,

present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;

(*b*) the majority in number referred to, or such number as the Court may order, under paragraph (*a*) represents three-fourths in value of —

(i) the creditors or class of creditors;

(ii) the members or class of members; or

(iii) the holders of units of shares or class of holders of units of shares,

present and voting either in person or by proxy at the meeting or the adjourned meeting, as the case may be;

(*c*) the compromise or arrangement is approved by order of the Court.

[36/2014]

(3A) [*Deleted by Act 40 of 2018*]

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

[1/2007; 40/2018]

(4A) [*Deleted by Act 40 of 2018*]

(5) An order under subsection (3AB)(*c*) has no effect until a copy of the order is lodged with the Registrar, and upon being so lodged, the order takes effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

[36/2014]

(6) Subject to subsection (7), a copy of every order made under subsection (3AB)(*c*) must be annexed to every copy of the constitution of the company issued after the order has been made.

[36/2014]

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company must so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction

of any company or companies or the amalgamation of any 2 or more companies) has been proposed, the directors of the company must —

(*a*) if a meeting of the members of the company by resolution so directs, instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as possible; and

(*b*) make such report or reports available at the registered office of the company for inspection by the shareholders, creditors and holders of units of shares of the company at least 7 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

[36/2014]

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

Power of Court to restrain proceedings

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member, creditor or holder of units of shares of the company restrain further proceedings in any action or proceeding against the company except by permission of the Court and subject to such terms as the Court imposes.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(10A) Where the terms of any compromise or arrangement approved under this section provides for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may, after the expiration of 2 years and must before the expiration of 10 years from the date on

which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

[36/2014]

(10B) The Official Receiver must —

(*a*) deal with any moneys received under subsection (10A) as if the moneys were paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) sell or dispose of any other consideration received under subsection (10A) in such manner as the Official Receiver thinks fit and must deal with the proceeds of such sale or disposal as if it were moneys paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

(11) In this section —

"arrangement" includes a reorganisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

"company" means any corporation liable to be wound up under the Insolvency, Restructuring and Dissolution Act 2018;

"holder of units of shares" does not include a person who holds units of shares only beneficially.

[36/2014; 40/2018]

Information as to compromise with creditors, members and holders of units of shares of company

211.—(1) Where a meeting is summoned under section 210, there must —

(*a*) with every notice summoning the meeting which is sent to a creditor, member or holder of units of shares of the company — be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors

or as members, creditors or holders of units of shares of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and

(*b*) in every notice summoning the meeting which is given by advertisement — be included either such a statement or a notification of the place at which and the manner in which creditors, members or holders of units of shares of the company entitled to attend the meeting may obtain copies of such a statement.

[36/2014]

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement must give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor, member or holder of units of shares of the company entitled to attend the meeting must on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

[36/2014]

(4) Each director and each trustee for debenture holders must give notice to the company of such matters relating to the director or the trustee as may be necessary for the purposes of this section within 7 days of the receipt of a request in writing for information as to such matters.

(5) Where default is made in complying with any requirement of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

(6) For the purpose of subsection (5), the liquidator of the company and any trustee for debenture holders are deemed to be officers of the company.

(7) Despite subsection (5), a person shall not be liable under that subsection if the person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to the person's interests.

211A. to **211J.** [*Repealed by Act 40 of 2018*]

Approval of compromise or arrangement by Court

212.—(1) Where an application is made to the Court under this Part or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (called in this section the transferor company) is to be transferred to another company (called in this section the transferee company), the Court may either by the order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;

(*d*) the dissolution, without winding up, of the transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

[1/2007; 40/2018]

(1A) [*Deleted by Act 40 of 2018*]

(2) Where an order made under this section provides for the transfer of property or liabilities, then by virtue of the order that property is transferred to and vests in, and those liabilities are transferred to and become the liabilities of, the transferee company, free in the case of any particular property if the order so directs, from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made must lodge within 7 days of the making of the order —

(*a*) a copy of the order with the Registrar; and

(*b*) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(4) No vesting order, referred to in this section, has any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

(5) In this section —

"liabilities" includes duties;

"property" includes property, rights and powers of every description.

(6) In this section, "company" means any corporation liable to be wound up under the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

213. [*Repealed by S 675/2001*]

214. [*Repealed by S 675/2001*]

Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority

215.—(1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (called in this section the transferor company) to a person (called in this section the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% of the total number of those shares (excluding treasury shares) or of the shares of that class (other than shares already held at the date of the offer by the transferee, and excluding any shares in the transferor company held as treasury shares), the transferee may at any time within 2 months, after the offer has been so approved, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire the dissenting shareholder's shares; and when such a notice is given the transferee is, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, entitled and bound to acquire those shares on the terms which, under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee or if the offer contained 2 or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.

[36/2014]

(1A) Where alternative terms were offered to the shareholders, a dissenting shareholder is entitled to elect not later than the end of one month after the date on which the notice is given under

subsection (1), or 14 days after a statement is supplied under subsection (2), whichever is the later, which of those terms the dissenting shareholder prefers.

[36/2014]

(1B) In offering alternative terms to the shareholders, the transferee must state which of those terms is to apply to the acquisition of the shares of a dissenting shareholder where the dissenting shareholder fails to make the election within the time allowed under subsection (1A).

[36/2014]

(1C) In determining whether the scheme or contract has been approved by the holders of the requisite number of shares, or shares of any particular class, under subsection (1), the following shares are to be disregarded:

(*a*) shares that are issued after the date of the offer;

(*b*) relevant treasury shares that cease to be held as treasury shares after the date of the offer.

[36/2014]

(1D) In subsection (1C)(*b*), "relevant treasury shares" means —

(*a*) shares that are held by the transferor company as treasury shares on the date of the offer; or

(*b*) shares that become shares held by the transferor company as treasury shares after the date of the offer but before a date specified in or determined in accordance with the terms of the offer.

[36/2014]

(2) Where a transferee has given notice to any dissenting shareholder that it desires to acquire the dissenting shareholder's shares, the dissenting shareholder is entitled to require the transferor company by a written demand served on the transferor company, within one month from the date on which the notice was given, to supply the dissenting shareholder with a written statement of the names and addresses of all other dissenting shareholders as shown in the register of members, and the transferee is not entitled or bound to acquire the shares of the dissenting shareholders until 14 days after

the posting of the statement of such names and addresses to the dissenting shareholder.

[36/2014]

(3) Where, pursuant to any such scheme or contract, shares in a transferor company are transferred to a transferee or its nominee and those shares together with any other shares in the transferor company held by the transferee at the date of the transfer comprise or include 90% of the total number of the shares in the transferor company or of any class of those shares, then —

(*a*) the transferee must within one month from the date of the transfer (unless on a previous transfer pursuant to the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(*b*) any such holder may within 3 months from the giving of the notice to such holder require the transferee to acquire the shares in question,

and where a shareholder gives notice under paragraph (*b*) with respect to any shares, the transferee is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the Court on the application of either the transferee or the shareholder thinks fit to order.

[36/2014]

(3A) In subsection (3), for the purpose of calculating whether 90% of the total number of shares are held by the transferee, shares held by the transferor company as treasury shares are to be treated as having been acquired by the transferee.

[36/2014]

(4) Where a notice has been given by the transferee under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee must, after the expiration of one month after the date on which the notice has been given or, after 14 days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an

application to the Court by the dissenting shareholder is then pending, after that application has been disposed of —

(*a*) transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee, and on its own behalf by the transferee; and

(*b*) pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee for the shares which by virtue of this section the transferee is entitled to acquire,

and the transferor company must thereupon register the transferee as the holder of those shares.

[36/2014]

(5) Any sums received by the transferor company under this section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by the transferor company in trust for the several persons entitled to the shares in respect of which they were respectively received.

[36/2014]

(6) Where any money or other consideration is held in trust by a company for any person under this section, the company holding the money or other consideration may, after the expiration of 2 years and must before the expiration of 10 years from the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

[36/2014]

(7) The Official Receiver must —

(*a*) deal with any moneys received under subsection (6) as if the moneys were paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) sell or dispose of any other consideration received under subsection (6) in such manner as the Official Receiver thinks fit and must deal with the proceeds of such sale or disposal as if it were moneys paid to the Official Receiver

under section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

(8) In this section, a dissenting shareholder includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer the shareholder's shares to the transferee in accordance with the scheme or contract.

[36/2014]

(8A) In this section and sections 215AA and 215AB —

(*a*) "shares" includes units of shares;

(*b*) "shareholders" includes holders of units of shares but does not include a person who holds units of shares only beneficially;

(*c*) "register of members" includes any records kept by or with respect to the transferor company of the names and addresses of holders of units of shares.

[36/2014]

(8B) Nothing in the definition of "shares" in subsection (8A) is to be read as requiring any securities to be treated —

(*a*) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

(*b*) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

[36/2014]

(9) For the purposes of this section, shares held or acquired —

(*a*) by a nominee on behalf of the transferee; or

(*b*) by a related corporation of the transferee or by a nominee of that related corporation,

are to be treated as held or acquired by the transferee.

[36/2014]

(9A) In addition to subsection (9), in respect of an offer made on or after the date of commencement of section 10(*a*) of the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act 2023, shares held or acquired —

(*a*) by a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;

(*b*) by the transferee's spouse, parent, brother, sister, son, adopted son, stepson, daughter, adopted daughter or stepdaughter;

(*c*) by a person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; or

(*d*) by a body corporate that is controlled (within the meaning of subsection (12)) by the transferee or a person mentioned in paragraph (*a*), (*b*) or (*c*),

are also to be treated as held or acquired by the transferee.

[Act 17 of 2023 wef 01/07/2023]

(10) The reference in subsection (1) to shares already held by the transferee includes a reference to shares which the transferee has contracted to acquire but is not to be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

[36/2014]

(11) Where, during the period within which an offer for the transfer of shares to the transferee can be approved, the transferee acquires or contracts to acquire any of the shares whose transfer is involved but otherwise than by virtue of the approval of the offer, then, if —

(*a*) the consideration for which the shares are acquired or contracted to be acquired (called in this subsection the

acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (*a*), no longer exceeds the consideration specified in those terms,

the transferee is to be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of the approval of the offer.

(12) For the purposes of subsection (9A)(*d*), a body corporate is controlled by a transferee or person mentioned in paragraph (*a*), (*b*) or (*c*) of subsection (9A) if —

(*a*) the transferee or person (as the case may be) is entitled to exercise or control the exercise of not less than 50% of the voting power in the body corporate or such percentage of the voting power in the body corporate as may be prescribed, whichever is lower; or

(*b*) the body corporate is, or a majority of its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee or the person (as the case may be).

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

Joint offers

215AA.—(1) In the case of a scheme involving an offer to acquire all of the shares in a company, or all of the shares in any particular class in a company, by 2 or more persons jointly (called in this section the joint transferees), section 215 is to be read subject to this section.

[36/2014]

(2) The conditions for the exercise of the rights conferred by section 215(1) are satisfied —

(*a*) in the case of acquisitions of shares by virtue of acceptances of the offer — by the joint transferees

acquiring or unconditionally contracting to acquire the necessary shares jointly; or

(*b*) in other cases — by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.

[36/2014]

(3) The conditions for the exercise of the rights conferred by section 215(3) are satisfied —

(*a*) in the case of acquisitions of shares by virtue of acceptances of the offer — by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares jointly; or

(*b*) in other cases — by the joint transferees acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.

[36/2014]

(4) Subject to this section, the rights and obligations of the transferee under section 215 are respectively joint rights and joint and several obligations of the joint transferees.

[36/2014]

(5) Subject to subsection (6), any notice or other document given or sent by or to the joint transferees under section 215 is complied with if the notice or document is given or sent by or to any of them.

[36/2014]

(6) The notice required to be given by the joint transferees under section 215(1) and (3) must be made by all of the joint transferees and, where one or more of them is a company, signed by a director of that company.

[36/2014]

Effect of impossibility, etc., of communicating or accepting offer made under scheme or contract

215AB.—(1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being an offer made under a scheme or contract for the purposes of section 215 if —

(*a*) those shareholders have no address in Singapore registered with the company;

(*b*) the offer was not communicated to those shareholders —

(i) in order not to contravene the law of a country or territory outside Singapore; or

(ii) because communication to those shareholders would in the circumstances be unduly onerous; and

(*c*) either —

(i) the offer is published in the *Gazette*; or

(ii) the offer can be inspected, or a copy of it obtained, at a place in Singapore or on a website, and a notice is published in the *Gazette* specifying the address of that place or website.

[36/2014]

(2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside Singapore, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being made under a scheme or contract for the purposes of section 215.

[36/2014]

(3) It is not to be inferred —

(*a*) that an offer which is not communicated to every holder of shares in the company cannot be an offer made under a scheme or contract for the purposes of section 215 unless the requirements of subsection (1)(*a*), (*b*) and (*c*) are met; or

(*b*) that an offer which is impossible, or more difficult, for certain persons to accept cannot be an offer made under a scheme or contract for those purposes unless the reason for the impossibility or difficulty is the reason mentioned in subsection (2).

[36/2014]

Amalgamations

215A. Without affecting section 212 and any other law relating to the merger or amalgamation of companies, 2 or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or a new company, in accordance with sections 215B to 215G, where applicable.

Amalgamation proposal

215B.—(1) An amalgamation proposal must contain the terms of an amalgamation under section 215A and, in particular —

(*a*) the name of the amalgamated company;

(*b*) the registered office of the amalgamated company;

(*c*) the full name of every director of the amalgamated company;

(*ca*) the residential address and contact address of every director of the amalgamated company which is contained in the register of directors kept by the Registrar under section 173(1)(*a*) in respect of the company;

[Act 21 of 2024 wef 09/12/2024]

(*d*) the share structure of the amalgamated company, specifying —

(i) the number of shares of the amalgamated company;

(ii) the rights, privileges, limitations and conditions attached to each share of the amalgamated company; and

(iii) whether the shares are transferable or non-transferable and, if transferable, whether their transfer is subject to any condition or limitation;

(*e*) a copy of the constitution of the amalgamated company;

(*f*) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;

(*g*) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;

(*h*) any payment to be made to any member or director of an amalgamating company, other than a payment of the kind described in paragraph (*g*); and

(*i*) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

[36/2014]

(2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

(3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal —

(*a*) must provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and

(*b*) must not provide for the conversion of those shares into shares of the amalgamated company.

(4) A cancellation of shares under this section is not deemed to be a reduction of share capital within the meaning of this Act.

(5) For the purposes of subsection (1)(*a*), the name of the amalgamated company may be —

(*a*) the name of one of the amalgamating companies; or

(*b*) a new name that has been reserved under section 27(12B).

[36/2014]

Manner of approving amalgamation proposal

215C.—(1) An amalgamation proposal must be approved —

(*a*) subject to the constitution of each amalgamating company, by the members of each amalgamating company by special resolution at a general meeting; and

(*b*) by any other person, where any provision in the amalgamation proposal would, if contained in any amendment to the constitution of an amalgamating company or otherwise proposed in relation to that company, require the approval of that person.

[36/2014]

(2) The board of directors of each amalgamating company must, before the general meeting mentioned in subsection (1)(*a*) —

(*a*) resolve that the amalgamation is in the best interest of the amalgamating company;

(*b*) make a solvency statement in relation to the amalgamating company in accordance with section 215I; and

(*c*) make a solvency statement in relation to the amalgamated company in accordance with section 215J.

(3) Every director who votes in favour of the resolution and the making of the statements mentioned in subsection (2) must sign a declaration stating —

(*a*) that, in his or her opinion, the conditions specified in subsection (2)(*a*), section 215I(1)(*a*) and (*b*) (in relation to the amalgamating company) and section 215J(1)(*a*) and (*b*) (in relation to the amalgamated company) are satisfied; and

(*b*) the grounds for that opinion.

(4) The board of directors of each amalgamating company must send to every member of the amalgamating company, not less than 21 days before the general meeting mentioned in subsection (1)(*a*) —

(*a*) a copy of the amalgamation proposal;

(*b*) a copy of the declarations given by the directors under subsection (3);

(*c*) a statement of any material interests of the directors, whether in that capacity or otherwise; and

(*d*) such further information and explanation as may be necessary to enable a reasonable member of the amalgamating company to understand the nature and

implications, for the amalgamating company and its members, of the proposed amalgamation.

(5) The directors of each amalgamating company must, not less than 21 days before the general meeting mentioned in subsection (1)(*a*) —

(*a*) send a copy of the amalgamation proposal to every secured creditor of the amalgamating company; and

(*b*) cause to be published in at least one daily English newspaper circulating generally in Singapore a notice of the proposed amalgamation, including a statement that —

(i) copies of the amalgamation proposal are available for inspection by any member or creditor of an amalgamating company at the registered offices of the amalgamating companies and at such other place as may be specified in the notice during ordinary business hours; and

(ii) a member or creditor of an amalgamating company is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.

(6) Any director who contravenes subsection (3) shall be guilty of an offence.

Short form amalgamation

215D.—(1) A company (called in this subsection the amalgamating holding company) and one or more of its wholly-owned subsidiaries (called in this subsection the amalgamating subsidiary company) may amalgamate and continue as one company, being the amalgamated holding company or the amalgamated subsidiary company, without complying with sections 215B and 215C if the members of each amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

(*a*) in the case —

(i) where the amalgamating companies continue as the amalgamated holding company — the shares of each amalgamating subsidiary company will be cancelled without any payment or any other consideration; or

(ii) where the amalgamating companies continue as an amalgamated subsidiary company — the shareholders of the amalgamating holding company are to be issued and hold the same number of shares in the amalgamated subsidiary company as they hold in the amalgamating holding company without any payment or other consideration and the shares of each amalgamating company, except for the shares in the amalgamated subsidiary company which are issued to the shareholders of the amalgamating holding company, will be cancelled without any payment or any other consideration;

(*b*) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled;

(*c*) the directors of the amalgamating holding company and every amalgamating subsidiary company are satisfied that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and

(*d*) the person or persons named as director or directors in the resolution of each amalgamating company will be the director or directors of the amalgamated company.

[36/2014]

(2) Two or more wholly-owned subsidiary companies of the same corporation may amalgamate and continue as one company without complying with sections 215B and 215C if the members of each amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

(*a*) the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration;

(*b*) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled;

(*c*) the directors of every amalgamating company are satisfied that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and

(*d*) the person or persons named in each resolution will be the director or directors of the amalgamated company.

[36/2014]

(3) The directors of each amalgamating company must, not less than 21 days before the general meeting mentioned in subsection (1) or (2) (as the case may be) give written notice of the proposed amalgamation to every secured creditor of the amalgamating company.

(4) The resolution mentioned in subsection (1) or (2) (as the case may be) is deemed to be an amalgamation proposal that has been approved.

(5) The board of directors of each amalgamating company must, before the commencement of the general meeting mentioned in subsection (1) or (2) (as the case may be), make a solvency statement in relation to the amalgamated company in accordance with section 215J.

[36/2014]

(6) Every director who votes in favour of the making of the solvency statement mentioned in subsection (5) must sign a declaration stating —

(*a*) that, in the director's opinion, the conditions specified in section 215J(1)(*a*) and (*b*) are satisfied; and

(*b*) the grounds for that opinion.

(7) Any director who contravenes subsection (6) shall be guilty of an offence.

(8) A cancellation of shares under this section is not deemed to be a reduction of share capital within the meaning of this Act.

Registration of amalgamation

215E.—(1) For the purpose of effecting an amalgamation, the following documents must be filed with the Registrar, in the prescribed form with such particulars as may be required in the form, together with payment of the prescribed fee:

(*a*) the amalgamation proposal that has been approved;

(*aa*) any solvency statement made under section 215C(2) or 215D(5), as the case may be;

(*b*) any declaration required under section 215C(3) or 215D(6), as the case may be;

(*c*) a declaration signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the constitution of the amalgamating company;

(*d*) where the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, a copy of any notice or other documentary evidence that the name which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under section 27(12B);

(*e*) a declaration signed by the directors, or proposed directors, of the amalgamated company stating that, where the proportion of the claims of the creditors of the amalgamated company in relation to the value of the assets of the amalgamated company is greater than the proportion of the claims of the creditors of an amalgamating company in relation to the value of the assets of the amalgamating company, no creditor will be prejudiced by that fact.

[36/2014]

(2) Where the amalgamated company is a new company —

(*a*) section 19(1)(*a*) and (*c*) is deemed to have been complied with if, and only if, subsection (1) has been complied with; and

(*b*) the reference to a person named in the constitution as a director or the secretary of the proposed company in section 19(2)(*b*) includes a reference to a proposed director of the amalgamated company.

[36/2014]

Notice of amalgamation, etc.

215F.—(1) Upon the receipt of the relevant documents and fees, the Registrar must —

(*a*) if the amalgamated company is the same as one of the amalgamating companies — issue a notice of amalgamation in such form as the Registrar may determine; or

(*b*) if the amalgamated company is a new company — issue a notice of amalgamation in such form as the Registrar may determine together with the notice of incorporation under section 19(4).

(2) Where an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the relevant documents and fees mentioned in subsection (1), the notice of amalgamation and any notice of incorporation issued by the Registrar must be expressed to have effect on the date specified in the amalgamation proposal.

(3) The Registrar must, as soon as practicable after the effective date of an amalgamation, remove the amalgamating companies, other than the amalgamated company, from the register.

(4) Upon the application of the amalgamated company and payment of the prescribed fee, the Registrar must issue to the amalgamated company a certificate of confirmation of amalgamation.

[36/2014]

Effect of amalgamations

215G. On the date shown in a notice of amalgamation —

(*a*) the amalgamation is effective;

(*b*) the amalgamated company has the name specified in the amalgamation proposal;

(*c*) all the property, rights and privileges of each of the amalgamating companies are transferred to and vest in the amalgamated company;

(*d*) all the liabilities and obligations of each of the amalgamating companies are transferred to and become the liabilities and obligations of the amalgamated company;

(*e*) all proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;

(*f*) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and

(*g*) the shares and rights of the members in the amalgamating companies are converted into the shares and rights provided for in the amalgamation proposal.

Power of Court in certain cases

215H.—(1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application of that person made at any time before the date on which the amalgamation becomes effective, make any order it thinks fit in relation to the amalgamation proposal, and may, without limiting the generality of this subsection, make an order —

(*a*) directing that effect must not be given to the amalgamation proposal;

(*b*) modifying the amalgamation proposal in such manner as may be specified in the order; or

(*c*) directing the amalgamating company or its board of directors to reconsider the amalgamation proposal or any part thereof.

(2) An order may be made under subsection (1) on such terms or conditions as the Court thinks fit.

Solvency statement in relation to amalgamating company and offence for making false statement

215I.—(1) For the purposes of section 215C(2)(*b*), "solvency statement", in relation to an amalgamating company, means a statement by the board of directors of the amalgamating company that it has formed the opinion —

(*a*) that, as regards the amalgamating company's situation at the date of the statement, there is no ground on which the amalgamating company could then be found to be unable to pay its debts; and

(*b*) that, at the date of the statement, the value of the amalgamating company's assets is not less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

(2) The solvency statement —

(*a*) if the amalgamating company is exempt from audit requirements under section 205B or 205C, must be in the form of a written declaration; or

(*b*) if the amalgamating company is not such a company, must be in the form of a written declaration or must be accompanied by a report from its auditor that the auditor has inquired into the affairs of the amalgamating company and is of the opinion that the statement is not unreasonable given all the circumstances.

[36/2014]

(3) In forming an opinion for the purposes of subsection (1)(*a*) and (*b*), the directors must take into account all liabilities of the amalgamating company (including contingent liabilities).

(4) In determining, for the purposes of subsection (1)(*b*), whether the value of the amalgamating company's assets is or will become less than the value of its liabilities (including contingent liabilities), the board of directors of the amalgamating company —

(*a*) must have regard to —

(i) the most recent financial statements of the amalgamating company that comply with section 201(2) and (5), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamating company's assets and the value of the amalgamating company's liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[36/2014]

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the board of directors of the amalgamating company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the amalgamating company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(6) Any director of an amalgamating company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both.

Solvency statement in relation to amalgamated company and offence for making false statement

215J.—(1) In sections 215C(2)(*c*) and 215D(5), "solvency statement", in relation to an amalgamated company, means a written declaration by the board of directors of each amalgamating company that it has formed the opinion —

(*a*) that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and

(*b*) that the value of the amalgamated company's assets will not be less than the value of its liabilities (including contingent liabilities).

[36/2014]

(2) In forming an opinion for the purposes of subsection (1)(*a*) and (*b*), the directors must take into account all liabilities of the amalgamated company (including contingent liabilities).

(3) In determining, for the purposes of subsection (1)(*b*), whether the value of the amalgamated company's assets will become less than the value of its liabilities (including contingent liabilities), the board of directors of each amalgamating company —

(*a*) must have regard to —

(i) the most recent financial statements of the amalgamating company and the other amalgamating companies that comply with section 201(2) and (5), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamated company's assets and the value of the amalgamated company's liabilities (including contingent liabilities); and

(*b*) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[36/2014]

(4) In determining, for the purposes of subsection (3), the value of a contingent liability, the board of directors of each amalgamating company may take into account —

(*a*) the likelihood of the contingency occurring; and

(*b*) any claim the amalgamated company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(5) Any director of an amalgamating company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both.

Transfer of money or other consideration paid under terms of amalgamation to Official Receiver

215K.—(1) Where the terms of any amalgamation proposal that is approved under section 215C, or is deemed to be approved under section 215D, provide for any money or other consideration to be held by or on behalf of any party to the amalgamation in trust for any person, the person holding the money or other consideration may, after the expiration of 2 years and must before the expiration of 10 years from the date on which, the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

[36/2014]

(2) The Official Receiver must —

(*a*) deal with any moneys received under subsection (1) as if the moneys were paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) sell or dispose of any other consideration received under subsection (1) in such manner as the Official Receiver thinks fit and must deal with the proceeds of such sale or disposal as if it were moneys paid to the Official Receiver

under section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

Personal remedies in cases of oppression or injustice

216.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part 9, the Minister, may apply to the Court for an order under this section on the ground —

(*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including the applicant or in disregard of his, her or their interests as members, shareholders or holders of debentures of the company; or

(*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including the applicant).

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without limiting 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 company in future;

(*c*) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

(*d*) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(*e*) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(*f*) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to subsection (2)(*f*), the provisions of the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of a company apply, with such adaptations as are necessary, as if the order had been made upon an application duly made to the Court by the company.

[40/2018]

(4) Where an order under this section makes any alteration in or addition to any company's constitution, then, despite anything in any other provision of this Act, but subject to the provisions of the order, the company concerned does not have power, without the permission of the Court, to make any further alteration in or addition to the constitution inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order are of the same effect as if duly made by resolution of the company.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(5) A copy of any order made under this section must be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(7) This section applies to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members are to be construed accordingly.

Derivative or representative actions

216A.—(1) In this section and section 216B, "complainant" means —

(*a*) any member of a company;

(*b*) the Minister, in the case of a declared company under Part 9; or

(*c*) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

[36/2014]

(2) Subject to subsection (3), a complainant may apply to the Court for permission to bring an action or arbitration in the name and on behalf of the company or intervene in an action or arbitration to which the company is a party for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the company.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —

(*a*) the complainant has given 14 days' notice to the directors of the company of the complainant's intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action or arbitration;

(*b*) the complainant is acting in good faith; and

(*c*) it appears to be prima facie in the interests of the company that the action or arbitration be brought, prosecuted, defended or discontinued.

[36/2014]

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3)(*a*), the Court may make such interim order as it thinks fit pending the complainant giving notice as required.

(5) In granting permission under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:

(*a*) an order authorising the complainant or any other person to control the conduct of the action or arbitration;

(*b*) an order giving directions for the conduct of the action or arbitration by the person so authorised;

(*c*) an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action or arbitration.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(6) Where the action has been commenced or is to be brought in the State Courts, an application for permission under subsection (2) must be made in a District Court.

[5/2014]

[Act 25 of 2021 wef 01/04/2022]

Evidence of shareholders' approval not decisive — Court approval to discontinue action under section 216A

216B.—(1) An application made or an action brought or intervened in under section 216A must not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company has been or may be approved by the members of the company, but evidence of approval by the members may be taken into account by the Court in making an order under section 216A.

(2) An application made or an action brought or intervened in under section 216A must not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 216A, the Court may at any time order the company to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

PART 8

217. to **227.** [*Repealed by Act 40 of 2018*]

PART 8A

227AA. to **227X.** [*Repealed by Act 40 of 2018*]

PART 9

INVESTIGATIONS

Application of this Part

228. This Part does not authorise any investigation into the insurance business of a company or into the business of a banking corporation, unless specifically provided for in this Part.

Interpretation

229. In this Part, unless the contrary intention appears —

"company" includes a foreign company which is a declared company;

"declared company" means a company or foreign company which the Minister has by order declared to be a company to which this Part applies;

"officer or agent", in relation to a corporation, includes —

(*a*) a director, banker, solicitor or auditor of the corporation;

(*b*) a person who at any time —

(i) has been a person referred to in paragraph (*a*); or

(ii) has been otherwise employed or appointed by the corporation;

(*c*) a person who —

(i) has in the person's possession any property of the corporation;

(ii) is indebted to the corporation; or

(iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

(*d*) where there are reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (*c*) — that person.

Power to declare company or foreign company

230. The Minister may by order declare that a company or foreign company is a company to which this Part applies if the Minister is satisfied —

(*a*) that a prima facie case has been established that, for the protection of the public or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;

(*b*) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;

(*c*) that for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; or

(*d*) in the case of a foreign company, that the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company.

Appointment of inspectors for declared companies

231.—(1) Where a company or foreign company has been declared to be a company to which this Part applies, the Minister must appoint one or more inspectors to investigate the affairs of that company, and to report his or her opinion thereon to the Minister.

(2) An inspector appointed under subsection (1) may, at any time in the course of the inspector's investigation, without the necessity of making an interim report, inform the Minister of matters coming to the inspector's knowledge as a result of the investigation which tend to show that an offence has been committed; and the Minister may thereafter take such steps as the Minister may consider fit.

(3) The expenses of and incidental to an investigation of a declared company must be defrayed in the first instance out of moneys provided by Parliament.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who is convicted on a prosecution brought under section 233(3) or who is ordered to pay damages or restore property in proceedings under section 233(4) the Minister may by notification in the *Gazette* direct that the expenses be so paid.

(5) A notification under subsection (4) may specify the time or times and the manner in which the payment of the expenses must be made.

(6) Where a notification has been published by the Minister under subsection (5), the persons named in the notification to the extent therein specified shall be liable to reimburse the Minister in respect of such expenses.

(7) Action to recover any such expenses may be taken in the name of the Government in any court of competent jurisdiction.

(8) Where a notification under subsection (4) has been published for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the company are deemed to be part of the costs and expenses of the winding up for the purposes of section 203(1)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(9) The report of the inspector may if the inspector thinks fit, and must, if the Minister so directs, include a recommendation as to the terms of the notification which the inspector thinks proper in the light

of the inspector's investigation to be given by the Minister under subsection (4).

Investigation of affairs of company by inspectors at direction of Minister

232.—(1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs —

(*a*) in the case of a company having a share capital, on the application of —

(i) not less than 200 members (excluding the company itself if it is registered as a member) or of members holding not less than 10% of the shares issued (excluding treasury shares); or

(ii) holders of debentures holding not less than 20% in nominal value of debentures issued;

(*b*) in the case of a company not having a share capital, on the application of not less than 20% in number of the persons on the company's register of members; or

(*c*) in any case on the application of a company pursuant to a special resolution.

(2) An application under this section must be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security for such amount as the Minister thinks fit for payment of the cost of the investigation.

As to reports of inspectors

233.—(1) An inspector appointed by the Minister may, and if so directed by the Minister must, make interim reports to the Minister and on the conclusion of the investigation the inspector must report the inspector's opinion on or in relation to the affairs that the inspector has been appointed to investigate together with the facts

upon which the inspector's opinion is based to the Minister, and a copy of the report must, subject to subsection (1B), be forwarded by the Minister to the registered office of the company, and a further copy must, subject to that subsection, at the request of the applicants be delivered to them.

(1A) Subject to subsections (1B) and (1C), the Minister must give a copy of a report made under this Part to each person to whom in the opinion of the Minister the report ought to be given by reason that it relates to the affairs of that person to a material extent.

(1B) The Minister is not bound to furnish a company, an applicant or any other person with a copy of the report or any part thereof if the Minister is of the opinion that there is good reason for not divulging the contents of the report or any part thereof.

(1C) Subject to subsection (1D), the Minister must not give a copy of a report made under this Part to a person under subsection (1A) if the Minister believes that legal proceedings that have been or, in the Minister's opinion, might be instituted, might be unduly prejudiced by giving the report to that person.

(1D) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or part thereof must be given to that person.

(2) The Minister may, if he or she is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published but must refrain from so doing if the Attorney-General has certified in writing that publication of the report would be prejudicial to the administration of justice.

(3) If from any report of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted, the Minister must cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) must on being required by the Minister to do so give all assistance in connection with the prosecution which they are reasonably able to give.

(4) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any company dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that company or in the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained, the Minister may himself or herself bring proceedings for that purpose in the name of the company.

234. [*Repealed by Act 13 of 1987*]

Investigation of affairs of related corporation

235. Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a corporation which is or has at any relevant time been a corporation deemed to be related by virtue of section 6 to the company, the inspector may, with the consent in writing of the Minister, investigate the affairs of that corporation.

Procedure and powers of inspector

236.—(1) If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of section 6, the inspector has power to do so, and the inspector must report on the affairs of the other corporation so far as the inspector thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part must, if required by an inspector appointed under this Part, produce to the inspector all books and documents in the officer's or agent's custody or power and must give to the inspector all assistance in connection with the investigation which he or she is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being

investigated pursuant to this Part to appear for examination on oath or affirmation (which the inspector is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

(*a*) may take possession of all such books and documents;

(*b*) may retain all such books and documents for such time as the inspector considers to be necessary for the purpose of the investigation; and

(*c*) must permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his or her possession.

(4A) If an inspector has reasonable grounds for believing that a director or past director of the company or of a corporation which is or has at any time been deemed to be or to have been related to that company by virtue of section 6 whose affairs the inspector is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Singapore or elsewhere, into or out of which there has been paid any money which has been in any way connected with any act or omission or series of acts or omissions, which on the part of that director or past director constituted misconduct (whether fraudulent or not towards that company or that related company or its members), an inspector may require the director or past director to produce to the inspector all documents in the director's or past director's possession or under his or her control relating to that bank account.

(5) If any officer or agent of any corporation, the affairs of which are being investigated pursuant to this Part, fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him or her by an inspector with respect to the affairs of the corporation or that officer or agent is a director or past director to whom subsection (4A)

applies, if he or she fails to comply with a requirement of an inspector under that subsection, the inspector may certify the failure or refusal under the hand of the inspector to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if the offender had been guilty of contempt of the Court.

(6) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, is entitled to refuse to answer any question which is relevant or material to the investigation on the ground that the person's answer might tend to incriminate him or her but if the person claims that the answer to any question, might incriminate him or her and but for this subsection the person would have been entitled to refuse to answer the question, the answer to the question may not be used in any subsequent criminal proceedings except in the case of a charge against the person for making a false statement in answer to that question.

(7) Subject to subsection (6), any person is entitled to refuse to answer a question on the ground that the answer might tend to incriminate him or her.

(8) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (6) thereafter be used in evidence in any legal proceedings against that person.

As to costs of investigations

237.—(1) The expenses of and incidental to an investigation by an inspector appointed pursuant to sections 232 and 243 (including the costs of any proceedings brought by the Minister in the name of the company), must be paid by the company investigated or if the Minister so directs by the applicants or in part by the company and in part by the applicants.

(2) Despite subsection (1) —

(*a*) if the company fails to pay the whole or any part of the sum which it is so liable to pay, the applicants must make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount (if any) which they have under subsection (1) been directed by the Minister to pay; and

(*b*) any balance of the expenses not paid either by the company or the applicants must be paid out of moneys provided by Parliament.

Report of inspector to be admissible in evidence

238. A copy of the report of any inspector appointed under this Part, certified as correct by the Minister, is admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which the inspector's opinion is based in relation to any matter contained in the report.

Powers of inspector in relation to a declared company

239.—(1) An inspector of a declared company may employ such persons as the inspector considers necessary and in writing authorise any such person to do anything the inspector could himself or herself do, except to examine on oath or affirmation.

(2) Any officer or agent of a corporation who —

(*a*) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or

(*b*) refuses or fails to answer any question lawfully put to him or her by any such person,

shall be liable to be dealt with in the same manner as is provided in section 236(5) for refusing or failing to comply with the request of an inspector.

Suspension of actions and proceedings by declared company

240.—(1) On and after the appointment of an inspector in respect of any declared company until the expiration of 3 months after the inspector has presented the inspector's final report to the Minister, no action or proceeding may without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as the Minister thinks fit) be commenced or proceeded with in any Court —

(*a*) by the company upon or in respect of any contract, bill of exchange or promissory note; or

(*b*) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person —

(i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to the holder or other person gave therefor adequate pecuniary consideration; and

(ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to the holder or other person or at any time within 3 years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section is void and of no effect.

Winding up of company

241.—(1) An application to the Court —

(*a*) in the case of a company — for the winding up of the company; or

(*b*) in the case of a foreign company — for the winding up so far as the assets of the company in Singapore are concerned of the affairs of the company,

may be made by the Minister at any time after a report has been made in respect of a declared company by an inspector whereupon the provisions of the Insolvency, Restructuring and Dissolution Act 2018, with such adaptations as are necessary, apply as if —

(*c*) in the case of a company — a winding up application had been duly made to the Court by the company; and

(*d*) in the case of a foreign company — an application for an order for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore had been duly made to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

[40/2018]

(2) Where, in the case of a foreign company, on any application under subsection (1) an order is made for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore the company must not carry on business or establish or keep a place of business in Singapore.

Penalties

242.—(1) Any person who, with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part —

(*a*) destroys, conceals or alters any book, document or record of or relating to a declared company; or

(*b*) sends or attempts to send or conspires with any other person to send out of Singapore any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years.

(2) If in any prosecution for an offence under this section it is proved that the person charged with the offence —

(*a*) has destroyed, concealed or altered any book, document or record of or relating to the company; or

(*b*) has sent or attempted to send or conspired to send out of Singapore any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing the person had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on the person.

Appointment and powers of inspectors to investigate ownership of company

243.—(1) Where it appears to the Minister that there is good reason to do so, the Minister may appoint one or more inspectors to investigate and report on the membership of any corporation, whether or not it is a declared company, and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the corporation or able to control or materially to influence the policy of the corporation.

(2) The appointment of an inspector under this section may define the scope of the inspector's investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 232, the Minister must appoint an inspector to conduct the investigation unless the Minister is satisfied that the application is vexatious, and the inspector's appointment must not exclude from the scope of the inspector's investigation any matter which the application seeks to have included therein, except insofar as the

Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, the inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the inspector's investigation.

(5) For the purposes of any investigation under this section, the provisions of this Part with respect to the investigation of declared companies apply with the necessary modifications of references to the affairs of the corporation or to those of any other corporation, but so that —

(*a*) this Part applies in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with that of the corporation, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the corporation or of the other corporation, as the case may be; and

(*b*) the Minister is not bound to furnish the corporation or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if the Minister is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but may, if the Minister thinks fit, cause to be kept by the Registrar a copy of the report or (as the case may be) the parts of the report, as respects which the Minister is not of that opinion.

Power to require information as to persons interested in shares or debentures

244.—(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a corporation and that it is unnecessary to appoint an inspector for the purpose, the Minister may require any person whom the Minister has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give such information to the Minister.

(2) For the purposes of this section, a person is deemed to have an interest in a share or debenture if the person has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if the person's consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with the person's instructions.

(3) Any person who fails to give any information required of the person under this section, or who in giving any such information makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) This section applies to a banking corporation but nothing therein requires, subject to the provisions of the Banking Act 1970, disclosure by a banking corporation to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the banker.

(5) The Minister may by notification in the *Gazette* delegate his or her powers under this section either generally or in any particular case to a committee of an approved exchange that has been approved by the Minister under any written law relating to the securities industry

or to any body, panel or committee that has been established to advise the Minister on matters connected with the securities industry.

[4/2017]

(6) A committee of an approved exchange or any body, panel or committee mentioned in subsection (5) in the discharge of its powers under that subsection must keep the Minister informed of any information obtained under this section.

[4/2017]

(7) Despite any delegation of the Minister's powers under this section, the Minister may exercise any of the powers conferred upon the Minister under this section.

Power to impose restrictions on shares or debentures

245.—(1) Where in connection with an investigation under section 243 or 244 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, the Minister may by order in the *Gazette* direct that the shares are until further order subject to the following restrictions:

(*a*) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, is void;

(*b*) that no voting rights are exercisable in respect of those shares;

(*c*) that no further shares may be issued in right of those shares or pursuant to any offer made to the holder thereof; and

(*d*) that, except in a liquidation, no payment may be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2) Any order of the Minister directing that shares will cease to be subject to the restrictions mentioned in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of subsection (1)(*c*) and (*d*), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(3) Where any shares are for the time being subject to any restrictions mentioned in subsection (1), any person who —

(*a*) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;

(*b*) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(*c*) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom the firstmentioned person does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) Where shares in any company are issued in contravention of the restrictions imposed pursuant to subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

(5) A prosecution must not be instituted under this section except with the consent of the Public Prosecutor.

(6) This section applies in relation to debentures as it applies in relation to shares.

Inspectors appointed in other countries

246. Where —

(*a*) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and

(*b*) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

the Minister may by notice declare that the inspector so appointed is to have the same powers and duties in Singapore in relation to the investigation as if the corporation were a declared company and the inspector had been appointed under section 231 and thereupon the inspector has those powers and duties.

PART 10

DISSOLUTION

[40/2018]

Division 1 — [Repealed by Act 40 of 2018]

247. to **252.** [*Repealed by Act 40 of 2018*]

Division 2 — [Repealed by Act 40 of 2018]

Subdivision (1) — [Repealed by Act 40 of 2018]

253. to **262.** [*Repealed by Act 40 of 2018*]

Subdivision (2) — [Repealed by Act 40 of 2018]

263. to **276.** [*Repealed by Act 40 of 2018*]

Subdivision (3) — [Repealed by Act 40 of 2018]

277. [*Repealed by Act 40 of 2018*]

278. [*Repealed by Act 40 of 2018*]

Subdivision (4) — [Repealed by Act 40 of 2018]

279. to **289.** [*Repealed by Act 40 of 2018*]

Division 3 — [Repealed by Act 40 of 2018]

Subdivision (1) — [Repealed by Act 40 of 2018]

290. [*Repealed by Act 40 of 2018*]

291. [*Repealed by Act 40 of 2018*]

292. [*Repealed by Act 40 of 2018*]

293. [*Repealed by Act 40 of 2018*]

Subdivision (2) — [Repealed by Act 40 of 2018]

294. [*Repealed by Act 40 of 2018*]

295. [*Repealed by Act 40 of 2018*]

Subdivision (3) — [Repealed by Act 40 of 2018]

296. [*Repealed by Act 40 of 2018*]

297. [*Repealed by Act 40 of 2018*]

298. [*Repealed by Act 40 of 2018*]

299. [*Repealed by Act 40 of 2018*]

Subdivision (4) — [Repealed by Act 40 of 2018]

300. to **312.** [*Repealed by Act 40 of 2018*]

Division 4 — Provisions applicable to every mode of winding up

Subdivision (1) — [Repealed by Act 40 of 2018]

313. to **326.** [*Repealed by Act 40 of 2018*]

Subdivision (2) — [Repealed by Act 40 of 2018]

327. [*Repealed by Act 40 of 2018*]

328. [*Repealed by Act 40 of 2018*]

Subdivision (3) — [Repealed by Act 40 of 2018]

329. to **335.** [*Repealed by Act 40 of 2018*]

Subdivision (4) — [Repealed by Act 40 of 2018]

336. to **342.** [*Repealed by Act 40 of 2018*]

Subdivision (5) — Dissolution

343. [*Repealed by Act 40 of 2018*]

Power of Registrar to strike defunct company off register

344.—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, the Registrar may send to the company, and its directors, secretaries and members, a letter to that effect and stating that, if an answer showing cause to the contrary is not received within 30 days after the date of the letter, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

[36/2014]

(1A) Without limiting subsection (1), in determining whether there is reasonable ground to believe that a company is not carrying on business, the Registrar may have regard to such circumstances as may be prescribed.

[36/2014]

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, the Registrar may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of 60 days after the date of that notice the name of the company mentioned in that notice will, unless cause is (in the form and manner specified in section 344C) shown to the contrary, be struck off the register and the company will be dissolved.

[36/2014]

(3) If in any case where a company is being wound up the Registrar has reasonable cause to believe that —

(*a*) no liquidator is acting;

(*b*) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by the liquidator; or

(*c*) the affairs of the company have been fully wound up under Division 2 of Part 8 of the Insolvency, Restructuring and Dissolution Act 2018 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

the Registrar may publish in the *Gazette* and send to the company or the liquidator (if any) a notice to the same effect as that mentioned in subsection (2).

[40/2018]

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and must publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of the notice the company is dissolved; but —

(*a*) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and

(*b*) nothing in this subsection affects the power of the Court to wind up a company the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 6 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being lodged with the Registrar the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the

company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

[36/2014]

(6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at the liquidator's last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the constitution of the company addressed to each person at the address mentioned in the constitution.

[36/2014]

(7) The Registrar must ensure that —

(*a*) such particulars of the company mentioned in subsection (1) and of the Registrar's belief that the company is not carrying on business or is not in operation, as the Registrar may determine, is sent to —

(i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act 1992; and

(ii) the Central Provident Fund Board established under the Central Provident Fund Act 1953; and

(*b*) the substance of the notices to be published in the *Gazette* referred to in subsections (2), (3) and (4) is also published on the Authority's website.

[36/2014]

Striking off on application by company

344A.—(1) The Registrar may, on the application by a company, strike the company's name off the register on such grounds and subject to such conditions as may be prescribed.

[36/2014]

(2) An application under subsection (1) is to be made on the company's behalf by its directors or by a majority of them.

[36/2014]

(3) Upon receipt of the application, the Registrar must, if satisfied that the grounds and conditions (if any) referred to in subsection (1) have been satisfied, send to the company and its directors, secretaries and members a letter informing them of the application and stating that if an answer showing cause to the contrary (in the form and manner referred to in section 344C) is not received within 30 days after the date thereof a notice, details of which are set out in subsection (4), will be published in the *Gazette* with a view to striking the name of the company off the register.

[36/2014]

(4) The Registrar may not strike a company's name off the register under this section until after the expiration of 60 days after the publication by the Registrar in the *Gazette* of a notice —

(*a*) stating that the Registrar intends to exercise the power under this section in relation to the company; and

(*b*) inviting any person to show cause why that should not be done within such period as may be prescribed.

[36/2014]

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(*b*) as to why the name of the company should not be struck off the register, the Registrar must strike off the name of the company from the register and publish a notice in the *Gazette* of the company's name having been so struck off.

[36/2014]

(6) On the publication of the notice in the *Gazette* under subsection (5), the company is dissolved.

[36/2014]

(7) Despite the dissolution of the company under subsection (6) —

(*a*) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and

(*b*) nothing in this section affects the power of the Court to wind up a company the name of which has been struck off the register.

[36/2014]

(8) The Registrar must ensure that —

(*a*) such particulars of the company and of the application mentioned in subsection (1), as the Registrar may determine, is sent to —

(i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act 1992; and

(ii) the Central Provident Fund Board established under the Central Provident Fund Act 1953; and

(*b*) the substance of the notices to be published in the *Gazette* referred to in subsections (4) and (5) is also published on the Authority's website.

[36/2014]

(9) The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other prescribed manner.

[36/2014]

Withdrawal of application

344B.—(1) The applicant or applicants may, by written notice to the Registrar, withdraw an application to strike a company's name off the register under section 344A at any time before the name of the company has been struck off the register.

[36/2014]

(2) Upon receipt of the notice mentioned in subsection (1), the Registrar must —

(*a*) send to the company by ordinary post a notice that the application to strike the company's name off the register has been withdrawn; and

(*b*) publish a notice on the Authority's website that the application to strike the company's name off the register has been withdrawn.

[36/2014]

Objections to striking off

344C.—(1) Where a notice is given or published by the Registrar under section 344(2) or 344A(4) of the Registrar's intention to strike

the company's name off the register, any person may deliver, not later than the date specified in the notice, an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be so struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 344(1) or 344A(1).

[36/2014]

(2) An objection to the striking the name of the company off the register mentioned in subsection (1) must be given to the Registrar by notice in the prescribed form and manner.

[36/2014]

(3) Upon receipt of a notice of objection, which is made in the prescribed form and manner, within the time referred to in subsection (1), the Registrar —

(*a*) must where applicable, give the applicant or applicants for striking the name of the company off the register notice of the objection; and

(*b*) must, in deciding whether to allow the objection, take into account such considerations as may be prescribed.

[36/2014]

Application for administrative restoration to register

344D.—(1) Subject to such conditions as may be prescribed, an application may be made to the Registrar to restore to the register the name of a company whose name has been struck off the register by the Registrar under section 344, if no application has been or is being made to the Court to restore the name of the company to the register under section 344(5).

[36/2014]

(2) An application under this section may be made whether or not the company has in consequence been dissolved.

[36/2014]

(3) An application under this section may only be made by a former director or former member of the company.

[36/2014]

(4) An application under this section is not valid unless the application is received by the Registrar within 6 years after the date on which the company is dissolved.

[36/2014]

Registrar's decision on application for administrative restoration

344E.—(1) The Registrar must give notice to the applicant of the decision on an application under section 344D.

[36/2014]

(2) If the Registrar's decision is that the name of the company should be restored to the register —

(*a*) the restoration takes effect as from the date that notice is sent; and

(*b*) the Registrar must —

(i) enter in the register a note of the date on which the restoration takes effect; and

(ii) cause notice of the restoration to be published in the *Gazette* and on the Authority's website.

[36/2014]

(3) The notice under subsection (2)(*b*)(ii) must state —

(*a*) the name of the company or, if the company is restored to the register under a different name, that name and its former name;

(*b*) the company's registration number; and

(*c*) the date as on which the restoration of the name of the company to the register takes effect.

[36/2014]

(4) If the Registrar's decision is that the name of the company should not be restored to the register, the person who made the application under section 344D or any other person aggrieved by the decision of the Registrar may appeal to the Court.

[36/2014]

(5) On an appeal made under subsection (4), the Court may —

(*a*) confirm the Registrar's decision; or

(*b*) restore the name of the company to the register and give such directions and make such orders as the Court is empowered to give and make under section 344G(3).

[36/2014]

Registrar may restore company deregistered by mistake

344F.—(1) The Registrar may, on his or her own initiative, restore the name of a company to the register if the Registrar is satisfied that the name of the company has been struck off the register and the company is dissolved under section 344 or 344A as a result of a mistake of the Registrar.

[36/2014]

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the company off the register under section 344A.

[36/2014]

(3) The Registrar may restore the name of a company to the register by publishing in the *Gazette* and on the Authority's website a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

[36/2014]

Effect of restoration

344G.—(1) If the name of a company is restored to the register under section 344E(2) or 344F, or on appeal to the Court under section 344E(5), the company is to be regarded as having continued in existence as if its name had not been struck off the register.

[36/2014]

(2) The company and its directors are not liable to a penalty under section 204 for a financial year in relation to which the period for filing its financial statements and other related statements ended —

(*a*) after the date of dissolution or striking off; and

(*b*) before the restoration of the name of the company to the register.

[36/2014]

(3) On the application by any person, the Court may give such directions and make such orders, as it seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or its name had not been struck off the register.

[36/2014]

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the company to the register.

[36/2014]

Retention of books and papers upon striking off

344H.—(1) Where the name of a company has been struck off and the company dissolved under section 344 or 344A, a person who was an officer of the company immediately before the company was dissolved must ensure that all books and papers of the company are retained for a period of at least 5 years after the date on which the company was dissolved.

[15/2017]

(2) An officer of a company who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.

[15/2017]

345. to **349.** [*Repealed by Act 40 of 2018*]

Division 5 — [Repealed by Act 40 of 2018]

350. to **354.** [*Repealed by Act 40 of 2018*]

Division 6 — [Repealed by Act 40 of 2018]

354A. [*Repealed by Act 40 of 2018*]

354B. [*Repealed by Act 40 of 2018*]

354C. [*Repealed by Act 40 of 2018*]

PART 10A

TRANSFER OF REGISTRATION

Foreign corporate entities to which this Part applies

355. This Part applies to a foreign corporate entity which intends to be registered as a company limited by shares under this Act.

[15/2017]

Interpretation of this Part

356. In this Part, unless the context otherwise requires —

"date of registration", in relation to a foreign corporate entity that has applied to be registered as a company limited by shares under this Part, means the date of registration of the foreign corporate entity specified in the notice of transfer of registration;

"foreign corporate entity" means a body corporate that is incorporated outside Singapore;

"notice of transfer of registration" means the notice of transfer of registration issued under section 359(3);

"place of incorporation" means, in the case of a foreign corporate entity that had transferred its domicile after its incorporation, the jurisdiction where the foreign corporate entity is domiciled at the time it applies for registration;

"registration", in relation to a foreign corporate entity that has applied to be registered as a company limited by shares under this Part, means registration by the Registrar under section 359(1), and "register" and "registered" are to be construed accordingly.

[15/2017]

Names of companies to be registered under this Part

357.—(1) A foreign corporate entity which intends to be registered as a company limited by shares under this Act must apply to reserve the name of the intended company.

[15/2017]

(2) Section 27 applies to and in respect of an application under subsection (1) as if it were an application to reserve the name of an intended company under that section.

[15/2017]

(3) A foreign corporate entity must not be registered under section 359(1) unless the name which it is proposed to be registered has been reserved under section 27, as applied by subsection (2).

[15/2017]

Application for registration

358.—(1) A foreign corporate entity may apply to the Registrar to be registered as a company limited by shares under this Act.

[15/2017]

(2) An application under subsection (1) —

(*a*) must be made in such form and manner, and contain such particulars, as may be prescribed; and

(*b*) must be accompanied by —

(i) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its place of incorporation;

(ii) the constitution by which the foreign corporate entity proposes to be registered;

(iii) such other documents as may be prescribed; and

(iv) the prescribed fee.

[15/2017]

(3) The Registrar may require an applicant to furnish to the Registrar such further information or documents as the Registrar may require.

[15/2017]

Registration

359.—(1) Subject to section 360, upon compliance by the foreign corporate entity with section 358, the Registrar may, if the Registrar

thinks fit, register the foreign corporate entity as a company limited by shares by registering its constitution.

[15/2017]

(2) The registration of the foreign corporate entity is subject to such conditions that the Registrar may impose.

[15/2017]

(3) Upon registration of the foreign corporate entity, the Registrar must issue a notice of transfer of registration in the prescribed form stating that the company is, on and from the date specified in the notice —

(*a*) registered by way of transfer of registration under this Act;

(*b*) a company limited by shares; and

(*c*) where applicable, a private company.

[15/2017]

(4) A certificate of confirmation of registration must be issued by the Registrar upon the application of the company.

[15/2017]

(5) A notice of transfer of registration issued under subsection (3), and a certificate of confirmation of registration issued under subsection (4), is each conclusive evidence —

(*a*) that the foreign corporate entity is registered under this section; and

(*b*) of the date of the company's registration.

[15/2017]

(6) A foreign corporate entity registered under this section must, within 60 days after the issue of the notice of transfer of registration under subsection (3), or such further period as may be extended under subsection (7), submit to the Registrar a document evidencing that the foreign corporate entity has been deregistered in its place of incorporation.

[15/2017]

(7) The Registrar may, on the application of the foreign corporate entity registered under this section, extend the 60-day period mentioned in subsection (6) subject to such conditions as the Registrar considers fit.

[15/2017]

(8) The Registrar may, at any time in the Registrar's discretion, waive or modify any condition imposed by the Registrar under subsection (2).

[15/2017]

(9) Any person aggrieved by —

(*a*) the refusal of the Registrar to register a foreign corporate entity under subsection (1);

(*b*) any condition of registration imposed by the Registrar under subsection (2); or

(*c*) the modification of any condition by the Registrar under subsection (8),

may within 30 days after the date of the refusal to register, or the imposition or modification of the condition (as the case may be), appeal to the Minister whose decision is final.

[15/2017]

When registration must be refused

360.—(1) The Registrar must refuse to register a foreign corporate entity if the Registrar is not satisfied that the minimum requirements prescribed for registration have been met and that all other requirements for registration have been complied with.

[15/2017]

(2) The Registrar must refuse to register a foreign corporate entity if the Registrar is satisfied that —

(*a*) the intended company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

(*b*) it would be contrary to national security or interest for the intended company to be registered.

[15/2017]

(3) Any person aggrieved by the decision of the Registrar under subsection (1) or (2) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

[15/2017]

Effect of registration

361.—(1) Starting on the date of registration specified in the notice of transfer of registration —

(*a*) the foreign corporate entity is deemed to be a company as defined in section 4(1) and all provisions of this Act pertaining to companies apply with such adaptations, exceptions and modifications as may be specified in regulations; and

(*b*) if the foreign corporate entity was registered as a foreign company under Division 2 of Part 11 immediately before that date, ceases to be so registered under Division 2 of that Part.

[15/2017]

(2) To avoid doubt, the registration of a foreign corporate entity does not —

(*a*) create a new legal entity;

(*b*) prejudice or affect the identity of the body corporate constituted by the foreign corporate entity or its continuity as a body corporate;

(*c*) affect the property, or the rights or obligations, of the foreign corporate entity; or

(*d*) render defective any legal proceedings by or against the foreign corporate entity,

and any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its registration may be continued or commenced by or against the company after the registration.

[15/2017]

Revocation of registration

362.—(1) The Registrar may by order revoke the registration of a company if the company fails to comply with section 359(6).

[15/2017]

(2) The Registrar must, before making an order of revocation —

(*a*) give the company written notice of the Registrar's intention to revoke the registration;

(*b*) specify in the notice a period of at least 30 days within which the company may make written representations to the Registrar; and

(*c*) consider the company's written representations (if any) that are received by the Registrar within the time specified in the notice.

[15/2017]

(3) At the expiration of the time mentioned in the notice mentioned in subsection (2), the Registrar may, unless cause to the contrary is previously shown, order that the registration of the company be revoked.

[15/2017]

(4) The Registrar must —

(*a*) cause a notice of the order of revocation to be published in the *Gazette*; and

(*b*) serve a copy of the notice of the order of revocation on the company which registration is revoked.

[15/2017]

(5) Upon publication of the notice of the order of revocation in the *Gazette*, the order of revocation takes effect and the company ceases to be a company as defined in section 4(1) and the provisions of this Act cease to apply to the company.

[15/2017]

(6) An order of revocation under subsection (3) is final.

[15/2017]

(7) Despite the order of revocation in respect of a company under subsection (3), the liability (if any) of every officer and member of the company continues.

[15/2017]

(8) Nothing in this section prejudices —

(*a*) the enforcement by any person of any right or claim against the company; or

(*b*) the enforcement by the company of any right or claim against any person.

[15/2017]

Duty of company to register pre-existing charges

363.—(1) If, before the registration of a foreign corporate entity, there are any charges, whether created by the foreign corporate entity or otherwise, which would have been required to be registered under Division 8 of Part 4 if the foreign corporate entity had been incorporated as a company under this Act, there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the date of registration of the company, a statement containing the prescribed particulars of the charge.

[15/2017]

(2) Documents and particulars required to be lodged for registration under subsection (1) may be lodged by the company concerned or by any person interested in the documents.

[15/2017]

(3) Where registration under subsection (1) is effected by some person other than the company concerned, that person is entitled to recover from the company the amount of any fees properly paid by the person for the registration.

[15/2017]

(4) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[15/2017]

(5) To avoid doubt, a failure to comply with subsection (1) does not affect the continuity of status, operation or effect of any security, right, priority or obligation of the charge.

[15/2017]

(6) The Court, on being satisfied —

(*a*) that the omission to register a charge requiring registration under subsection (1), or that the omission or mis-statement of any particular with respect to such charge, was accidental or due to inadvertence or to some other

sufficient cause or is not of a nature to prejudice the position of creditors or shareholders; or

(*b*) that on other grounds it is just and equitable to grant relief,

may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

[15/2017]

(7) In respect of any charge that is required to be lodged under subsection (1), sections 134, 135, 136 and 138 apply as if the charge were a charge to which Division 8 of Part 4 applied.

[15/2017]

Duties of company with respect to issue of certificates

364.—(1) Within 60 days after the date of registration of the company, the company must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures (as the case may be) as at the date of registration.

[15/2017]

(2) Upon the delivery of the certificates to the holders of existing shares or debentures under subsection (1), all prior certificates in respect of such shares or debentures cease to be operative and cease to have any validity for the purposes of this Act.

[15/2017]

(3) Any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the company is void.

[15/2017]

(4) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have

the certificates or the debentures delivered to the person, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application are to be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

[15/2017]

Regulations

364A. The Minister may make regulations under section 411 in respect of applications for registration, and registration of a foreign corporate entity, under this Part, including —

(*a*) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under section 359(1);

(*b*) waiving any requirement of this Part in respect of any foreign corporate entity, or class of foreign corporate entities; and

(*c*) adapting, modifying or excluding the provisions of this Act in their application to any foreign corporate entity or class of foreign corporate entities registered under this Part.

[15/2017]

PART 11

VARIOUS TYPES OF COMPANIES, ETC.

Division 1 — [Repealed by Act 8 of 2003]

Division 2 — Foreign companies

Foreign companies to which this Division applies

365. This Division applies to a foreign company which —

(*a*) establishes a place of business or carries on business in Singapore; or

(*b*) intends to establish a place of business or carry on business in Singapore.

[36/2014]

Interpretation of this Division

366.—(1) In this Division, unless the contrary intention appears —

"authorised representative", in relation to a foreign company, means —

(*a*) in the case of a foreign company registered before 3 January 2016 — the agent of the foreign company as defined by this section in force immediately before that date; and

(*b*) in the case of a foreign company registered on or after 3 January 2016 — the person named in a notice lodged under section 368(1)(*e*);

"carrying on business" —

(*a*) includes the administration, management or otherwise dealing with property situated in Singapore as an agent, a legal personal representative, or a trustee, whether by employees or agents or otherwise; and

(*b*) does not exclude activities carried on without a view to any profit.

[36/2014]

(2) Despite subsection (1), a foreign company is not to be regarded as carrying on business in Singapore for the reason only that in Singapore it —

(*a*) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;

(*b*) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(*c*) maintains any bank account;

(*d*) effects any sale through an independent contractor;

(*e*) solicits or procures any order which becomes a binding contract only if such order is accepted outside Singapore;

(*f*) creates evidence of any debt or creates a charge on movable or immovable property;

(*g*) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;

(*h*) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;

(*i*) invests any of its funds or holds any property;

(*j*) establishes a share transfer or share registration office in Singapore;

(*k*) effects any transaction through its related corporation licensed or approved under any written law by the Monetary Authority of Singapore, established under the Monetary Authority of Singapore Act 1970, under an arrangement approved by the Monetary Authority of Singapore; or

(*l*) carries on such other activity as the Minister may prescribe.

[36/2014]

Power of foreign companies to hold immovable property

367. Subject to and in accordance with any written law, a foreign company registered under this Division has power to hold immovable property in Singapore.

[36/2014]

Documents, etc., to be lodged by foreign companies having place of business in Singapore

368.—(1) Every foreign company must, before it establishes a place of business or commences to carry on business in Singapore, lodge with the Registrar for registration —

(*a*) the name of the foreign company and the address of the registered office of the company in its place of incorporation or formation;

(*b*) a certified copy of the certificate of its incorporation or registration in its place of incorporation or formation or a document of similar effect;

(*c*) a certified copy of its charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution but only if such document is required to be registered or lodged under the law relating to the incorporation, formation or registration of the foreign company in its place of incorporation, formation or original registration;

(*d*) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of directors of a company incorporated under this Act and, in respect of each director, his or her residential address and contact address;

[Act 21 of 2024 wef 09/12/2024]

(*e*) a notice stating the names, nationalities and other identification particulars of one or more natural persons resident in Singapore who are appointed as the company's authorised representatives and authorised as such to accept on its behalf service of process and any notice required to be served on the company, and in respect of each authorised representative, his or her residential address and contact address;

[Act 21 of 2024 wef 09/12/2024]

(*f*) a statement by or on behalf of the foreign company in the prescribed form confirming that each of its authorised representatives referred to in the notice lodged under paragraph (*e*) has consented to act as such (called in this section and section 370 the consent statement);

(*g*) notice of the situation of its registered office in Singapore and, unless the office is open and accessible to the public during ordinary business hours on each business day, the

days and hours during which it is open and accessible to the public;

(*h*) a notice in the prescribed form containing the following particulars:

(i) in the case —

(A) where a certificate of the foreign company's incorporation or registration or a document of similar effect is issued in its place of incorporation or formation — the registration number indicated on the certificate of the foreign company's incorporation or registration or a document of similar effect; or

(B) where the document referred to in sub-paragraph (A) is not available — the number issued to the foreign company upon its incorporation by or registration with an authority which is responsible for incorporating or registering companies;

(ii) a description of the business carried on by the foreign company; and

(iii) the type of legal form or legal entity of the foreign company; and

(*i*) where the law for the time being applicable to the foreign company in the place of its incorporation or formation requires audited financial statements of its head office to be prepared, a copy of the latest audited financial statements of its head office,

and on payment of the appropriate fees and subject to this Act, the Registrar must register the foreign company under this Division by registration of the documents.

[36/2014]

(2) Any document required to be served under this Act on a director or an authorised representative of a foreign company is sufficiently served if addressed to the director or authorised representative and

left at or sent by post to his or her residential address or contact address.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(3) The following must be made available for inspection at the registered office of the foreign company during the hours in which the registered office of the company is accessible to the public:

(*a*) a copy of the memorandum of appointment or power of attorney appointing each authorised representative of the company in such manner as to be binding on the company;

(*b*) where the memorandum of appointment or power of attorney mentioned in paragraph (*a*) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner.

[36/2014]

(4) Subsection (1) applies to a foreign company which was not registered under the repealed written laws but which, immediately before 29 December 1967, had a place of business or was carrying on business in Singapore and, on that date, had a place of business or was carrying on business in Singapore, as if it established that place of business or commenced to carry on that business on that date.

[36/2014]

Duty of directors and authorised representatives to provide information to foreign company

368A.—(1) A director must give the foreign company any information the company needs to comply with section 372(1) as soon as practicable but not later than 14 days after his or her initial appointment, unless he or she has previously given the information to the company in writing.

[36/2014]

(2) An authorised representative must give the foreign company —

(*a*) any information the company needs to comply with section 370(4) as soon as practicable but not later than 14 days after his or her initial appointment, unless he or she

has previously given the information to the company in writing; and

(*b*) any information the company needs to comply with section 372(1) as soon as practicable but not later than 14 days after any change in his or her particulars.

[36/2014]

(3) Despite subsection (1) or (2), a director or an authorised representative must, subject to subsection (4), if requested by the foreign company, give the company any information referred to in section 368(1)(*d*) or (*e*) for the purpose of enabling the company to confirm its record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

[36/2014]

(4) The director or authorised representative mentioned in subsection (3) must furnish the information to the foreign company as soon as practicable but not later than 14 days after receipt of a written request for such information from the company.

[36/2014]

(5) A director or an authorised representative who is bound to comply with a requirement under this section and fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[36/2014]

Saving and transitional provisions for existing particulars of directors and authorised representatives before 3 January 2016

368B.—(1) If a foreign company, whether incorporated before, on or after 3 January 2016 —

(*a*) has lodged the name and particulars of one or more directors with the Registrar as a director or directors (as the case may be) of the foreign company under section 368(1)(*c*) in force immediately prior to that date, the name and particulars of the director or directors (as the case may be) are to be treated as the name and particulars of the company's director or directors (as the case may be)

until a notification of any change to the information is received by the Registrar under section 372(1)(*ca*); or

(*b*) has lodged the name and particulars of one or more agents with the Registrar as an agent or agents (as the case may be) of the foreign company under section 368(1)(*e*) in force immediately prior to that date, the name and particulars of the agent or agents (as the case may be) are to be treated as the name and particulars of the company's authorised representative or representatives (as the case may be) until a notification of any change to the information is received by the Registrar under section 372(1)(*ca*).

[36/2014]

(2) For the purposes of subsection (1) —

(*a*) the address lodged with the Registrar in respect of a director under section 368(1)(*c*) in force immediately before 3 January 2016 is to be treated as the director's residential address; and

(*b*) the address lodged with the Registrar in respect of an agent under section 368(1)(*e*) in force immediately before 3 January 2016 is to be treated as the agent's residential address in the agent's capacity as an authorised representative of the foreign company.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

Power to refuse registration of a foreign company in certain circumstances

369.—(1) Despite anything in this Act or any rule of law, the Registrar must refuse to register a company under this Division if the Registrar is satisfied that the foreign company is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or it would be contrary to the national security or interest for the foreign company to be registered.

[36/2014]

(2) A foreign company aggrieved by the decision of the Registrar under subsection (1) may, within 30 days of the date of the decision, appeal to the Minister whose decision is final.

As to registered office and authorised representatives of foreign companies

370.—(1) A foreign company must have a registered office in Singapore to which all communications and notices may be addressed and which must be open and accessible to the public for not less than 5 hours between the hours of 9 a.m. and 5 p.m. each business day.

[36/2014]

(2) An authorised representative, until he or she ceases to be such in accordance with subsection (5) —

(*a*) continues to be the authorised representative of the company;

(*b*) is answerable for the doing of all such acts, matters and things, as are required to be done by the company under this Act; and

(*c*) shall be personally liable to all penalties imposed on the company for any contravention of any of the provisions of this Act unless he or she satisfies the court hearing the matter that he or she should be not so liable.

[36/2014]

(3) A foreign company or its authorised representative may lodge with the Registrar a notice in the prescribed form stating that the authorised representative has ceased to be the authorised representative or will cease to be the authorised representative on a date specified in the notice.

(4) On the appointment of a new authorised representative, the company must lodge a notice mentioned in section 368(1)(*e*) and a consent statement in respect of the new authorised representative with the Registrar.

[36/2014]

(5) Subject to subsections (6) and (7), the authorised representative in respect of whom the notice under subsection (3) has been lodged

ceases to be an authorised representative on the expiration of a period of 21 days after the date of lodgment of the notice or on the date on which the consent statement in respect of another authorised representative is lodged with the Registrar under section 368(1)(*f*), whichever is the earlier, but if the notice states a date on which the firstmentioned authorised representative is to so cease and the date is later than the expiration of that period, on that date.

[36/2014]

(6) Where the authorised representative in respect of whom the notice under subsection (3) has been lodged is the sole authorised representative of a foreign company —

(*a*) the foreign company must appoint another authorised representative; and

(*b*) the authorised representative ceases to be an authorised representative of the foreign company on the date on which the consent statement in respect of another authorised representative is lodged under subsection (4).

[36/2014]

(7) Where a foreign company's sole authorised representative dies, the company must, within 21 days after the death of the authorised representative, appoint another authorised representative.

[36/2014]

Transitional provision for contact address of director or authorised representative of foreign company

370A.—(1) Where a director or authorised representative of a foreign company (who is an individual) maintained an alternate address with the Registrar under this Act immediately before the commencement date, that address is taken to be the individual's contact address for the purposes of this Act, until notice of a change in the individual's contact address is lodged under any ACRA administered Act on or after that date.

(2) Where a director or authorised representative of a foreign company (who is an individual) did not maintain an alternate address with the Registrar under this Act immediately before the commencement date, the individual's residential address is taken to be the individual's contact address for the purposes of this Act, until

notice of a change in the individual's contact address is lodged under any ACRA administered Act on or after that date.

(3) An individual's contact address mentioned in subsection (1) or (2) is deemed, for the purposes of section 372(1)(*ca*), to be a particular lodged with the Registrar under section 368(1).

(4) Subsection (5) applies to a notice or information required to be lodged or given under section 368(1)(*d*) or (*e*), 368A(1), (2)(*a*), (3) or (4) or 370(4) (as the case may be), relating to a director or authorised representative of a foreign company appointed before the commencement date.

(5) Where the notice or information mentioned in subsection (4) is lodged or given on or after the commencement date, the notice or information must provide the information required under section 368 as in force when the notice or information is lodged or given, despite the director or authorised representative having been appointed before the commencement date.

(6) In this section, "commencement date" means the date of commencement of section 47 of the ACRA (Registry and Regulatory Enhancements) Act 2024.

[Act 21 of 2024 wef 09/12/2024]

Transitory provisions

371.—(1) On the registration of a foreign company under this Division, the Registrar must issue a notice in the prescribed form and the notice is prima facie evidence in all courts of the particulars mentioned in the notice.

(2) Upon the application of the foreign company that has been duly registered and payment of the prescribed fee, the Registrar must issue to the foreign company a certificate confirming the particulars mentioned in the notice, and the certificate is prima facie evidence in all courts of those particulars.

Return to be filed where documents, etc., altered

372.—(1) Where any change or alteration is made in —

(*a*) the charter, statutes, constitution, memorandum or articles of the foreign company or other instrument lodged with the Registrar;

(*b*) the directors of the foreign company;

(*c*) the authorised representative or authorised representatives of the foreign company;

(*ca*) the particulars of any director or authorised representative of the foreign company which are lodged with the Registrar under section 368(1), other than the director's or authorised representative's residential address;

(*d*) the situation or address or designation of situation or address of the registered office of the foreign company in Singapore or the days or hours during which it is open and accessible to the public;

(*e*) the address of the registered office of the foreign company in its place of incorporation or origin;

(*f*) the name of the foreign company;

(*g*) the description of the business carried on by the foreign company; or

(*h*) the type of legal form or legal entity of the foreign company,

the foreign company must, within 30 days or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

[36/2014]

(1A) A director or an authorised representative of a foreign company must lodge with the Registrar a notice of the director's or authorised representative's new residential address within 30 days after the date of change.

[36/2014]

(1B) Where the director or authorised representative mentioned in subsection (1) has changed his or her residential address and has made a report of the change under section 10 of the National Registration Act 1965, the director or authorised representative is to be taken to have informed the Registrar of the change of residential address in compliance with subsection (1A).

[36/2014]

(1C) If default is made by any director or authorised representative of a foreign company in complying with subsection (1A), he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

[36/2014]

(2) [*Deleted by Act 36 of 2014*]

(3) [*Deleted by Act 36 of 2014*]

(4) If any order is made by a court under any law in force in the country in which a foreign company is incorporated which corresponds to section 210 of this Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018, the company must, within 30 days or within such further period as the Registrar in special circumstances allows after the order was made, lodge with the Registrar a copy of that order.

[36/2014; 15/2017; 40/2018]

Financial statements

373.—(1) Subject to this section, a foreign company must lodge with the Registrar, within the time specified in subsection (3), financial statements made up to the end of its last financial year together with a declaration in the prescribed form verifying that the copies are true copies of the documents so required and, in the case where the financial statements are audited, a statement of the name of the auditor.

[36/2014]

(2) In subsection (1), "financial statements" means —

(*a*) in the case where the foreign company's shares are listed for quotation on an approved exchange in Singapore or a securities exchange in a country or territory outside Singapore and the foreign company is required by the

rules of the approved exchange or securities exchange (as the case may be) to prepare financial statements — those financial statements; and

(*b*) in any other case —

(i) where the foreign company prepares financial statements in accordance with accounting standards that are substantially similar to the Accounting Standards — those financial statements;

(ii) where the foreign company does not prepare the financial statements mentioned in sub-paragraph (i) but prepares financial statements in accordance with the applicable accounting standards as required by the law for the time being in force in the place of the foreign company's incorporation which are audited or not (as the case may be) in accordance with that law — those financial statements; or

(iii) where the foreign company does not prepare the financial statements mentioned in sub-paragraph (i) or (ii) — the unaudited summary financial statements of the foreign company.

[Act 21 of 2024 wef 09/12/2024]

(3) The financial statements mentioned in subsection (1) must be lodged —

(*a*) in the case where the foreign company is required by the law for the time being in force in the place of the foreign company's incorporation to table the financial statements at an annual general meeting — within 60 days after the date on which its annual general meeting is held; or

(*b*) in any other case — within such period as the directors of the foreign company would have been required to lodge its financial statements if the company were a public company incorporated under this Act which does not keep a branch register outside Singapore.

[Act 21 of 2024 wef 09/12/2024]

(4) The Registrar may, if the Registrar is of the opinion that the financial statements mentioned in subsection (1) do not sufficiently disclose the foreign company's financial position, require the company —

(*a*) to lodge financial statements within such period, in such form and containing such particulars; and

(*b*) to annex thereto such documents,

as the Registrar may by written notice to the company require.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(5) Subsection (4) does not authorise the Registrar to require —

(*a*) financial statements to contain any particulars; or

(*b*) the company to annex, attach or to send any documents,

that would not be required to be furnished if the company were a public company incorporated under this Act.

[36/2014]

(6) The foreign company must comply with the requirements set out in the notice under subsection (4).

[36/2014]

(7) In addition to the financial statements required to be lodged with the Registrar under subsections (1), (3) and (4), a foreign company must lodge with the Registrar within the time specified in subsection (3) the following:

(*a*) a duly audited statement showing its assets used in and liabilities arising out of its operations in Singapore as at the date to which its balance sheet was made up;

(*b*) a duly audited profit and loss account which, insofar as is practicable, complies with the requirements of the Accounting Standards and which gives a true and fair view of the profit or loss arising out of the company's operation in Singapore for the last preceding financial year of the company;

[Act 17 of 2023 wef 01/07/2023]

(*c*) a statement of the name of the auditor who audited the documents referred to in paragraph (*a*) or (*b*), or both paragraphs (*a*) and (*b*), as the case may be.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(8) For the purpose of subsection (7), the foreign company is entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Singapore and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Singapore.

[36/2014]

(9) A foreign company which is dormant in Singapore may, in lieu of satisfying the requirements of subsection (7), lodge with the Registrar —

(*a*) an unaudited statement showing its assets used in and liabilities arising out of its operations in Singapore; and

(*b*) an unaudited profit and loss account with respect to the company's operations in Singapore.

[36/2014]

(10) The Registrar may, on application by a foreign company and payment of the prescribed application fee, extend the period referred to in subsection (3) within which the company is required to comply with any or all of the requirements of subsections (3)(*b*) and (7).

[36/2014; 15/2017]

(11) A statement and profit and loss account is deemed to have been duly audited for the purposes of subsection (7) if it is accompanied by a report by an accounting entity appointed to provide auditing services in respect of the foreign company's operations in Singapore which complies, insofar as is practicable, with section 207.

[36/2014]

(12) The Registrar may, upon the written application of a foreign company, waive the requirement of a foreign company to lodge the documents referred to in subsection (7)(*a*), (*b*) and (*c*) if the Registrar is satisfied that —

(*a*) it is impractical for the foreign company to comply having regard to the nature of the foreign company's operations in Singapore;

(*b*) it would be of no real value having regard to the amount involved;

(*c*) it would involve expense unduly out of proportion to its value; or

(*d*) it would be misleading or harmful to the business of the foreign company, or to any company which is deemed by virtue of section 6 to be related to the foreign company.

[36/2014]

(13) The Registrar may, upon the application of a foreign company, make an order —

(*a*) relieving the foreign company from complying with any requirement relating to the form and content of the financial statements mentioned in subsection (2)(*b*)(i) or (ii) or the unaudited summary financial statements mentioned in subsection (2)(*b*)(iii), including any aspect relating to the audit of those documents; or

(*b*) allowing the foreign company to lodge under subsection (1) any other document instead of the financial statements mentioned in subsection (2)(*b*)(i) or (ii) or the unaudited summary financial statements mentioned in subsection (2)(*b*)(iii).

[Act 21 of 2024 wef 09/12/2024]

(13A) The Registrar may, upon the application of a foreign company, make an order relieving the foreign company from any requirement relating to audit or the form and content of the documents referred to in subsection (7).

[Act 21 of 2024 wef 09/12/2024]

(14) The Registrar may make the order mentioned in subsection (13) or (13A) unconditionally or subject to the condition that the foreign company comply with such other

requirements relating to audit or the form and content of the documents as the Registrar may determine.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(15) The Registrar must not make an order under subsection (13) or (13A) unless the Registrar is of the opinion that compliance with the requirements of this section would render the documents misleading or inappropriate to the circumstances of the foreign company or would impose unreasonable burdens on the company.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(16) The Registrar may make an order under subsection (13) or (13A) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(17) Without affecting subsections (12), (13), (13A) and (14), the Minister may, by order in the *Gazette*, in respect of foreign companies of a specified class or description —

(*a*) substitute other accounting standards for the Accounting Standards, and the provisions of this section apply accordingly in respect of such foreign companies; or

(*b*) exempt foreign companies of a specified class or description from any or all of the requirements of subsection (7).

[36/2014]

[Act 21 of 2024 wef 09/12/2024]

(18) If default is made by a foreign company in complying with this section, other than subsection (7)(*b*) —

(*a*) the company; and

(*b*) every director or equivalent person, and every authorised representative of the company, who knowingly and wilfully authorises or permits the default,

shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $50,000.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(18A) If default is made by a foreign company in complying with subsection (7)(*b*) —

(*a*) the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000; and

(*b*) every director or equivalent person, and every authorised representative, of the company, who knowingly and wilfully authorises or permits the default, shall each be guilty of an offence and shall each be liable on conviction —

(i) to a fine not exceeding $250,000; or

(ii) if the offence was committed with intent to defraud the creditors of the company or creditors of any other person, or for a fraudulent purpose, to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both.

[Act 17 of 2023 wef 01/07/2023]

(19) For the purposes of this section —

(*a*) a foreign company is dormant in Singapore during a period in which no accounting transaction arising out of its operations in Singapore occurs; and the company ceases to be dormant on the occurrence of such a transaction; and

(*b*) an "accounting transaction" means a transaction for which accounting or other records would be required to be kept so as to enable the documents referred to in subsection (7) to be prepared.

[36/2014]

Return to be filed on keeping of registers of foreign company

374. A foreign company must, at the time when making a lodgment of —

(*a*) its financial statements in accordance with section 373(1); or

(*b*) where the Registrar allows under section 373(13)(*b*) the foreign company to lodge under section 373(1) any other document instead of its financial statements — that other document,

also lodge with the Registrar a return containing prescribed information relating to the keeping of the following registers:

(*c*) the register of controllers kept by the foreign company under section 386AF;

(*d*) the register of nominee directors kept by the foreign company under section 386AKA;

(*e*) the register of nominee shareholders kept by the foreign company under section 386ALA.

[Act 23 of 2024 wef 16/06/2025]

Obligation to state name of foreign company, whether limited, and country where incorporated

375.—(1) A foreign company must —

(*a*) [*Deleted by Act 36 of 2014*]

(*b*) cause its name and the place where it is formed or incorporated to be stated in legible romanised letters on all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and

(*c*) if the liability of its members is limited (unless the last word of its name is the word "Limited" or "Berhad" or the abbreviation "Ltd." or "Bhd."), cause notice of that fact —

(i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices, and other official publications in Singapore; and

(ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Singapore.

[36/2014]

(2) Where the name of a foreign company is indicated on any of the documents referred to in subsection (1) in characters or in any other way than by the use of romanised letters, this section relating to the statement of its name is deemed not to have been complied with unless the name of the company is stated on such document in romanised letters not smaller than any of the characters so exhibited or stated on the relevant document.

[36/2014]

(3) The unique entity number of a foreign company, issued by the Registrar, must appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.

[36/2014]

(4) Despite subsection (3), a foreign company incorporated before 3 January 2016 need only comply with subsection (3) after the expiration of 12 months after that date.

[36/2014]

Service of document

376. Any document required to be served on a foreign company is sufficiently served —

(*a*) if addressed to the foreign company and left at or sent by post to its registered office in Singapore;

(*b*) if addressed to an authorised representative of the company and left at or sent by post to his or her residential address or contact address; or

[Act 21 of 2024 wef 09/12/2024]

(*c*) in the case of a foreign company which has ceased to maintain a place of business in Singapore, if addressed to the foreign company and left at or sent by post to its registered office in the place of its incorporation.

[36/2014]

Cesser of business in Singapore

377.—(1) If a foreign company ceases to have a place of business in Singapore or to carry on business in Singapore, it must, within 7 days after so ceasing, lodge with the Registrar notice of that fact.

[36/2014]

(1A) Starting on the day on which the foreign company lodged the notice mentioned in subsection (1), the foreign company's obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar ceases.

[36/2014]

(1B) The Registrar must as soon as practicable after the lodgment of the notice mentioned in subsection (1) record in the register that the company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore, as the case may be.

[36/2014]

(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin, each person who immediately before the commencement of the liquidation proceedings was an authorised representative must —

(*a*) within 14 days after the commencement of the liquidation or the dissolution; or

(*b*) within such further time as the Registrar in special circumstances allows,

lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment.

[40/2018]

(3) [*Deleted by Act 40 of 2018*]

(4) [*Deleted by Act 40 of 2018*]

(4A) [*Deleted by Act 40 of 2018*]

(5) On receipt of a notice from an authorised representative that the foreign company has been dissolved, the Registrar must record in the register that the foreign company has been dissolved.

[36/2014]

(6) [*Deleted by Act 36 of 2014*]

(7) [*Deleted by Act 40 of 2018*]

(8) The Registrar must strike the name of a foreign company off the register if the Registrar is satisfied that the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against the national security or interest.

[36/2014]

(9) The Registrar may strike the name of a foreign company off the register if —

(*a*) the Registrar has reasonable cause to believe that the company has ceased to carry on business or to have a place of business in Singapore; or

(*b*) the company has failed to appoint an authorised representative within 6 months after the date of the death of its sole authorised representative.

[36/2014]

(10) The Registrar may strike the name of a foreign company off the register upon the application of the sole authorised representative of the foreign company in the prescribed form if the Registrar is satisfied that —

(*a*) the sole authorised representative has given written notice to the foreign company that he or she desires to resign and has lodged a notice under section 370(3) with the Registrar, but the company has failed to respond or appoint another authorised representative within 12 months after the date of lodgment of the notice; or

(*b*) the foreign company has failed to give instructions with respect to a written request from the sole authorised representative for instructions as to whether the company wishes to cancel or continue its registration under this Act within 12 months after the date the written request was sent.

[36/2014]

(11) Without limiting subsection (9)(*a*), in determining whether there is reasonable ground to believe that a company is not carrying

on business under that subsection, the Registrar may have regard to such circumstances as may be prescribed.

[36/2014]

(12) For the purposes of subsections (9) and (10), the provisions of this Act relating to the striking off the register of the name of a defunct company extend and apply with such adaptations as are necessary.

[36/2014]

(13) Any person aggrieved by the decision of the Registrar under subsection (8), (9) or (10) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

[36/2014]

Application for administrative restoration of foreign company to register

377A.—(1) Subject to such conditions as may be prescribed, a director or member of a foreign company whose name has been struck off the register under section 377(9) or (10) may apply to the Registrar to restore the name of the company to the register.

[36/2014]

(2) An application under this section is not valid unless the application is received by the Registrar within 6 years after the date on which the name of the foreign company is struck off the register.

[36/2014]

Registrar's decision on application for administrative restoration of foreign company

377B.—(1) The Registrar must give notice to the applicant of the decision on an application under section 377A.

[36/2014]

(2) If the Registrar's decision is that the name of the foreign company should be restored to the register, the name of the company is restored to the register on the date on which notice is sent (called in this section the restoration date).

[36/2014]

(3) The Registrar must —

(*a*) enter in the register a note of the restoration date; and

(*b*) cause notice of the restoration to be published in the *Gazette* and on the Authority's website.

[36/2014]

(4) The notice under subsection (3)(*b*) must state —

(*a*) the name of the foreign company or, if the company is restored to the register under a different name, that name and its former name;

(*b*) the unique entity number of the foreign company issued by the Registrar; and

(*c*) the restoration date.

[36/2014]

(5) If the Registrar's decision is that the name of the foreign company should not be restored to the register, the person who made the application under section 377A or any other person aggrieved by the decision of the Registrar, may appeal to the Court.

[36/2014]

(6) On an appeal made under subsection (5), the Court may —

(*a*) confirm the Registrar's decision; or

(*b*) restore the name of the foreign company to the register and give such directions and make such orders as the Court is empowered to give and make under section 377D(3).

[36/2014]

Registrar may restore foreign company deregistered by mistake

377C.—(1) The Registrar may, on his or her own initiative, restore the name of a foreign company to the register if the Registrar is satisfied that the name of the company has been struck off the register under section 377(9) or (10) as a result of a mistake of the Registrar.

[36/2014]

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by an applicant in connection with an application for striking the name of the foreign company off the register under section 377(10).

[36/2014]

(3) The Registrar may restore the name of a foreign company to the register by publishing in the *Gazette* and on the Authority's website a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

[36/2014]

Effect of restoration of foreign company

377D.—(1) If the name of a foreign company is restored to the register under section 377B(2) or 377C, or on appeal to the Court under section 377B(5), the company is to be regarded as having continued its registration under this Act as if the name of the company had not been struck off the register.

[36/2014]

(2) The foreign company, its directors or equivalent persons, and authorised representatives are not liable to a penalty under section 373(18) for a financial year in relation to which the period for filing its balance sheet, cash flow statement, profit and loss statement and other related documents ended —

(*a*) after the date on which the name of the company was struck off the register; and

(*b*) before the restoration of the name of the company to the register.

[36/2014]

(3) On the application by any person, the Court may give directions and make orders, as seem just for placing the foreign company and all other persons in the same position (as nearly as may be) as if the name of the company had not been struck off the register.

[36/2014]

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the foreign company to the register.

[36/2014]

Restriction on use of certain names

378.—(1) Except with the consent of the Minister or as provided in subsection (2), the Registrar must refuse to register a foreign company under a name, whether on its registration or by a

subsequent change of name, under which the company is to carry on business in Singapore that, in the opinion of the Registrar —

(*a*) is undesirable;

(*b*) is identical to a name of any other foreign company, or any company, limited liability partnership, limited partnership or corporation, or to a registered business name;

(*c*) is identical to a name reserved under subsection (15) and section 27(12B) of this Act, section 16 of the Business Names Registration Act 2014, section 23(4) of the Limited Liability Partnerships Act 2005, section 17(4) of the Limited Partnerships Act 2008, or section 27(12B) as applied by section 21(8) of the VCC Act; or

(*d*) is a name, or is a name of a kind that the Minister has directed the Registrar not to accept for registration.

[36/2014; 44/2018]

(2) In addition to subsection (1), the Registrar must, on or after 3 January 2016, except with the consent of the Minister, refuse to register a foreign company under a name, if —

(*a*) it is identical to the name of a company that was dissolved —

(i) unless, in a case where the company was dissolved following its winding up under Part 8 of the Insolvency, Restructuring and Dissolution Act 2018, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the company was dissolved following its name being struck off the register under section 344 or 344A, a period of at least 6 years has passed after the date of dissolution;

(*b*) it is identical to the business name of a person whose registration and registration of that business name has been cancelled under the Business Names Registration Act 2014 or had ceased under section 22 of that Act, unless a period of at least one year has passed after the date of cancellation or cessation;

(*c*) it is identical to the name of a foreign company notice of the dissolution of which has been given to the Registrar under section 377(2), unless a period of at least 2 years has passed after the date of dissolution;

(*d*) it is identical to the name of a limited liability partnership that was dissolved —

(i) unless, in a case where the limited liability partnership was dissolved following its winding up under section 39 of, and the Fifth Schedule to, the Limited Liability Partnerships Act 2005, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the limited liability partnership was dissolved following its name being struck off the register kept under section 63 of the Limited Liability Partnerships Act 2005, a period of at least 6 years has passed after the date of dissolution;

(*e*) it is identical to the name of a limited partnership that was cancelled or dissolved —

(i) unless, in a case where the registration of the limited partnership was cancelled under section 14(1) or 19(4) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of cancellation; or

(ii) unless, in a case where notice was lodged with the Registrar of Limited Partnerships that the limited partnership was dissolved under section 19(2) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of dissolution; or

(*f*) it is identical to the name of a VCC that was dissolved —

(i) unless, in a case where the VCC was dissolved following its winding up under Part 11 of the VCC Act, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the VCC was dissolved following its name being struck off the register under section 344 or 344A of this Act as applied by section 130 of the VCC Act, a period of at least 6 years has passed after the date of dissolution.

[36/2014; 40/2018; 44/2018]

(3) Despite subsection (1), the Registrar may, on or after 3 January 2016, register a foreign company under —

(*a*) a name that is identical to the name of a foreign company registered under Division 2 of Part 11 —

(i) in respect of which notice was lodged under section 377(1) that the foreign company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore, if a period of at least 3 months has passed after the date of cessation; and

(ii) the name of which was struck off the register under section 377(8), (9) or (10), if a period of at least 6 years has passed after the date the name was so struck off; and

(*b*) a name that is identical to the name of a limited partnership in respect of which notice was lodged under section 19(1) of the Limited Partnerships Act 2008 that the limited partnership ceased to carry on business in Singapore, if a period of at least one year has passed after the date of cessation.

[36/2014]

(4) No foreign company to which this Division applies may use in Singapore any name other than —

(*a*) the name under which the foreign company is registered under this Division; and

(*b*) if the foreign company is registered under the Business Names Registration Act 2014, a business name in respect of which the foreign company is registered under section 8 of that Act.

[36/2014]

(5) Despite this section, where the Registrar is satisfied that a foreign company has been registered (whether through inadvertence or otherwise or whether on its registration or by a subsequent change of name) by a name —

(*a*) which is one that is not permitted to be registered under subsection (1)(*a*), (*b*) or (*d*);

(*b*) which is one that is not permitted to be registered under subsection (2) until the expiry of the relevant period referred to in that subsection; or

(*c*) which is one that is permitted to be registered under subsection (3) only after the expiry of the relevant period referred to in that subsection,

the Registrar may direct the foreign company to change its name, and the company must comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

[36/2014]

(6) Any person may apply, in writing, to the Registrar to give a direction to a foreign company under subsection (5) on a ground referred to in that subsection.

[36/2014]

(7) If the foreign company fails to comply with subsection (4), the company and every officer of the company who is in default and every authorised representative of the company who knowingly and wilfully authorises or permits the default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

[36/2014]

(8) In this section, "registered business name" has the meaning given by section 2(1) of the Business Names Registration Act 2014.

[36/2014]

(9) An appeal to the Minister against the following decisions of the Registrar that are made on or after 3 January 2016 may be made by the following persons within the following times:

(*a*) in the case of the Registrar's decision under subsection (5) — by the foreign company aggrieved by the decision within 30 days after the decision;

(*b*) in the case of the Registrar's refusal to give a direction to a foreign company under subsection (5) pursuant to an application under subsection (6) — by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

[36/2014]

(10) The Minister must cause a direction given by the Minister under subsection (1)(*d*) to be published in the *Gazette*.

[36/2014]

(11) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as the name under which a foreign company proposes to be registered, either originally or upon change of name.

[36/2014]

(12) A foreign company must not be registered, whether on its initial registration or by a subsequent change of name, by a name unless the name has been reserved under subsection (15).

[36/2014]

(13) The Registrar may approve an application made under subsection (11) only if the Registrar is satisfied that —

(*a*) the application is made in good faith; and

(*b*) the name to be reserved is one in respect of which a foreign company may be registered having regard to subsections (1), (2) and (3).

[36/2014]

(14) The Registrar must refuse to approve an application to reserve a name under subsection (11) if the Registrar is satisfied that —

(*a*) the foreign company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

(*b*) it would be contrary to the national security or interest for the foreign company to be registered.

[36/2014]

(15) Where an application for a reservation of a name is made under subsection (11), the Registrar must reserve the proposed name for a period starting at the time the Registrar receives the application and ending —

(*a*) if the Registrar approves the application — 60 days after the date on which the Registrar notifies the applicant that the application has been approved, or such further period of 60 days as the Registrar may, on application made in good faith, extend; or

(*b*) if the Registrar refuses to approve the application — on the date on which the Registrar notifies the applicant of the refusal.

[36/2014]

(16) A person aggrieved by a decision of the Registrar —

(*a*) refusing to approve an application under subsection (11); or

(*b*) refusing an application under subsection (15)(*a*) to extend the reservation period,

may, within 30 days after being informed of the Registrar's decision, appeal to the Minister whose decision is final.

[36/2014]

(17) The reservation of a name under this section in respect of a foreign company does not in itself entitle the foreign company to be registered by that name, either originally or upon change of name.

[36/2014]

Register of members of foreign companies

379.—(1) A foreign company registered under this Division on or after 31 March 2017 must, within 30 days after it is registered —

(*a*) keep a register of its members at its registered office in Singapore or at some other place in Singapore; and

(*b*) lodge a notice with the Registrar specifying the address at which the register of members is kept.

[15/2017]

(2) A foreign company registered under this Division before 31 March 2017 must, within 60 days after that date —

(*a*) keep a register of its members at its registered office in Singapore or at some other place in Singapore; and

(*b*) lodge a notice with the Registrar specifying the address at which the register of members is kept.

[15/2017]

(3) If there is any change in the address at which the register of members mentioned in subsection (1) or (2) is kept, the foreign company must, within 30 days after the change, lodge a notice of the change with the Registrar.

[15/2017]

Contents of register and index of members of foreign companies

380.—(1) The register of members of a foreign company required to be kept under section 379 must contain the following particulars:

(*a*) the names and addresses of the members of the foreign company;

(*b*) the date on which the name of each person was entered in the register as a member;

(*c*) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member;

(*d*) in the case of a foreign company having a share capital —

(i) a statement of the shares held by each member, distinguishing each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member; and

(ii) such particulars of the shares held by each member, including the date of every allotment of shares to members and the number of shares comprised in each allotment;

(*e*) such other particulars as may be prescribed.

[15/2017]

(2) Every foreign company having more than 50 members must, unless the register of members is in such a form as to constitute in itself an index —

(*a*) keep an index in convenient form of the names of the members;

(*b*) within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index; and

(*c*) keep the index at the same place as the register of members.

[15/2017]

(3) The index must in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

[15/2017]

(4) If there is any change in the particulars mentioned in subsection (1) contained in the register of members of a foreign company, the foreign company must, within 30 days after the change, update the register of members to reflect the change.

[Act 2 of 2022 wef 30/05/2022]

Register to be prima facie evidence

381. A register of members of a foreign company kept under section 379 is prima facie evidence of any matter which the register is required under this Division to be contained.

[15/2017]

Certificate as to shareholding

382. A certificate made under the seal of a foreign company (or in any manner permitted for certificates of such type by the laws of the country or territory in which the foreign company is incorporated or established) specifying any shares held by any member of that company and registered in the register of members of the foreign company kept under section 379 is prima facie evidence of the title of

the member to the shares and the registration of the shares in that register.

[15/2017]

No civil proceedings to be brought in respect of bearer shares or share warrants

383.—(1) Any allotment, issue, sale, transfer, assignment or other disposition in Singapore of any bearer share or share warrant by a foreign company registered under this Division is void.

[15/2017]

(2) No civil proceedings may be brought or maintained in any court for or in respect of any bearer share or share warrant allotted, issued, sold, transferred, assigned or disposed by a foreign company registered under this Division.

[15/2017]

Application of provisions of Act

384. Regulations made under section 411 may —

(*a*) provide for —

(i) the application of any provision of Division 7 of Part 4 relating to the transfer of shares in a company to the transfer of shares in a foreign company; and

(ii) the application of Division 4 of Part 5 relating to the register of members to the register of members of a foreign company,

subject to such adaptations, modifications or additions as may be prescribed; and

(*b*) exempt any foreign company or class of foreign companies from all or any provision of this Division.

[15/2017]

385. [*Repealed by Act 15 of 2017*]

Penalties

386. If default is made by any foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company and

every officer of the company who is in default and every authorised representative of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

PART 11A

REGISTER OF CONTROLLERS, NOMINEE DIRECTORS AND NOMINEE SHAREHOLDERS OF COMPANIES

[Act 2 of 2022 wef 04/10/2022]

Application of this Part

386AA.—(1) This Part applies to —

(*a*) all companies other than a company that is set out in the Fourteenth Schedule; and

(*b*) all foreign companies registered under Division 2 of Part 11 other than a foreign company that is set out in the Fifteenth Schedule.

[15/2017]

(2) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[15/2017]

(3) This Part extends to acts done or omitted to be done outside Singapore.

[15/2017]

Interpretation of this Part

386AB. In this Part, unless the context otherwise requires —

"approved exchange" means an approved exchange as defined in section 2(1) of the Securities and Futures Act 2001;

"controller" means an individual controller or a corporate controller;

"corporate controller", in relation to a company or a foreign company, means a legal entity which has a significant interest in, or significant control over, the company or the foreign company, as the case may be;

"individual controller", in relation to a company or a foreign company, means an individual who has a significant interest in, or significant control over, the company or the foreign company, as the case may be;

"legal entity" means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes a foreign company;

"limited liability partnership" has the meaning given by section 4(1) of the Limited Liability Partnerships Act 2005;

"member of the public" includes —

(*a*) in the case of a company — any member of the company acting in the member's capacity as such; and

(*b*) in the case of a foreign company — any member of the foreign company acting in the member's capacity as such;

"register of controllers" or "register" —

(*a*) in relation to a company to which this Part applies — means the register that the company is required to keep of its registrable controllers under section 386AF(1), (1A), (2) or (3); and

[Act 23 of 2024 wef 16/06/2025]

(*b*) in relation to a foreign company to which this Part applies — means the register that the foreign company is required to keep of its registrable controllers under section 386AF(4), (4A), (5) or (6);

[Act 23 of 2024 wef 16/06/2025]

[*Deleted by Act 22 of 2024 wef 09/06/2025*]

"significant control", in relation to a company or a foreign company, has the meaning given in the Sixteenth Schedule;

"significant interest", in relation to a company or a foreign company, has the meaning given in the Sixteenth Schedule.

[15/2017]

Meaning of "registrable"

386AC. For the purposes of this Part, in relation to a company (*X*) or a foreign company (*X*), a controller (*A*) is registrable unless —

(*a*) *A*'s significant interest in or significant control over *X* is only through one or more controllers (*B*) of *X*;

(*b*) *A* is a controller of *B* (or each *B* if more than one); and

(*c*) *B* (or each *B* if more than one) is either —

(i) a company, or foreign company to which this Part applies, that is required to keep a register of controllers under section 386AF;

(ii) a company that is set out in the Fourteenth Schedule;

(iii) a foreign company that is set out in the Fifteenth Schedule;

(iv) a corporation which shares are listed for quotation on an approved exchange;

(v) a limited liability partnership to which Part 6A of the Limited Liability Partnerships Act 2005 applies, that is required to keep a register of controllers of limited liability partnerships under that Act;

(vi) a limited liability partnership that is set out in the Sixth Schedule to the Limited Liability Partnerships Act 2005;

(vii) a trustee of an express trust to which Part 7 of the Trustees Act 1967 applies; or

(viii) a VCC.

[15/2017; 44/2018]

State of mind of corporation, unincorporated association, etc.

386AD.—(1) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(*a*) an officer, employee or agent of the corporation engaged in that conduct within the scope of the officer's, employee's or agent's actual or apparent authority; and

(*b*) the officer, employee or agent had that state of mind,

is evidence that the corporation had that state of mind.

[15/2017]

(2) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(*a*) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of the employee's or agent's actual or apparent authority; and

(*b*) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

[15/2017]

Meaning of "legal privilege"

386AE.—(1) For the purposes of this Part, information or a document is subject to legal privilege if —

(*a*) it is a communication made between a lawyer and a client, or a legal counsel acting as such and the legal counsel's employer, in connection with the lawyer giving legal advice to the client or the legal counsel giving legal advice to the employer, as the case may be;

(*b*) it is a communication made between 2 or more lawyers acting for a client, or 2 or more legal counsel acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of

the legal counsel giving legal advice to the employer, as the case may be;

(*c*) it is a communication made —

(i) between a client, or an employer of a legal counsel, and another person;

(ii) between a lawyer acting for a client and either the client or another person; or

(iii) between a legal counsel acting as such for the legal counsel's employer and either the employer or another person,

in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer (as the case may be) is or may be, or was or might have been, a party;

(*d*) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (*a*) or (*b*) and that is made or prepared by any person in connection with a lawyer or legal counsel, or one or more of the lawyers or legal counsel, in either paragraph giving legal advice to the client or the employer of the legal counsel, as the case may be; or

(*e*) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (*c*) and that is made or prepared by any person in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the legal counsel (as the case may be) is or may be, or was or might have been, a party,

but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose.

[15/2017]

(2) In subsection (1) —

"client", in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client;

"employer", in relation to a legal counsel, includes —

(*a*) if the employer is one of a number of corporations that are related to each other under section 6, every corporation so related as if the legal counsel is also employed by each of the related corporations;

(*b*) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act 1893 and the legal counsel is required as part of the legal counsel's duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the legal counsel is also employed by the other public agency or each of the other public agencies; and

(*c*) an employee or officer of the employer;

"lawyer" means a solicitor or a professional legal adviser, and includes an interpreter or other person who works under the supervision of a solicitor or a professional legal adviser;

"legal counsel" means a legal counsel as defined in section 3(7) of the Evidence Act 1893, and includes an interpreter or other person who works under the supervision of a legal counsel.

[15/2017]

Register of controllers

386AF.—(1) A company incorporated on or after 31 March 2017 but before the appointed day, must keep a register of its registrable controllers not later than 30 days after the date of the company's incorporation.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(1A) A company incorporated on or after the appointed day must keep a register of its registrable controllers starting on the date of the company's incorporation.

[Act 23 of 2024 wef 16/06/2025]

(2) A company incorporated before 31 March 2017 must keep a register of its registrable controllers not later than 60 days after that date.

[15/2017]

(3) If a company that is not a company to which this Part applies subsequently becomes a company to which this Part applies, the company must keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the company.

[15/2017]

(4) A foreign company registered under Division 2 of Part 11 on or after 31 March 2017 but before the appointed day, must keep a register of its registrable controllers not later than 30 days after the date of the foreign company's registration.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(4A) A foreign company registered under Division 2 of Part 11 on or after the appointed day must keep a register of its registrable controllers starting on the date of the foreign company's registration.

[Act 23 of 2024 wef 16/06/2025]

(5) A foreign company registered under Division 2 of Part XI before 31 March 2017 must keep a register of its registrable controllers not later than 60 days after that date.

[15/2017]

(6) If a foreign company that is not a foreign company to which this Part applies subsequently becomes a foreign company to which this Part applies, the foreign company must keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the foreign company.

[15/2017]

(7) A company or foreign company must ensure that its register —

(*a*) contains such particulars of the company's or foreign company's registrable individual controllers and registrable corporate controllers as may be prescribed;

(*aa*) contains the note and prescribed particulars required under section 386AFA(3), if applicable;

[Act 2 of 2022 wef 04/10/2022]

(*b*) is updated if any change to the prescribed particulars mentioned in paragraph (*a*) or (*aa*) occurs; and

[Act 2 of 2022 wef 04/10/2022]

(*c*) is kept in such form and at such place as may be prescribed.

[15/2017]

(8) A company or foreign company must enter the particulars in its register and update the register within the prescribed time and in the prescribed manner.

[15/2017]

(9) A company or foreign company must —

(*a*) enter the particulars of any controller in its register, or update the particulars of that controller in the register, after the particulars of that controller are confirmed by the controller; or

(*b*) if the company or foreign company does not receive the controller's confirmation, enter or update the particulars with a note indicating that the particulars have not been confirmed by the controller.

[15/2017]

(10) For the purposes of subsection (9)(*a*), the particulars of the controller to be entered, or updated, in a register must be confirmed by the controller in the prescribed manner.

[15/2017]

(11) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, a register or any particulars contained in the register to any member of the public.

[15/2017]

(12) If a company fails to comply with —

(*a*) subsection (1), (1A), (2) or (3), whichever is applicable; or

[Act 23 of 2024 wef 16/06/2025]

(*b*) subsection (7), (8), (9) or (11),

the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(13) If a foreign company fails to comply with —

(*a*) subsection (4), (4A), (5) or (6), whichever is applicable; or

[Act 23 of 2024 wef 16/06/2025]

(*b*) subsection (7), (8), (9) or (11),

the foreign company, and every officer of the foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(14) In this section, "appointed day" means the date of commencement of section 4 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024.

[Act 23 of 2024 wef 16/06/2025]

Additional particulars

386AFA.—(1) This section applies where a company or foreign company knows, or has reasonable grounds to believe —

(*a*) that the company or foreign company has no registrable controller; or

(*b*) that the company or foreign company has a registrable controller but has not been able to identify the registrable controller.

(2) Where this section applies, each director with executive control and each chief executive officer of the company or foreign company is, subject to subsection (9), taken to be a registrable controller of the company or foreign company for the purposes of this Part.

(3) Where this section applies, the company or foreign company must enter the following in its register of controllers:

(*a*) a note stating —

(i) that the company or foreign company knows, or has reasonable grounds to believe, as the case may be —

(A) that the company or foreign company has no registrable controller; or

(B) that the company or foreign company has a registrable controller but has not been able to identify the registrable controller; and

(ii) that each director with executive control and each chief executive officer of the company or foreign company is taken to be a registrable controller of the company or foreign company under subsection (2);

(*b*) the prescribed particulars of each director with executive control and each chief executive officer of the company or foreign company.

(4) A company or foreign company must enter the matters mentioned in subsection (3) in its register of controllers within the prescribed period after —

(*a*) in the case of a company or foreign company that knows, or has reasonable grounds to believe, that it has no registrable controller — the date on which the company or foreign company knows, or has reasonable grounds to believe, that the company or foreign company has no registrable controller; or

(*b*) in the case of a company or foreign company that knows, or has reasonable grounds to believe, that it has a registrable controller but has not been able to identify the registrable controller — the date on which the company or foreign company, having taken the reasonable steps required by section 386AG(1), forms the opinion that it is unable to identify the registrable controller.

(5) A company or foreign company must, within the prescribed period after the date on which the company or foreign company knows, or has reasonable grounds to believe, that any change in the particulars entered in its register of controllers under subsection (3)(*b*) has occurred, update its register of controllers to reflect the change.

(6) If a company or foreign company mentioned in subsection (1) enters the particulars of a registrable controller in its register of controllers under section 386AF(9), the company or foreign company must, at the same time, enter in its register of controllers a note stating —

(*a*) that each director with executive control and each chief executive officer of the company or foreign company is no longer taken to be a registrable controller of the company or foreign company under subsection (2); and

(*b*) the date on which the particulars of the registrable controller were entered in its register of controllers under section 386AF(9).

(7) If a company or foreign company fails to comply with subsection (3), (4), (5) or (6), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

(8) In this section —

"chief executive officer" —

(*a*) in relation to a company, has the meaning given by section 4(1); and

(*b*) in relation to a foreign company, has the meaning given by section 4(1), subject to the modification that each reference to a company is a reference to the foreign company;

"director with executive control", in relation to a company or foreign company, means a director of the company or foreign company who exercises executive control over the daily or

regular affairs of the company or foreign company through a senior management position.

(9) Despite anything in this Part, a reference in section 386AF(9) or (10), 386AG(1) or (2), 386AH(1) or (7), 386AI(1), 386AIA(1) or (6), 386AJ(1) or 386AK(1) to a controller or a registrable controller does not include a director or chief executive officer taken to be a registrable controller under subsection (2).

[Act 2 of 2022 wef 04/10/2022]

[Act 23 of 2024 wef 16/06/2025]

Duty of company and foreign company to investigate and obtain information

386AG.—(1) A company or foreign company must take reasonable steps to find out and identify the registrable controllers of the company or foreign company.

[15/2017]

(2) A company (*A*) or foreign company (*A*) —

(*a*) must give a notice to any person (*B*) whom *A* knows or has reasonable grounds to believe is a registrable controller in relation to *A*, requiring *B* —

(i) to state whether *B* is or is not a registrable controller of *A*;

(ii) to state whether *B* knows or has reasonable grounds to believe that any other person (*C*) is a registrable controller of *A* or is likely to have that knowledge and to give such particulars of *C* that are within *B*'s knowledge; and

(iii) to provide such other information as may be prescribed; and

(*b*) must give a notice to any person (*D*) whom *A* knows, or has reasonable grounds to believe knows, the identity of a person who is a registrable controller of *A* or is likely to have that knowledge, requiring *D* —

(i) to state whether *D* knows or has reasonable grounds to believe that any other person (*E*) is a registrable

controller of *A* or is likely to have that knowledge and to give such particulars of *E* that are within *D*'s knowledge; and

(ii) to provide such other information as may be prescribed.

[15/2017]

(3) A notice mentioned in subsection (2) —

(*a*) must state that the addressee must comply with the notice not later than the time prescribed for compliance;

(*b*) must be in such form, contain such particulars and be sent in such manner, as may be prescribed; and

(*c*) must be given within such period as may be prescribed after the company or foreign company first knows the existence of, or first has reasonable grounds to believe that there exists, a person to whom a notice must be given under that subsection.

[15/2017]

(4) Subsection (2) does not require a company or foreign company to give notice to any person in respect of any information that is required to be stated or provided pursuant to the notice if the information was previously provided by that person or by any registered corporate service provider on behalf of that person.

[15/2017]

[Act 22 of 2024 wef 09/06/2025]

(5) If a company or foreign company fails to comply with subsection (2) or (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(6) An addressee of a notice under subsection (2) must comply with the notice within the time specified in the notice for compliance except that an addressee is not required to provide any information that is subject to legal privilege.

[15/2017]

(7) An addressee of a notice under subsection (2) who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

Duty of company and foreign company to keep information up-to-date

386AH.—(1) If a company or foreign company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a registrable controller that are stated in the company's or foreign company's register of controllers, the company or foreign company must give notice to the registrable controller —

(*a*) to confirm whether or not the change has occurred; and

(*b*) if the change has occurred —

(i) to state the date of the change; and

(ii) to provide the particulars of the change.

[15/2017]

(2) A company or foreign company must give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows of the change or first has reasonable grounds to believe that the change has occurred.

[15/2017]

(3) Section 386AG(3)(*a*) and (*b*) applies to a notice under this section as it applies to a notice under that section.

[15/2017]

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was previously provided by that person or by any registered corporate service provider on behalf of that person.

[15/2017]

[Act 22 of 2024 wef 09/06/2025]

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 386AG(3)(*a*) and (*b*) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be

guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(7) For the purposes of this section, a relevant change occurs if —

(*a*) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or

(*b*) any other change occurs as a result of which the particulars of the registrable controller in the company's or foreign company's register of controllers are incorrect or incomplete.

[15/2017]

Duty of company and foreign company to correct information

386AI.—(1) If a company or foreign company knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the company's or foreign company's register is incorrect, the company or foreign company must give notice to the registrable controller to confirm whether the particulars are correct and, if not, to provide the correct particulars.

[15/2017]

(2) A company or foreign company must give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows or first has reasonable grounds to believe that the information is incorrect.

[15/2017]

(3) Section 386AG(3)(*a*) and (*b*) applies to a notice under this section as it applies to a notice under that section.

[15/2017]

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was

previously provided by that person or by any registered corporate service provider on behalf of that person.

[15/2017]

[Act 22 of 2024 wef 09/06/2025]

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 386AG(3)(*a*) and (*b*) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

Duty of company and foreign company to ensure information in register is up-to-date and correct

386AIA.—(1) A company or foreign company must, at the prescribed frequency, give a notice to each registrable controller whose particulars are stated in the company's or foreign company's register of controllers for the following purposes:

(*a*) to require the registrable controller to confirm whether or not a relevant change has occurred and, if the change has occurred, to —

(i) state the date of the change; and

(ii) provide the particulars of the change;

(*b*) to require the registrable controller to confirm whether the stated particulars of the registrable controller are correct and, if not, to provide the correct particulars.

(2) The notice mentioned in subsection (1) must —

(*a*) state that the addressee must comply with the notice not later than the time specified for compliance (which must be the prescribed time); and

(*b*) be in such form, contain such particulars and be sent in such manner, as may be prescribed.

(3) An addressee of a notice under subsection (1) must comply with the notice no later than the time specified in the notice for compliance.

(4) If a company or foreign company fails to comply with subsection (1) or (2), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

(5) An addressee of a notice under subsection (1) who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

(6) For the purposes of this section, a relevant change occurs if —

(*a*) the registrable controller ceases to be one in relation to the company or foreign company, as the case may be; or

(*b*) any other change occurs as a result of which the particulars of the registrable controller stated in the company's or foreign company's register of controllers are incorrect or incomplete.

[Act 23 of 2024 wef 16/06/2025]

Controller's duty to provide information

386AJ.—(1) A person who knows or ought reasonably to know that the person is a registrable controller in relation to a company or foreign company must —

(*a*) notify the company or foreign company (as the case may be) that the person is a registrable controller in relation to the company or foreign company;

(*b*) state the date, to the best of the person's knowledge, on which the person became a registrable controller in relation to the company or foreign company; and

(*c*) provide such other information as may be prescribed.

[15/2017]

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known that that person was a registrable controller.

[15/2017]

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 386AG(2) and has complied with the requirements of the notice within the time specified in the notice for compliance.

[15/2017]

(4) If a person fails to comply with subsection (1) or (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

Controller's duty to provide change of information

386AK.—(1) A person who is a registrable controller in relation to a company or foreign company who knows, or ought reasonably to know, that a relevant change has occurred in the prescribed particulars of the registrable controller must notify the company or foreign company of the relevant change —

(*a*) stating the date that the change occurred; and

(*b*) providing the particulars of the change.

[15/2017]

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known of the relevant change.

[15/2017]

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 386AH(1) and has complied with the requirements of the notice within the time specified in the notice for compliance.

[15/2017]

(4) Any person who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(5) For the purposes of this section, a relevant change occurs if —

(*a*) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or

(*b*) there is a change in the person's contact details or such other particulars as may be prescribed.

[15/2017]

Register of nominee directors

386AKA.—(1) A company or foreign company registered under Division 2 of Part 11 must keep a register of its directors who are nominees (called in this Part the register of nominee directors) in the prescribed form and at the prescribed place.

(2) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

(3) A company or foreign company must, within 7 days after the company or foreign company is informed of any fact and provided with any particulars mentioned in section 386AL(1), (1A), (2), (4) or (5), enter that fact and those particulars in its register of nominee directors.

(4) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386AL(3)(*a*) or (5A)(*a*) that a director of the company or foreign company has

ceased to be a nominee, enter the following in the company's or foreign company's register of nominee directors:

(*a*) the fact that the director has ceased to be a nominee;

(*b*) the date on which the director ceased to be a nominee.

(5) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386AL(3)(*b*) or (5A)(*b*) of any change to the particulars of a person for whom a director of the company or foreign company is a nominee, enter the following in the company's or foreign company's register of nominee directors:

(*a*) the new particulars of that person;

(*b*) the date on which the particulars of that person changed.

(6) If a company or foreign company fails to comply with subsection (1), (2), (3), (4) or (5), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

Nominee directors

386AL.—(1) A director of a company incorporated on or after 31 March 2017 but before the appointed day —

(*a*) who is a nominee on the date of incorporation must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the date of incorporation; or

[Act 23 of 2024 wef 16/06/2025]

(*b*) who becomes a nominee after the date of incorporation must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(1A) A director of a company incorporated on or after the appointed day —

(*a*) who is a nominee on the date of incorporation must inform the company of that fact and provide prescribed particulars of the person for whom the director is a nominee on that date; or

(*b*) who becomes a nominee after the date of incorporation must inform the company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(2) A director of a company incorporated before 31 March 2017 —

(*a*) [*Deleted by Act 23 of 2024 wef 16/06/2025*]

(*b*) who becomes a nominee after 31 March 2017 must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

[15/2017]

[Act 23 of 2024 wef 16/06/2025]

(3) A director of a company (whether incorporated before, on or after the appointed day) must inform the company —

(*a*) that he or she ceases to be a nominee within 30 days after the cessation; and

(*b*) of any change to the particulars provided to the company under this section (whether as in force on or before the appointed day) within 30 days after the change.

[Act 23 of 2024 wef 16/06/2025]

(4) A director of a foreign company registered under Division 2 of Part 11 on or after the appointed day —

(*a*) who is a nominee on the date of registration must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee on that date; or

(*b*) who becomes a nominee after the date of registration must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(5) A director of a foreign company registered under Division 2 of Part 11 before the appointed day —

(*a*) who is a nominee on the appointed day must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 60 days after that day; or

(*b*) who becomes a nominee after the appointed day must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(5A) A director of a foreign company mentioned in subsection (4) or (5) must inform the foreign company —

(*a*) that he or she ceases to be a nominee within 30 days after the cessation; and

(*b*) of any change to the particulars provided to the foreign company under that subsection within 30 days after the change.

[Act 23 of 2024 wef 16/06/2025]

(6) If a director fails to comply with subsection (1), (1A), (2), (3), (4), (5) or (5A), the director shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

(7) [*Deleted by Act 2 of 2022 wef 30/05/2022*]

(8) In this section and section 386AKA, a director is a nominee if the director is accustomed or under an obligation whether formal or

informal to act in accordance with the directions, instructions or wishes of any other person.

[15/2017]

[Act 2 of 2022 wef 30/05/2022]

(9) In this section, "appointed day" means the date of commencement of section 8 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024.

[Act 23 of 2024 wef 16/06/2025]

Register of nominee shareholders

386ALA.—(1) A company or foreign company must keep a register of its shareholders who are nominees (called in this Part the register of nominee shareholders) in the prescribed form and at the prescribed place.

(2) A company or foreign company must, within 7 days after the company or foreign company is informed of any fact and provided with any particulars mentioned in section 386ALB(1), (1A), (2), (3), (3A) or (4), enter that fact and those particulars in its register of nominee shareholders.

[Act 23 of 2024 wef 16/06/2025]

(3) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386ALB(5)(*a*) that a shareholder of the company or foreign company has ceased to be a nominee, enter the following in its register of nominee shareholders:

(*a*) the fact that the shareholder has ceased to be a nominee;

(*b*) the date on which the shareholder ceased to be a nominee.

(4) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386ALB(5)(*b*) of any change to the particulars of a person for whom a shareholder of the company or foreign company is a nominee, enter the following in its register of nominee shareholders:

(*a*) the new particulars of that person;

(*b*) the date on which the particulars of that person changed.

(5) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, the register of nominee shareholders or any particulars contained in the register of nominee shareholders to any member of the public.

(6) If a company or foreign company fails to comply with subsection (1), (2), (3), (4) or (5), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

[Act 2 of 2022 wef 04/10/2022]

Nominee shareholders

386ALB.—(1) A shareholder of a company incorporated on or after 4 October 2022 but before the appointed day —

(*a*) who is a nominee on the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date of incorporation; or

(*b*) who becomes a nominee after the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(1A) A shareholder of a company incorporated on or after the appointed day —

(*a*) who is a nominee on the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, on that date; or

(*b*) who becomes a nominee after the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the

shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(2) A shareholder of a company incorporated before 4 October 2022 —

(*a*) [*Deleted by Act 23 of 2024 wef 16/06/2025*]

(*b*) who becomes a nominee after 4 October 2022must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(3) A shareholder of a foreign company registered under Division 2 of Part 11 on or after 4 October 2022 but before the appointed day —

(*a*) who is a nominee on the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date of registration; or

(*b*) who becomes a nominee after the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(3A) A shareholder of a foreign company registered under Division 2 of Part 11 on or after the appointed day —

(*a*) who is a nominee on the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, on that date; or

(*b*) who becomes a nominee after the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for

whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(4) A shareholder of a foreign company registered under Division 2 of Part 11 before 4 October 2022 —

(*a*) [*Deleted by Act 23 of 2024 wef 16/06/2025*]

(*b*) who becomes a nominee after 4 October 2022must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

[Act 23 of 2024 wef 16/06/2025]

(5) A shareholder of a company or foreign company (whether incorporated or registered before, on or after the appointed day) must —

(*a*) within 30 days after the shareholder ceases to be a nominee, inform the company or foreign company of the fact that the shareholder has ceased to be a nominee; and

(*b*) within 30 days after any change to the particulars provided to the company or foreign company under this section (whether as in force on or before the appointed day) inform the company or foreign company of the change.

[Act 23 of 2024 wef 16/06/2025]

(6) If a shareholder of a company or foreign company (as the case may be) fails to comply with subsection (1), (1A), (2), (3), (3A), (4) or (5), the shareholder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

(7) In this section and section 386ALA, a shareholder of a company or foreign company is a nominee if the shareholder satisfies either or both of the following:

(*a*) the shareholder is accustomed or under an obligation whether formal or informal to vote, in respect of shares in the company or foreign company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person;

(*b*) the shareholder receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

(*a*) the shareholder is accustomed or under an obligation whether formal or informal to vote, in respect of shares in the company or foreign company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person;

(*b*) the shareholder receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

[Act 23 of 2024 wef 16/06/2025]

(7A) In this section, a shareholder of a company incorporated before the appointed day or of a foreign company registered under Division 2 of Part 11 before that day, who, on that day —

(*a*) was not a nominee within the meaning of subsection (7) as in force immediately before that day; but

(*b*) is a nominee within the meaning of that subsection as in force on that day,

is treated as a shareholder of the company or foreign company who becomes a nominee on the appointed day.

[Act 23 of 2024 wef 16/06/2025]

(8) In this section and section 386ALA —

"appointed day" means the date of commencement of section 10 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024;

[Act 23 of 2024 wef 16/06/2025]

"company" means a company having a share capital;

"foreign company" means a foreign company having a share capital;

"shareholder", in relation to a company or foreign company, means a person who is registered in the register of members

of the company or foreign company as a holder of shares in the company or foreign company.

[Act 2 of 2022 wef 04/10/2022]

Power to enforce

386AM.—(1) The Registrar or an officer of the Authority may —

(*a*) require a company or foreign company to which this Part applies to produce its register, its register of nominee directors, its register of nominee shareholders and any other document relating to those registers or the keeping of those registers;

[Act 2 of 2022 wef 04/10/2022]

(*b*) inspect, examine and make copies of the registers and any document so produced; and

(*c*) make such inquiry as may be necessary to ascertain whether the provisions of this Part are complied with.

[15/2017]

(2) Where any register or documents as are mentioned in subsection (1) are kept in electronic form —

(*a*) the power of the Registrar or an officer of the Authority in subsection (1)(*a*) to require the register or any documents to be produced includes the power to require a copy of the register or documents to be made available in legible form and subsection (1)(*b*) is to accordingly apply in relation to any copy so made available; and

(*b*) the power of the Registrar or an officer of the Authority under subsection (1)(*b*) to inspect the register or any documents includes the power to require any person on the premises in question to give the Registrar or the officer of the Authority such assistance as the Registrar or officer may reasonably require to enable the Registrar or officer to inspect and make copies of the register or documents in legible form, and to make records of the information contained in them.

[15/2017]

(3) The powers conferred on the Registrar or an officer of the Authority under subsections (1) and (2) may be exercised by a public agency to enable the public agency to administer or enforce any written law.

[15/2017]

(4) Any person who fails to comply with any requirement imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

[15/2017]

(4A) A person who, in complying with a requirement imposed, or in answering an inquiry made, under subsection (1) or (2), provides any information that is false or misleading in a material particular to the Registrar or an officer of the Authority, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[Act 23 of 2024 wef 16/06/2025]

(4B) In proceedings for an offence under subsection (4A), it is a defence to the charge for the accused to prove, on a balance of probabilities, that the accused took all reasonable steps and exercised all due diligence to ensure that the information provided was not false or misleading.

[Act 23 of 2024 wef 16/06/2025]

(5) This section applies in addition to any right of inspection conferred by section 396A.

[15/2017]

(6) In this section, "public agency" means a public officer, an Organ of State or a ministry or department of the Government, or a public authority established by or under any public Act for a public purpose or a member, an officer or an employee, or any department, thereof.

[15/2017]

Central register of controllers

386AN.—(1) This section applies where the Minister, by notification in the *Gazette*, directs the Registrar to maintain a central register of controllers of companies and foreign companies.

[15/2017]

(2) Where the Minister has directed the Registrar to maintain a central register of controllers of companies and foreign companies under subsection (1) —

(*a*) the Registrar must keep a central register of controllers consisting of the particulars contained in the registers kept by companies and foreign companies to which this Part applies; and

(*b*) the Registrar must require any company or foreign company to which this Part applies to lodge with the Registrar —

(i) all particulars contained in the company's or foreign company's register maintained under section 386AF (including the matters mentioned in section 386AFA(3)); and

[Act 2 of 2022 wef 04/10/2022]

(ii) all updates to the company's or foreign company's register that occur after the lodgment of the particulars under sub-paragraph (i).

[15/2017]

(3) Where the Registrar requires a company or foreign company to lodge with the Registrar the particulars, matters and updates mentioned in subsection (2)(*b*), the company or foreign company must lodge the particulars, matters and updates in the prescribed form and manner and within the prescribed time.

[Act 2 of 2022 wef 30/05/2022]

(4) If a company or foreign company fails to comply with subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

[15/2017]

[Act 2 of 2022 wef 30/05/2022]

[Act 23 of 2024 wef 16/06/2025]

(5) Subject to subsection (6), the Registrar must not disclose, or make available for inspection, the central register of controllers of

companies and foreign companies kept by the Registrar under this section to any member of the public.

[Act 23 of 2024 wef 16/06/2025]

(6) The Registrar may disclose prescribed information in the central register of controllers of companies and foreign companies to prescribed persons under prescribed circumstances.

[Act 23 of 2024 wef 16/06/2025]

(7) To avoid doubt, different information and persons may be prescribed under subsection (6) for different prescribed circumstances.

[Act 23 of 2024 wef 16/06/2025]

Central registers of nominee directors and nominee shareholders

386ANA.—(1) The Registrar must keep a central register of nominee directors and a central register of nominee shareholders consisting of the particulars contained in the registers kept by companies and foreign companies to which this Part applies.

(2) A company or foreign company to which this Part applies must lodge with the Registrar —

(*a*) all particulars contained in the company's or foreign company's register of nominee directors maintained under section 386AKA;

(*b*) all updates to that register that occur after the lodgment of the particulars under paragraph (*a*);

(*c*) all particulars contained in the company's or foreign company's register of nominee shareholders maintained under section 386ALA; and

(*d*) all updates to that register that occur after the lodgment of the particulars under paragraph (*c*).

(3) The company or foreign company must lodge the particulars, matters and updates in the prescribed form and manner and within the prescribed time.

(4) If a company or foreign company fails to comply with subsection (2) or (3), the company or foreign company, and every

officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $25,000.

(5) Subject to subsection (6), the Registrar must not disclose, or make available for inspection, the central register of nominee directors or the central register of nominee shareholders kept by the Registrar under this section to any member of the public.

(6) The Registrar may disclose prescribed information in the central register of nominee directors or the central register of nominee shareholders to prescribed persons under prescribed circumstances.

(7) To avoid doubt, different information and persons may be prescribed under subsection (6) for different prescribed circumstances.

[Act 23 of 2024 wef 16/06/2025]

Codes of practice, etc.

386AO.—(1) The Registrar may issue one or more codes, guidance, guidelines, policy statements and practice directions for all or any of the following purposes:

(*a*) to provide guidance to companies or foreign companies, or to both, in relation to the operation or administration of any provision of this Part;

(*b*) generally for carrying out the purposes of this Part.

[15/2017]

(2) The Registrar may publish any such code, guidance, guideline, policy statement or practice direction, in such manner as the Registrar thinks fit.

[15/2017]

(3) The Registrar may revoke, vary, revise or amend the whole or any part of any code, guidance, guideline, policy statement or practice direction issued under this section in such manner as the Registrar thinks fit.

[15/2017]

(4) Where amendments are made under subsection (3) —

(*a*) the other provisions of this section apply, with the necessary modifications, to such amendments as they

apply to the code, guidance, guideline, policy statement and practice direction; and

(*b*) any reference in this Act or any other written law to the code, guidance, guideline, policy statement or practice direction however expressed is to be treated, unless the context otherwise requires, as a reference to the code, guidance, guideline, policy statement or practice direction as so amended.

[15/2017]

(5) The failure by any person to comply with any of the provisions of a code, guidance, guideline, policy statement or practice direction issued under this section that applies to that person does not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

[15/2017]

(6) Any code, guidance, guideline, policy statement or practice direction issued under this section —

(*a*) may be of general or specific application; and

(*b*) may specify that different provisions apply to different circumstances or provide for different cases or classes of cases.

[15/2017]

(7) It is not necessary to publish any code, guidance, guideline, policy statement or practice direction issued under this section in the *Gazette*.

[15/2017]

Exemption

386AP. The Minister may, by order in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Part.

[15/2017]

PART 12

GENERAL

Division 1 — Enforcement of this Act

Interpretation

386A. In this section and sections 387B, 387C, 397 and 401, unless the contrary intention appears —

"consolidated financial statements" and "parent company" have the meanings given by section 209A;

"financial statements" means the financial statements of a company required to be prepared by the Accounting Standards and, in the case of a parent company, means the consolidated financial statements.

[36/2014]

Service of documents on company

387. A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company.

Electronic transmission of notices of meetings

387A.—(1) Where any notice of a meeting is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to —

(*a*) a member of the company; or

(*b*) an officer or auditor of the company,

that notice may be given, sent or served using electronic communications to the current address of that person.

[36/2014]

(2) For the purposes of this section, a notice of a meeting is also treated as given or sent to, or served on a person where —

(*a*) the company and that person have agreed in writing that notices of meetings required to be given to that person may instead be accessed by the person on a website;

(*b*) the meeting is a meeting to which that agreement applies;

(*c*) the notice is published on the website such that it is or can be made legible;

(*d*) that person is notified, in a manner for the time being agreed between the person and the company for the purpose, of —

(i) the publication of the notice on that website;

(ii) the address of that website; and

(iii) the place on that website where the notice may be accessed, and how it may be accessed; and

(*e*) the notice continues to be published on and remains accessible to that person from that website throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

(3) For the purposes of this Act, a notice of a meeting treated in accordance with subsection (2) as given or sent to or served on any person is treated as so given, sent or served at the time of the notification mentioned in subsection (2)(*d*).

(4) A notice of a meeting given for the purposes of subsection (2)(*d*) must specify such matters or information as may be required for a notice of that type under any other provision of this Act or the constitution of that company.

[36/2014]

(5) Nothing in subsection (2) invalidates the proceedings of a meeting where —

(*a*) any notice of a meeting that is required to be published and remain accessible as mentioned in paragraph (*e*) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(*b*) the failure to publish and make accessible that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(6) A company may, despite any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3), (4) or (5).

[36/2014]

(7) For the purposes of this section and section 387B, the current address of a person of a company, in relation to any notice or document, is a number or address used for electronic communication which —

(*a*) has been notified by the person in writing to the company as one at which that notice or document may be sent to the person; and

(*b*) the company has no reason to believe that that notice or document sent to the person at that address will not reach the person.

Electronic transmission of documents

387B.—(1) Where any accounts, balance sheet, financial statements, report or other document is required or permitted to be sent under this Act or under the constitution of a company by the company or the directors of the company to —

(*a*) a member of the company; or

(*b*) an officer or auditor of the company,

that document may be sent using electronic communications to the current address of that person.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(2) For the purposes of this section, a document is also treated as sent to a person where —

(*a*) the company and that person have agreed in writing to the person having access to documents on a website (instead of their being sent to the person);

(*b*) the document is a document to which that agreement applies;

(*c*) the document is published on the website such that it is or can be made legible; and

(*d*) that person is notified, in a manner for the time being agreed for that purpose between the person and the company, of —

(i) the publication of the document on that website;

(ii) the address of that website; and

(iii) the place on that website where the document may be accessed, and how it may be accessed.

[Act 17 of 2023 wef 01/07/2023]

(3) Where any provision of this Act or of the constitution of the company requires any document to be sent to a person not less than a specified number of days before a meeting, that document, if treated in accordance with subsection (2) as sent to any person, is treated as sent to the person not less than the specified number of days before the date of a meeting if, and only if —

(*a*) the document is published on and remains accessible to that person from the website throughout a period beginning before the specified number of days before the date of the meeting and ending with the conclusion of the meeting; and

(*b*) the notification given for the purposes of subsection (2)(*d*) is given not less than the specified number of days before the date of the meeting.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(4) Nothing in subsection (3) invalidates the proceedings of a meeting where —

(*a*) any document that is required to be published and remain accessible as mentioned in paragraph (*a*) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(*b*) the failure to publish and make accessible that document throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(5) A company may, despite any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3) or (4).

(6) For the purposes of this section and sections 387C and 387D —

(*a*) a reference to a document does not include any of the following:

(i) a share certificate;

(ii) a debenture;

(iii) a certificate of any other interest in a company;

(iv) an instrument of transfer of any share, debenture or other interest in a company; and

(*b*) a reference to the sending of a document includes the circulation, delivery, despatching, depositing, forwarding, furnishing, giving, issuing, serving, submission, transmitting or supply of that document.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

Electronic transmission in accordance with constitution, etc.

387C.—(1) Despite sections 387A and 387B, where a notice of meeting or any accounts, balance sheet, financial statements, report or other document is required or permitted to be sent under this Act or under the constitution of a company by the company or the directors of the company to a member of the company, that notice or document may be sent using electronic communications with the express, implied or deemed consent of the member in accordance with the constitution of the company.

[36/2014]

[Act 17 of 2023 wef 01/07/2023]

(2) For the purposes of this section, a member has given implied consent if the constitution of the company —

(*a*) provides for the use of electronic communications;

(*b*) specifies the manner in which electronic communications is to be used; and

(*c*) provides that the member agrees to receive such notice or document by way of such electronic communications and does not have a right to elect to receive a physical copy of such notice or document.

[36/2014]

(3) For the purposes of this section, but subject to regulations mentioned in subsection (4), a member is deemed to have consented if —

(*a*) the member was by written notice given an opportunity to elect, within such period of time specified in the notice, whether to receive the notice or document by way of electronic communications or as a physical copy; and

(*b*) the member failed to make an election within the time so specified.

[15/2017]

(4) The Minister may make regulations under section 411 —

(*a*) to exclude any notice or document or any class of notices or documents from the application of this section;

(*b*) to provide for safeguards for the use of electronic communications under this section; and

(*c*) without limiting paragraph (*b*), to provide that a member who is deemed to have consented to receive notices or documents by way of electronic communications may make a fresh election to receive such notice or document as a physical copy and the manner in which the fresh election may be made.

[36/2014]

Electronic transmission of documents by member, officer or auditor to company or director

387D. Where any document is required or permitted to be sent under this Act by a member, officer or auditor of the company to the company or a director of the company, that document may be sent using electronic communications to the company or the director if the member, officer or auditor (as the case may be) and the company or director (as the case may be) have agreed, generally or specifically,

that the document may be sent in that manner, and that agreement has not been revoked.

[Act 17 of 2023 wef 01/07/2023]

Security for costs

388.—(1) Where a corporation is claimant in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in the defendant's defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

[Act 25 of 2021 wef 01/04/2022]

Costs

(2) The costs of any proceeding before a court under this Act must be borne by such party to the proceeding as the court may, in its discretion, direct.

As to rights of witnesses to legal representation

389. Any person summoned for examination under Part 9 may, at the person's own cost, employ a solicitor who is at liberty to put to the person such questions as the inspector, Court or District Judge considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

[40/2018]

Disposal of shares of shareholder whose whereabouts unknown

390.—(1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than 10 years, the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the Official Receiver.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown,

the company may transfer the shares held by the shareholder in the company to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

(3) The Official Receiver must sell or dispose of any shares so received in such manner and at such time as the Official Receiver thinks fit and must deal with proceeds of the sale or disposal as if they were moneys paid to the Official Receiver pursuant to section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

Power to grant relief

391.—(1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court before which the proceedings are taken that the person is or may be liable in respect thereof but that the person has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the person's liability on such terms as the court thinks fit.

(1A) To avoid doubt and without limiting subsection (1), "liability" includes the liability of a person to whom this section applies to account for profits made or received.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of duty or breach of trust the person may apply to the Court for relief, and the Court has the same power to relieve the person as under this section it would have had if it had been a court before which proceedings against the person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are —

(*a*) officers of a corporation;

(*b*) persons employed by a corporation as auditors, whether they are or are not officers of the corporation;

(*c*) experts within the meaning of this Act; and

(*d*) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a corporation and all other persons so appointed or so directed.

Irregularities

392.—(1) In this section, unless the contrary intention appears, a reference to a procedural irregularity includes a reference to —

(*a*) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(*b*) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(2A) A meeting to which section 173J(2)(*b*) or (*c*) applies is not invalidated by reason of any technological disruption, malfunction or outage unless the Court —

(*a*) is of the opinion that the technological disruption, malfunction or outage has caused or may cause substantial injustice that cannot be remedied by any order of the Court; and

(*b*) by order declares the meeting to be invalid.

[Act 17 of 2023 wef 01/07/2023]

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to

attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(*a*) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of a corporation;

(*b*) an order directing the rectification of any register kept by the Registrar under this Act;

(*c*) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (*a*);

(*d*) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under subsection (4)(*a*) or (*b*) even though the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(6) The Court is not to make an order under this section unless it is satisfied —

(*a*) in the case of an order mentioned in subsection (4)(*a*) —

(i) that the act, matter or thing, or the proceeding, mentioned in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is in the public interest that the order be made;

(*b*) in the case of an order mentioned in subsection (4)(*c*), that the person subject to the civil liability concerned acted honestly; and

(*c*) in every case, that no substantial injustice has been or is likely to be caused to any person.

Privileged communications

393. No inspector appointed under this Act may require disclosure by a solicitor of any privileged communication made to the solicitor in that capacity, except as respects the name and address of the solicitor's client.

Production and inspection of books or papers where offence suspected

394.—(1) If, on an application made to a judge of the Court in chambers by or on behalf of the Minister, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made —

(*a*) authorising any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(*b*) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) No appeal lies against any order or decision of a judge on or in relation to an application under this section.

Form of company records

395.—(1) A company must adequately record for future reference the information required to be contained in any company records.

[36/2014]

(2) Subject to subsection (1), company records may be —

(*a*) kept in hard copy form or in electronic form; and

(*b*) arranged in the manner that the directors of the company think fit.

[36/2014]

(3) If company records are kept in electronic form, the company must ensure that they are capable of being reproduced in hard copy form.

[36/2014]

(4) In this section and sections 396 and 396A —

"company" includes a corporation which is required to keep company records under this Act;

"company record" means any register, index, minute book, accounting record, minute or other document required by this Act to be kept by a company;

"in electronic form" means in the form of an electronic record as defined in section 2(1) of the Electronic Transactions Act 2010;

"in hard copy form" means in a paper form or similar form capable of being read.

[36/2014]

Duty to take precautions against falsification

396.—(1) Where company records are kept otherwise than in hard copy form, reasonable precautions must be taken for —

(*a*) ensuring the proper maintenance and authenticity of the company records;

(*b*) guarding against falsification; and

(*c*) facilitating the discovery of any falsifications.

[36/2014]

(2) In the case where company records are kept in electronic form, the company must provide for the manner by which the records are to be authenticated and verified.

[36/2014]

(3) Where default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Inspection of records

396A.—(1) Any company record which is by this Act required to be available for inspection must, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the company is accessible to the public.

[36/2014]

(2) If company records are kept by the company by recording the information in question in electronic form, any duty imposed on the company under subsection (1) or any other provision of this Act to allow inspection of the company records is to be regarded as a duty to allow inspection of —

(*a*) a reproduction of the recording, or the relevant part of the recording, in hard copy form; or

(*b*) if requested by the person inspecting the recording, the recording, or the relevant part of the recording, by electronic means.

[36/2014]

(3) Any person permitted by this Act to inspect any company records may make copies of or take extracts from it.

[36/2014]

(4) Where company records are kept by the company by recording the information in question in electronic form, the company must ensure that proper facilities are provided to enable the company

records to be inspected, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

[36/2014]

Liability where proper accounts not kept

396B.—(1) If, on an investigation under this Act, it is shown that proper books of account were not kept by the company throughout the shorter of —

(*a*) the period of 2 years immediately preceding the commencement of the investigation; or

(*b*) the period between the incorporation of the company and the commencement of the investigation,

every officer who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months.

[40/2018]

(2) Where a person is charged with an offence under subsection (1), it is a defence for the person charged to prove that the person acted honestly and to show that, in the circumstances in which the business of the company was carried on, the default was excusable.

[40/2018]

(3) For the purposes of this section, proper books of account are deemed not to have been kept in the case of a company —

(*a*) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the

buyers and sellers of the goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or

(*b*) if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

[40/2018]

Translations of instruments, etc.

397.—(1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the corporation must lodge at the same time with the Registrar a certified translation thereof in the English language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the corporation must keep at its registered office in Singapore a certified translation thereof in the English language.

(3) Where any accounts, financial statements, minute books or other records of a corporation required by this Act to be kept are not kept in the English language, the directors of the corporation must cause a true translation of such accounts, financial statements, minute books and other records to be made from time to time at intervals of not more than 7 days and must cause such translations to be kept with the original accounts, financial statements, minute books and other records for so long as the original accounts, financial statements, minute books and other records are required by this Act to be kept.

[36/2014]

Certificate of incorporation conclusive evidence

398. A certificate of incorporation under the hand and seal of the Registrar issued under this Act in force before 13 January 2003, a notice of incorporation issued by the Registrar under this Act, and a certificate of confirmation of incorporation of the Registrar issued under this Act, are each conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and

incidental thereto have been complied with, and that the company referred to therein is duly incorporated under this Act.

[36/2014]

Court may compel compliance

399.—(1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which under this Act he or she is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer is deemed to have the same status, powers and duties as he or she had at the time the act, matter or thing should have been done.

Division 2 — Offences

400. [*Repealed by S 236/2002*]

False and misleading statement

401.—(1) Every corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading, or in which the amount of capital or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of subscribed capital is stated, and every officer of the corporation who knowingly authorises, directs or consents to such advertising, circulation or publication shall be guilty of an offence.

(2) Every person who in any return, report, certificate, balance sheet, financial statements or other document required by or for the purposes of this Act wilfully makes or authorises the making of a statement false or misleading in any material particular knowing it to

be false or misleading or wilfully omits or authorises the omission of any matter or thing without which the document is misleading in a material respect shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(2A) Any person who, for any purpose under this Act —

(*a*) lodges or files with or submits to the Registrar any document; or

(*b*) authorises another person to lodge or file with or submit to the Registrar any document,

knowing that document to be false or misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement mentioned in that subsection the person is deemed to have authorised the making of that statement.

False statements or reports

402.—(1) An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to —

(*a*) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or

(*b*) in the case of a corporation that is a subsidiary, an auditor of the holding company,

relating to the affairs of the corporation, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1), "officer" includes a person who at any time has been an officer of the corporation.

Dividends payable from profits only

403.—(1) No dividend is payable to the share-holders of any company except out of profits.

(1A) Subject to subsection (1B), any profits of a company applied towards the purchase or acquisition of its own shares in accordance with sections 76B to 76G are not payable as dividends to the shareholders of the company.

(1B) Subsection (1A) does not apply to any part of the proceeds received by the company as consideration for the sale or disposal of treasury shares which the company has applied towards the profits of the company.

(1C) Any gains derived by the company from the sale or disposal of treasury shares are not payable as dividends to the shareholders of the company.

(2) Every director or chief executive officer of a company who wilfully pays or permits to be paid any dividend in contravention of this section —

(*a*) shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months; and

(*b*) shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors.

[36/2014]

(3) If the whole amount is recovered from one director or chief executive officer, he or she may recover contribution against any other person liable who has directed or consented to such payment.

[36/2014]

(4) No liability by this section imposed on any person extends or passes, on the death of such person to the person's executors or

administrators nor is the estate of any such person after the person's death liable under this section.

(5) In this section, "dividend" includes bonus and payment by way of bonus.

Fraudulently inducing persons to invest money

404.—(1) [*Deleted by Act 42 of 2001*]

(2) [*Deleted by Act 42 of 2001*]

Obtaining payment of moneys, etc., to company by false promise of officer or agent of company

(3) Whoever, being an officer or agent of any corporation, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that corporation or to himself, herself or any other person for the use or benefit or on account of that corporation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 5 years or to both.

Evidence of financial position of company

(4) Upon the trial of a charge of an offence under this section, the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he or she has made an audit or examination of the affairs of the company according to recognised audit practice is admissible either for the prosecution or for the defence as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

Penalty for carrying on business without registering a corporation and for improper use of words "Limited" and "Berhad"

405.—(1) If any person —

(*a*) other than a foreign company, uses any name or title or trades or carries on business under any name or title which "Limited" or "Berhad" or any abbreviation, imitation or translation of any of those words is the final word; or

(*b*) in any way holds out that the business is incorporated under this Act,

that person shall, unless at that time the business was duly incorporated under this Act, be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

Restriction on the use of word "Private" or "Sendirian"

(2) A company must not use the word "Private" or "Sendirian" or any abbreviation thereof as part of its name if it does not fulfil the requirements required by this Act to be fulfilled by private companies and every corporation and every officer of a corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Penalty for holding out business as registered foreign company

(3) If a person carrying on a business, the person's agent or a person acting on the firstmentioned person's behalf, in any way holds out that the business is registered as a foreign company under this Act when at the material time the business was not so registered, that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

Frauds by officers

406. Every person who, while an officer of a company —

(*a*) has by deceitful or fraudulent or dishonest means or by means of any other fraud induced any person to give credit to the company;

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the execution of any enforcement order against, the property of the company; or

[Act 25 of 2021 wef 01/04/2022]

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 3 years or to both.

General penalty provisions

407.—(1) A person who —

(*a*) does that which under this Act the person is forbidden to do;

(*b*) does not do that which under this Act the person is required or directed to do; or

(*c*) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence.

(2) A person who is guilty of an offence under this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a fine not exceeding $1,000.

(3) Every summons issued for an offence committed by an officer of a company or other person under this Act or any regulations may, despite anything in this Act, be served —

(*a*) by delivering it to that person;

(*b*) by delivering it to any adult person residing at that person's last known place of abode or employed at that person's last known place of business; or

(*c*) by forwarding it by registered post in a cover addressed to that person at the person's last known place of abode or business or at any address furnished by the person.

(4) In proving service by registered post, it is sufficient to prove that the registered cover containing the summons was duly addressed and posted.

Default penalties

408.—(1) Where a default penalty is provided in any section of this Act, any person who is convicted of an offence under this Act or who has been dealt with under section 409B for an offence under this Act in relation to that section shall be guilty of a further offence under this Act if the offence continues after the person is so convicted or after the person has been so dealt with and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section as the amount of the default penalty or, if an amount is not so expressed, of not more than $200.
[36/2014]

(2) Where any offence is committed by a person by reason of the person's failure to comply with any provision of this Act under which the person is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), is deemed to continue so long as the thing so required or directed to be done by the person remains undone, even though such period has elapsed.

(3) For the purposes of any provision of this Act which provides that an officer of a company or corporation who is in default is guilty of an offence under this Act or is liable to a penalty or punishment, the phrase "officer who is in default" or any like phrase means any officer of the company or corporation who knowingly and wilfully —

(*a*) is guilty of the offence; or

(*b*) authorises or permits the commission of the offence.

Proceedings how and when taken

409.—(1) Except where provision is otherwise made in this Act, proceedings for any offence under this Act may, with the authorisation of the Public Prosecutor, be taken by the Registrar or with the written consent of the Minister by any person.

[15/2010]

(2) [*Deleted by Act 36 of 2000*]

(3) Proceedings for any offence under this Act, other than an offence punishable with imprisonment for a term exceeding 6 months, may be prosecuted in a Magistrate's Court and in the case of an offence punishable with imprisonment for a term of 6 months or more may be prosecuted in a District Court.

(4) [*Deleted by Act 36 of 2014*]

(5) [*Deleted by Act 36 of 2014*]

(6) [*Deleted by Act 36 of 2014*]

(7) Any punishment authorised by this Act may be imposed by a District Court, even though it is a greater punishment than that Court is otherwise empowered to impose.

(8) The Registrar and any officer authorised by the Registrar in writing has the right to appear and be heard before a Magistrate's

Court or a District Court in any proceedings for an offence under this Act.

Injunctions

409A.—(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of —

(*a*) the Registrar; or

(*b*) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the firstmentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of —

(*a*) the Registrar; or

(*b*) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the firstmentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind mentioned in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised —

(*a*) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(*b*) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

(*a*) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(*b*) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(7) Where the Registrar makes an application to the Court for the grant of an injunction under this section, the Court must not require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Composition of offences

409B.—(1) The Registrar may, in his or her discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(*a*) one half of the amount of the maximum fine that is prescribed for the offence;

(*b*) $5,000.

[36/2014]

(2) The Registrar may, in his or her discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

(*a*) was compoundable under this Act at the time the offence was committed; but

(*b*) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(*c*) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;

(*d*) $5,000.

[36/2014]

(3) On payment of the sum of money referred to in subsection (1) or (2), no further proceedings may be taken against that person in respect of the offence.

[36/2014]

(4) The Minister may prescribe the offences which may be compounded.

[36/2014]

Appeal

409C.—(1) Any party aggrieved by an act or a decision of the Registrar under this Act may, within 28 days after the date of the act or decision, appeal to the Court against the act or decision.

[36/2014]

(2) The Court may confirm the act or decision or give such directions in the matter as seem proper or otherwise determine the matter.

[36/2014]

(3) This section does not apply to any act or decision of the Registrar —

(*a*) in respect of which any provision in the nature of an appeal or a review is expressly provided in this Act; or

(*b*) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

[36/2014]

Rules

410. The Rules Committee constituted under section 80 of the Supreme Court of Judicature Act 1969 may, subject to and in accordance with the provisions of that law relating to the making of rules, make rules —

(*a*) with respect to proceedings and the practice and procedure of the Court under this Act;

(*b*) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules; and

(*c*) without limiting this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court.

[36/2014; 40/2018]

Regulations

411.—(1) The Minister may make regulations for or with respect to —

(*a*) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other persons appointed to assist with the administration of this Act;

(*b*) regulating the use of virtual meeting technology for meetings held in the manner described in section 173J(2)(*b*) or (*c*), including —

(i) restricting or mandating the types of virtual meeting technology that may be used;

(ii) restricting the means by which voting may be carried out, or mandating how voting may be carried out, using virtual meeting technology;

(iii) imposing record keeping and auditing requirements in respect of the use of virtual meeting technology;

(iv) imposing requirements relating to the verification or authentication of the identities of persons attending meetings using virtual meeting technology; and

(v) mandating the notices and documents (including physical notices and documents) to be sent to persons attending or eligible to attend a meeting using virtual meeting technology;

[Act 17 of 2023 wef 01/07/2023]

(*ba*) all matters connected with or arising out of a compromise or an arrangement between a company and its creditors or any class of those creditors;

[Act 17 of 2023 wef 01/07/2023]

(*c*) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;

(*d*) prescribing forms for the purposes of this Act;

(*e*) prescribing the fees payable for the purposes of this Act, including but not limited to fees for —

(i) the lodgment or registration of any document required to be lodged or registered with the Registrar;

(ii) the issue of any document by the Registrar;

(iii) any act required to be performed by the Registrar; or

(iv) the inspection of any document mentioned in sub-paragraphs (i) and (ii);

(*ea*) prescribing the fees payable in respect of any of the following required or permitted under any other Act:

(i) the lodgment or registration of any document with the Registrar;

(ii) the issue of any document by the Registrar;

(iii) the performance of any act by the Registrar;

(iv) the inspection of any document mentioned in sub-paragraphs (i) and (ii);

(*eb*) prescribing the penalties payable for the late lodgment of any document;

(*ec*) prescribing the manner in which prescribed fees and penalties are to be paid;

(*ed*) the waiver, refund or remission, whether wholly or in part, of any fee or penalty chargeable under this Act;

(*ee*) prescribing all matters connected with or arising from the restrictions under this Act as to the reservation or registration of names of companies and foreign companies (including rules for determining when a name falls within those restrictions);

(*f*) prescribing times for the lodging of any documents with the Registrar; and

(*g*) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.

[36/2014; 15/2017; 40/2018]

(2) The regulations may provide that a contravention of a specified provision of the regulations shall be an offence.

[36/2014]

FIRST SCHEDULE

Section 3(1)

REPEALED WRITTEN LAWS

Number in 1955 Edition	*Short Title*	*Extent of Repeal*
Cap. 15	The Foreign Corporations (Execution of Instruments under Seal) Ordinance	The whole.
Cap. 174	The Companies Ordinance	The whole.
Cap. 277	The Companies (Special Provisions) Ordinance	The whole.

SECOND SCHEDULE

[*Repealed by Act 36 of 2014*]

THIRD SCHEDULE

[*Repealed by Act 5 of 2004*]

FOURTH SCHEDULE

[*Repealed by Act 36 of 2014*]

FIFTH SCHEDULE

[*Repealed by S 236/2002*]

SIXTH SCHEDULE

Section 60(1)

STATEMENT IN LIEU OF PROSPECTUS

PART 1

Statement in Lieu of Prospectus Lodged for Registration by

[Insert name of the company]

The issued share capital of the company	$
	Shares of $
Divided into	Shares of $
	Shares of $
Amount (if any) of above capital which consists of redeemable preference shares	Shares of $
The date on or before which these shares are, or are liable, to be redeemed	
Names and descriptions and residential addresses or contact addresses of directors (contained in the register of directors kept by the Registrar under section 173(1)(*a*) in respect of the company) or proposed directors	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively	
Number and amount of shares and debentures issued within the 2 years preceding the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash	1. shares of $ fully paid 2. shares upon which $ per share credited as paid 3. debentures $

SIXTH SCHEDULE — *continued*

The consideration for the issue or intended issue of those shares and debentures	4. Consideration:
Number, description, and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to the firstmentioned person offering them for sale	1. shares of $ and debentures of $
Period during which option is exercisable	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option	3. $
Consideration for option or right to option	4. Consideration:
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures	5. Names and addresses:
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for the purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material	
Amount (in cash, shares or debentures) payable to each separate vendor	
Amount (if any) paid or payable (in cash, shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill	Total purchase price $ _____ Cash ... $ Shares ... $ Debentures ... $ _____ Goodwill ... $ _____

SIXTH SCHEDULE — *continued*

Short particulars of any transaction relating to any such property which was completed within the 2 preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid: $ Amount payable: $
Rate of the commission	per cent
Amount or rate of brokerage	
The number of shares (if any) which persons have agreed for a commission to subscribe absolutely	
Amount or estimated amount of preliminary expenses	$
By whom those expenses have been paid or are payable	
Amount paid or intended to be paid to any promoter	Name of promoter: Amount: $
Consideration for the payment	Consideration:
Any other benefit given or intended to be given to any promoter	Name of promoter: Nature and value of benefit:
Consideration for giving of benefit	Consideration:
Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than 2 years before the delivery of this statement)	

SIXTH SCHEDULE — *continued*

Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English, a copy of a certified translation thereof in English or embodying a translation in English of the parts in a language other than English (as the case may be) may be inspected	
Names and addresses of the auditors of the company	
Full particulars of the nature and extent of the interest, direct or indirect, of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm or limited liability partnership or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm or limited liability partnership or corporation and where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or her or to the firm or limited liability partnership or corporation in cash or shares, or otherwise, by any person (in the case of a director) either to induce him or her to become, or to qualify him or her as a director or otherwise for service rendered by him or her or by the	

firm or limited liability partnership or corporation in connection with the promotion or formation of the company (in the case of an expert) for services rendered by him or her or the firm or limited liability partnership or corporation in connection with the promotion or formation of the company. For the purposes of this paragraph a director or expert is deemed to have an indirect interest in a corporation if he or she has any beneficial interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the company or if he or she has a beneficial interest in shares or debentures in a corporation which is by virtue of section 6 of the Act deemed to be related to that firstmentioned corporation

And also, in the case of a statement to be lodged by a private company on becoming a public company, the following items:

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the 3 financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

[Act 21 of 2024 wef 09/12/2024]

SIXTH SCHEDULE — *continued*

PART 2

Reports to be set out

1. Where it is proposed to acquire a business or limited liability partnership, a report by a public accountant appointed as auditor of the company (who must be named in the statement) with respect to —

(*a*) the profits or losses of the business or limited liability partnership in respect of each of the 3 financial years immediately preceding the lodging of the statement with the Registrar; and

(*b*) the assets and liabilities of the business or limited liability partnership at the last date to which the accounts of the business or limited liability partnership were made up.

2.—(1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by a public accountant appointed as auditor of the company (who must be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with sub-paragraph (2) or (3) (as the case requires) indicating how the profits and losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other corporation has no subsidiaries, the report mentioned in sub-paragraph (1) must —

(*a*) so far as regards profits and losses — deal with the profits or losses of the other corporation in respect of each of the 3 financial years immediately preceding the delivery of the statement to the Registrar; and

(*b*) so far as regards assets and liabilities — deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.

(3) If the other corporation has subsidiaries, the report mentioned in sub-paragraph (1) must —

(*a*) so far as regards profits and losses — deal separately with the other corporation's profits or losses as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —

SIXTH SCHEDULE — *continued*

(i) as a whole — with the combined profits or losses of its subsidiaries; or

(ii) individually — with the profits or losses of each subsidiary,

or, instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities — deal separately with the other corporation's assets and liabilities as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —

(i) as a whole — with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or

(ii) individually — with the assets and liabilities of each subsidiary,

and must indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Note.—Where a company is not required to furnish any of the reports mentioned in this Part, a statement to that effect giving the reasons therefor should be furnished.

(Signatures of the persons abovenamed as directors_____ or proposed directors or of their agents authorised_____ in writing)

Date:

PART 3

Provisions applying to Parts 1 and 2 of this Schedule

3. In this Schedule "vendor" includes any person who is a vendor for the purposes of the repealed Fifth Schedule, and "financial year" has the meaning assigned to it in Part 3 of that Schedule.

4. If, in the case of a business which has been carried on or of a corporation or limited liability partnership which has been carrying on business for less than 3 years, the accounts of the business or corporation or limited liability partnership have only been made up in respect of 2 years or one year, Part 2 of this Schedule has effect as if references to 2 years or one year (as the case may be) were substituted for references to 3 years.

SIXTH SCHEDULE — *continued*

5. Any report required by Part 2 of this Schedule must either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or must make those adjustments and indicate that adjustments have been made.

[36/2014]

SEVENTH SCHEDULE

[*Repealed by S 236/2002*]

EIGHTH SCHEDULE

[*Repealed by Act 36 of 2014*]

NINTH SCHEDULE

[*Repealed by Act 12 of 2002*]

TENTH SCHEDULE

[*Repealed by Act 40 of 2018*]

ELEVENTH SCHEDULE

[*Repealed by Act 40 of 2018*]

TWELFTH SCHEDULE

Sections 8(7) and 201(16)

CONTENTS OF DIRECTORS' STATEMENT

1. A statement as to whether in the opinion of the directors —

(*a*) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the company and

(if applicable) of the financial position and performance of the group for the period covered by the financial statements or consolidated financial statements; and

(*b*) at the date of the statement there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

2. Where any option has been granted by a company, other than a parent company for which consolidated financial statements are required, during the period covered by the financial statements to take up unissued shares of a company —

(*a*) the number and class of shares in respect of which the option has been granted;

(*b*) the date of expiration of the option;

(*c*) the basis upon which the option may be exercised; and

(*d*) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.

3. Where any of the particulars required by paragraph 2 have been stated in a previous directors' statement, they may be stated by reference to that statement.

4. Where a parent company or any of its subsidiary corporations has at any time granted to a person an option to have shares issued to the person in the company or subsidiary corporation, the directors' statement of the parent company must state the name of the corporation in respect of the shares in which the option was granted and the other particulars required under paragraphs 2, 5 and 6.

5. The particulars of shares issued during the period to which the statement relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period.

6. The number and class of unissued shares of the company under option as at the end of the period to which the statement relates, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights (if any) of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.

7. The names of the persons who are the directors in office at the date of the statement.

8. Whether at the end of the financial year to which the financial statements or, where the company is a parent company, consolidated financial statements relate —

TWELFTH SCHEDULE — *continued*

(*a*) there subsist arrangements to which the company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate; or

(*b*) there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired pursuant to the arrangements.

9. As respects each person who, at the end of the financial year, was a director of the company —

(*a*) whether or not (according to the register kept by the company for the purposes of section 164 relating to the obligation of a director of a company to notify it of his or her interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company) he or she was, at the end of that year, interested in shares in, or debentures of, the company or any other such body corporate; and

(*b*) if he or she was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he or she was then interested and whether or not, according to that register, he or she was, at the beginning of that year (or, if he or she was not then a director, when he or she became a director), interested in shares in, or debentures of, the company or any other such body corporate and, if he or she was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he or she was interested at the beginning of that year or (as the case may be) when he or she became a director.

[36/2014]

THIRTEENTH SCHEDULE

Sections 8(7) and 205C(5)

CRITERIA FOR SMALL COMPANY AND SMALL GROUP

1. For the purposes of section 205C —

(*a*) a company is a small company if it qualifies as a small company under paragraph 2, 3 or 4, whichever may be applicable, and the company continues to be a small company until it ceases to be a small company under paragraph 5; and

(*b*) a group is a small group if it qualifies as a small group under paragraph 7, 8 or 9, whichever may be applicable, and the group continues to be a small group until it ceases to be a small group under paragraph 10.

2. A company is a small company from a financial year if —

(*a*) it is a private company throughout the financial year; and

(*b*) it satisfies any 2 of the following criteria for each of the 2 financial years immediately preceding the financial year:

(i) the revenue of the company for each financial year does not exceed $10 million;

(ii) the value of the company's total assets at the end of each financial year does not exceed $10 million;

(iii) it has at the end of each financial year not more than 50 employees.

3. Despite paragraph 2, where a company has not reached its third financial year after incorporation, a company is a small company —

(*a*) from its first financial year after incorporation if —

(i) it is a private company throughout its first financial year; and

(ii) it satisfies any 2 of the following criteria for its first financial year:

(A) the revenue of the company for its first financial year does not exceed $10 million;

(B) the value of the company's total assets at the end of its first financial year does not exceed $10 million;

(C) it has at the end of its first financial year not more than 50 employees; or

THIRTEENTH SCHEDULE — *continued*

(*b*) from its second financial year after incorporation if —

(i) it is a private company throughout its second financial year; and

(ii) it satisfies any 2 of the following criteria for its second financial year:

(A) the revenue of the company for its second financial year does not exceed $10 million;

(B) the value of the company's total assets at the end of its second financial year does not exceed $10 million;

(C) it has at the end of its second financial year not more than 50 employees.

4. Despite paragraph 2, a company which was incorporated before 1 July 2015 is a small company —

(*a*) from the first financial year that commences on or after 1 July 2015 if —

(i) it is a private company throughout the first financial year; and

(ii) it satisfies any 2 of the following criteria for the first financial year:

(A) the revenue of the company for the first financial year does not exceed $10 million;

(B) the value of the company's total assets at the end of the first financial year does not exceed $10 million;

(C) it has at the end of the first financial year not more than 50 employees; or

(*b*) from the second financial year that commences on or after 1 July 2015 if —

(i) it is a private company throughout the second financial year; and

(ii) it satisfies any 2 of the following criteria for the second financial year:

(A) the revenue of the company for the second financial year does not exceed $10 million;

(B) the value of the company's total assets at the end of the second financial year does not exceed $10 million;

THIRTEENTH SCHEDULE — *continued*

(C) it has at the end of the second financial year not more than 50 employees.

5. Subject to paragraph 6, a small company ceases to be a small company from a financial year if —

(*a*) it ceases to be a private company at any time during the financial year; or

(*b*) it does not satisfy any 2 of the following criteria for each of the 2 consecutive financial years immediately preceding the financial year:

(i) the revenue of the company for each financial year does not exceed $10 million;

(ii) the value of the company's total assets at the end of each financial year does not exceed $10 million;

(iii) it has at the end of each financial year not more than 50 employees.

6. Paragraph 5 does not apply —

(*a*) to a company that has not reached its third financial year after incorporation; or

(*b*) in the case of a company that was incorporated before 1 July 2015, to a company that has not reached its third financial year after that date.

7. A group is a small group from a financial year if the group satisfies any 2 of the following criteria for each of the 2 consecutive financial years immediately preceding the financial year:

(*a*) the consolidated revenue of the group for each financial year does not exceed $10 million;

(*b*) the value of the consolidated total assets of the group at the end of each financial year does not exceed $10 million;

(*c*) the group has at the end of each financial year an aggregate number of employees of not more than 50.

8. Despite paragraph 7, a group is a small group —

(*a*) from its first financial year after it is formed if it satisfies any 2 of the following criteria for its first financial year:

(i) the consolidated revenue of the group for its first financial year does not exceed $10 million;

THIRTEENTH SCHEDULE — *continued*

(ii) the value of the consolidated total assets of the group at the end of its first financial year does not exceed $10 million;

(iii) the group has at the end of its first financial year an aggregate number of employees of not more than 50; or

(*b*) from its second financial year after it is formed if it satisfies any 2 of the following criteria for its second financial year:

(i) the consolidated revenue of the group for its second financial year does not exceed $10 million;

(ii) the value of the consolidated total assets of the group at the end of its second financial year does not exceed $10 million;

(iii) the group has at the end of its second financial year an aggregate number of employees of not more than 50.

9. Despite paragraph 7, a group which is formed before 1 July 2015 is a small group —

(*a*) from the first financial year that commences on or after 1 July 2015, if it satisfies any 2 of the following criteria for the first financial year:

(i) the consolidated revenue of the group for the first financial year does not exceed $10 million;

(ii) the value of the consolidated total assets of the group at the end of the first financial year does not exceed $10 million;

(iii) the group has at the end of the first financial year an aggregate number of employees of not more than 50; or

(*b*) from the second financial year that commences on or after 1 July 2015 if it satisfies any 2 of the following criteria for the second financial year:

(i) the consolidated revenue of the group for the second financial year does not exceed $10 million;

(ii) the value of the consolidated total assets of the group at the end of the second financial year does not exceed $10 million;

(iii) the group has at the end of the second financial year an aggregate number of employees of not more than 50.

10. Subject to paragraph 11, a small group ceases to be a small group from a financial year if it does not satisfy any 2 of the following criteria for 2 consecutive financial years immediately preceding the financial year:

(*a*) the consolidated revenue of the group for each financial year does not exceed $10 million;

(*b*) the value of the consolidated total assets of the group at the end of each financial year does not exceed $10 million;

(*c*) the group has at the end of each financial year an aggregate number of employees of not more than 50.

11. Paragraph 10 does not apply —

(*a*) to a group that has not reached its third financial year after it is formed; or

(*b*) in the case of a group that was formed before 1 July 2015, to a group that has not reached its third financial year after that date.

12. For the purposes of this Schedule —

(*a*) the question whether an entity is part of a group is to be decided in accordance with the Accounting Standards;

(*b*) in the case —

(i) where consolidated financial statements are prepared by a parent in relation to a group, the "consolidated total assets" and "consolidated revenue" of the group are to be determined in accordance with the accounting standards applicable to the group; or

(ii) where consolidated financial statements are not prepared by a parent in relation to a group —

(A) "consolidated total assets" means the aggregate total assets of all the members of the group; and

(B) "consolidated revenue" means the aggregate revenue of all the members of the group; and

(*c*) "parent" has the meaning given by the Accounting Standards, but does not include any entity which is a subsidiary of any other entity within the meaning of the Accounting Standards.

13. For the purposes of this Schedule —

(*a*) a reference to a company being a small company from a financial year means that the company is a small company for that financial year and every subsequent financial year until it ceases to be a small company under paragraph 5;

THIRTEENTH SCHEDULE — *continued*

(*b*) a reference to a group being a small group from a financial year means that the group is a small group for that financial year and every subsequent financial year until it ceases to be a small group under paragraph 10.

14. To avoid doubt —

(*a*) a company that has ceased to be a small company under paragraph 5 may become a small company again if it subsequently qualifies as a small company under paragraph 2; and

(*b*) a group that has ceased to be a small group under paragraph 10 may become a small group again if it subsequently qualifies as a small group under paragraph 7.

[36/2014]

FOURTEENTH SCHEDULE

Sections 8(7), 386AA(1) and 386AC(*c*) and Fifteenth Schedule

COMPANIES TO WHICH PART 11A DOES NOT APPLY

1. Part 11A does not apply to any of the following companies:

(*a*) a public company which shares are listed for quotation on an approved exchange in Singapore;

(*b*) a company that is a Singapore financial institution;

(*c*) a company that is wholly-owned by the Government;

(*d*) a company that is wholly-owned by a statutory body established by or under a public Act for a public purpose;

(*e*) a company that is a wholly-owned subsidiary of a company mentioned in sub-paragraph (*a*), (*b*), (*c*) or (*d*);

(*f*) a company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to —

(i) regulatory disclosure requirements; and

(ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through stock exchange rules, law or other enforceable means.

FOURTEENTH SCHEDULE — *continued*

2. For the purposes of paragraph 1, a Singapore financial institution is —

(*a*) any financial institution that is licensed, approved, registered (including a fund management company registered under paragraph 5(1)(*i*) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations) or regulated by the Monetary Authority of Singapore but does not include —

(i) [*Deleted by Act 2 of 2019*]

(ii) a person (other than a person mentioned in sub-paragraphs (*b*) and (*c*)) who is exempted from licensing, approval or regulation by the Monetary Authority of Singapore under any Act administered by the Monetary Authority of Singapore, including a private trust company exempted from licensing under section 15 of the Trust Companies Act 2005 read with regulation 4 of the Trust Companies (Exemption) Regulations;

(*b*) any person exempted under section 20(1)(*g*) of the Financial Advisers Act 2001 read with regulation 27(1)(*d*) of the Financial Advisers Regulations; or

(*c*) any person exempted under section 99(1)(*h*) of the Securities and Futures Act 2001 read with paragraph 7(1)(*b*) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.

[15/2017; 2/2019]

FIFTEENTH SCHEDULE

Sections 8(7), 386AA(1) and 386AC(*c*)

FOREIGN COMPANIES TO WHICH PART 11A DOES NOT APPLY

1. Part 11A does not apply to any of the following foreign companies:

(*a*) a foreign company that is a Singapore financial institution;

(*b*) a foreign company that is a wholly-owned subsidiary of a foreign company that is a Singapore financial institution;

(*c*) a foreign company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to —

(i) regulatory disclosure requirements; and

FIFTEENTH SCHEDULE — *continued*

(ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through stock exchange rules, law or other enforceable means;

[S 383/2023 wef 28/06/2023]

(*d*) a foreign company which shares are listed for quotation on an approved exchange in Singapore, such listing being a primary listing.

[S 383/2023 wef 28/06/2023]

2. In paragraph 1, "Singapore financial institution" has the meaning given in paragraph 2 of the Fourteenth Schedule.

[15/2017]

SIXTEENTH SCHEDULE

Sections 8(7) and 386AB

MEANINGS OF "SIGNIFICANT CONTROL" AND "SIGNIFICANT INTEREST"

Definition of "significant control"

1. For the purposes of Part 11A, an individual or a legal entity has significant control over a company or foreign company if the individual or legal entity —

(*a*) holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company or foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;

(*b*) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the company or foreign company; or

(*c*) has the right to exercise, or actually exercises, significant influence or control over the company or foreign company.

Definition of "significant interest"

2.—(1) For the purposes of Part 11A, an individual or a legal entity has a significant interest in a company or foreign company having a share capital —

(*a*) if the individual or legal entity (as the case may be) has an interest in more than 25% of the shares in the company or foreign company; or

(*b*) if —

(i) the individual or legal entity (as the case may be) has an interest in one or more voting shares in the company or foreign company; and

(ii) the total votes attached to that share, or those shares, is more than 25% of the total voting power in the company or foreign company.

(2) In sub-paragraph (1)(*b*), "voting share" does not include any treasury share or any share mentioned in section 21(4B) or (6C).

3. For the purposes of Part 11A, an individual or a legal entity has a significant interest in a company or foreign company that does not have a share capital if the individual or legal entity holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the company or foreign company.

Supplementary provisions

4.—(1) Subject to sub-paragraphs (2), (3) and (5), subsections (1A) to (6A), (8), (9) and (10) of section 7 apply in determining whether a person has an interest in a share.

(2) If 2 or more persons jointly have an interest in a share, or jointly hold a right, each of the persons is considered for the purposes of this Schedule as having an interest in that share, or as holding that right, as the case may be.

(3) If shares in respect of which a person has an interest and the shares in respect of which another person has an interest are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as having an interest in the combined shares of both of them.

(4) If the rights held by a person and the rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined rights of both of them.

(5) A share or right held by a person as nominee for another is to be considered for the purposes of this Schedule as held by the other (and not by the nominee).

(6) In this paragraph —

(*a*) a "joint arrangement" is an arrangement between the persons having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is predetermined by the arrangement; and

SIXTEENTH SCHEDULE — *continued*

(*b*) "arrangement" includes —

(i) any scheme, agreement or understanding, whether or not it is legally enforceable; and

(ii) any convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

[15/2017]

LEGISLATIVE HISTORY

COMPANIES ACT 1967

This Legislative History is provided for the convenience of users of the Companies Act. It is not part of the Act.

1. Act 42 of 1967 — Companies Act 1967

Date of First Reading	:	5 December 1966 (Bill No. 58/66 published on 12 December 1966)
Date of Second Reading	:	21 December 1966
Date Committed to Select Committee	:	21 December 1966
Date of Presentation of Select Committee Report	:	7 December 1967 (Parl. 11 of 1967)
Date of Third Reading	:	21 December 1967
Date of commencement	:	29 December 1967

2. 1970 Revised Edition — Companies Act

Date of operation	:	1 July 1971

3. Act 62 of 1970 — Companies (Amendment) Act 1970

Date of First Reading	:	4 November 1970 (Bill No. 53/70 published on 10 November 1970)
Date of Second and Third Readings	:	30 December 1970
Date of commencement	:	1 October 1971

4. Act 49 of 1973 — Companies (Amendment) Act 1973

Date of First Reading	:	25 July 1973 (Bill No. 46/73 published on 28 July 1973)
Date of Second and Third Readings	:	28 July 1973
Date of commencement	:	5 October 1973

5. Act 10 of 1974 — Companies (Amendment) Act 1974

Date of First Reading	:	14 March 1974 (Bill No. 11/74 published on 15 March 1974)
Date of Second and Third Readings	:	27 March 1974
Date of commencement	:	15 November 1974

6. Act 19 of 1975 — Companies (Amendment) Act 1975

Date of First, Second and Third Readings	:	19 August 1975 (Bill No. 44/75)
Date of commencement	:	23 August 1975

7. Act 39 of 1975 — Companies (Amendment No. 2) Act 1975

Date of First Reading	:	11 November 1975 (Bill No. 56/75 published on 11 November 1975)
Date of Second and Third Readings	:	20 November 1975
Date of commencement	:	1 November 1975

8. 1979 Reprint — Companies Act

Date of operation	:	25 October 1979

9. G. N. No. S 177/1980 — Companies Act (Amendment of Second Schedule) Notification 1980

Date of commencement	:	23 June 1980

10. G. N. No. S 228/1982 — Companies Act (Amendment of Second Schedule) Notification 1982

Date of commencement	:	1 September 1982

11. Act 15 of 1984 — Companies (Amendment) Act 1984

Date of First Reading	:	20 December 1983 (Bill No. 16/83 published on 27 December 1983)
Date of Second Reading	:	17 January 1984
Date Committed to Select Committee	:	17 January 1984

Date of Presentation of Select Committee Report	:	12 June 1984 (Parl. 3 of 1984)
Date of Third Reading	:	29 June 1984
Date of commencement	:	15 August 1984

12. G. N. No. S 215/1984 — Companies Act (Amendment of Second Schedule) Notification 1984

Date of commencement	:	27 August 1984

13. 1985 Reprint — Companies Act

Date of operation	:	15 February 1985

14. Act 15 of 1986 — Securities Industry Act 1986
(Consequential amendments made to Act by)

Date of First Reading	:	26 February 1986 (Bill No. 3/86 published on 7 March 1986)
Date of Second and Third Readings	:	31 March 1986
Date of commencement	:	15 August 1986

15. G. N. No. S 263/1986 — Companies Act (Amendment of Second Schedule) Notification 1986

Date of commencement	:	24 October 1986

16. 1985 Revised Edition — Companies Act
(G.N. No. S 337/1987, S 22/1989, S 143/1989 — Rectification Order)

Date of operation	:	30 March 1987

17. Act 13 of 1987 — Companies (Amendment) Act 1987

Date of First Reading	:	31 March 1986 (Bill No. 9/86 published on 10 April 1986)
Date of Second Reading	:	5 May 1986
Date Committed to Select Committee	:	5 May 1986
Date of Presentation of Select Committee Report	:	12 March 1987 (Parl. 5 of 1987)
Date of Third Reading	:	26 March 1987
Date of commencement	:	15 May 1987

18. G. N. No. S 139/1987 — Companies Act (Amendment of Second and Eighth Schedules) Notification 1987

Date of commencement : 15 May 1987

19. 1988 Revised Edition — Companies Act (Chapter 50)
(G.N. No. S 130/1988 — Rectification Order)

Date of operation : 30 April 1988

20. G. N. No. S 203/1988 — Companies Act (Amendment of Second Schedule) Notification 1988

Date of commencement : 5 August 1988

21. G. N. No. S 204/1988 — Companies Act (Amendment of Eighth Schedule) Notification 1987

Date of commencement : 1 September 1988

22. G. N. No. S 7/1989 — Companies Act (Amendment of Second Schedule) Notification 1989

Date of commencement : 13 January 1989

23. 1990 Revised Edition — Companies Act

Date of operation : 15 March 1990

24. G. N. No. S 107/1990 — Companies Act (Amendment of Second Schedule) Notification 1990

Date of commencement : 16 March 1990

25. G. N. No. S 113/1990 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 1990

Date of commencement : 23 March 1990

26. Act 40 of 1989 — Companies (Amendment) Act 1989

Date of First Reading	:	22 March 1989 (Bill No. 24/89 published on 23 March 1989)
Date of Second Reading	:	7 April 1989
Date Committed to Select Committee	:	7 April 1989
Date of Presentation of Select Committee Report	:	27 October 1989 (Parl. 4 of 1989)
Date of Third Reading	:	30 November 1989
Date of commencement	:	23 March 1990

27. G. N. No. S 429/1990 — Companies Act (Amendment of Second Schedule) (No. 3) Notification 1990

Date of commencement	:	1 December 1990

28. G. N. No. S 279/1991 — Companies Act (Amendment of Second Schedule) Notification 1991

Date of commencement	:	1 July 1991

29. G. N. No. S 339/1991 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 1991

Date of commencement	:	8 August 1991

30. Act 22 of 1993 — Companies (Amendment) Act 1993

Date of First Reading	:	31 July 1992 (Bill No. 33/92 published on 1 August 1992)
Date of Second Reading	:	14 September 1992
Date Committed to Select Committee	:	14 September 1992
Date of Presentation of Select Committee Report	:	26 April 1993 (Parl. 2 of 1993)
Date of Third Reading	:	28 May 1993
Date of commencement	:	12 November 1993

31. Act 31 of 1993 — Goods and Services Tax (Amendment) Act 1993
(Consequential amendments made to Act by)

Date of First Reading	:	26 February 1993 (Bill No. 14/93 published on 27 February 1993)
Date of Second Reading	:	19 March 1993
Date Committed to Select Committee	:	19 March 1993
Date of Presentation of Select Committee Report	:	7 September 1993 (Parl. 4 of 1993)
Date of Third Reading	:	12 October 1993
Dates of commencement	:	26 November 1993 (except paragraph (3) of Fifth Schedule)

32. 1994 Revised Edition — Companies Act
(G.N. No. S 227/1995 — Rectification Order)

Date of operation	:	15 March 1994

33. Act 28 of 1994 — National Registration (Amendment) Act 1994
(Consequential amendments made to Act by)

Date of First Reading	:	31 October 1994 (Bill No. 30/94 published on 1 November 1994)
Date of Second and Third Readings	:	5 December 1994
Date of commencement	:	1 March 1995

34. G. N. No. S 119/1995 — Companies Act (Amendment of Second Schedule) Notification 1995

Date of commencement	:	1 April 1995

35. Act 15 of 1995 — Bankruptcy Act 1995
(Consequential amendments made to Act by)

Date of First Reading	:	25 July 1994 (Bill No. 16/94 published on 29 July 1994)
Date of Second Reading	:	25 August 1994
Date Committed to Select Committee	:	25 August 1994
Date of Presentation of Select Committee Report	:	7 March 1995 (Parl. 1 of 1995)
Date of Third Reading	:	23 March 1995
Date of commencement	:	15 July 1995

36. Act 22 of 1995 — Companies (Amendment) Act 1995

Date of First Reading	:	25 May 1995 (Bill No. 17/95 published on 26 May 1995)
Date of Second and Third Readings	:	7 July 1995
Date of commencement	:	4 August 1995

37. G. N. No. S 61/1997 — Companies Act (Amendment of Second Schedule) Notification 1997

Date of commencement	:	15 February 1997

38. G. N. No. S 344/1997 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 1997

Date of commencement	:	1 August 1997

39. Act 7 of 1997 — Statutes (Miscellaneous Amendments) Act 1997

Date of First Reading	:	11 July 1997 (Bill No. 6/97 published on 12 July 1997)
Date of Second and Third Readings	:	25 August 1997
Dates of commencement	:	1 October 1997 (except section 3)

40. Act 38 of 1998 — Companies (Amendment) Act 1998

Date of First Reading	:	4 September 1998 (Bill No. 36/98 published on 5 September 1998)
Date of Second and Third Readings	:	12 October 1998
Date of commencement	:	18 November 1998

41. Act 37 of 1999 — Bankruptcy (Amendment) Act 1999
(Consequential amendments made to Act by)

Date of First Reading	:	3 August 1999 (Bill No. 26/99 published on 4 August 1999)
Date of Second and Third Readings	:	18 August 1999
Date of commencement	:	15 September 1999

42. Act 39 of 1999 — Police Force (Amendment) Act 1999
(Consequential amendments made to Act by)

Date of First Reading	:	11 October 1999 (Bill No. 32/99 published on 12 October 1999)
Date of Second and Third Readings	:	23 November 1999

Date of commencement : 10 January 2000

43. G. N. No. S 387/2000 — Companies Act (Amendment of Second Schedule) Notification 2000

Date of commencement : 29 August 2000

44. Act 36 of 2000 — Companies (Amendment) Act 2000

Date of First Reading : 9 October 2000 (Bill No. 28/2000 published on 10 October 2000)

Date of Second and Third Readings : 13 November 2000

Date of commencement : 22 January 2001

45. G. N. No. S 29/2001 — Companies Act (Amendment of Second Schedule) Notification 2001

Date of commencement : 22 January 2001

46. G. N. No. S 99/2001 — Companies Act (Amendment of Fifth Schedule) Notification 2001

Date of commencement : 22 February 2001

47. Act 26 of 2001 — Statutes (Miscellaneous Amendments and Repeal) Act 2001

Date of First Reading : 11 July 2001 (Bill No. 24/2001 published on 12 July 2001)

Date of Second and Third Readings : 25 July 2001

Date of commencement : 1 September 2001 (section 6)

48. Act 42 of 2001 — Securities and Futures Act 2001
(Consequential amendments made to Act by)

Date of First Reading : 25 September 2001 (Bill No. 33/2001 published on 26 September 2001)

Date of Second and Third Readings : 5 October 2001

Date of commencement : 1 January 2002 (Parts I, VIII, IX, X and XV (except sections 314 and 342 (1) and (3)), First Schedule, Second

Schedule and items (4)(*o*) and (*q*) and (7)(*c*) of Fourth Schedule)
1 July 2002
1 October 2002

49. G. N. No. S 675/2001 — Securities and Futures (Repeal of Provisions) Notification 2001

Date of commencement : 1 January 2002

50. G. N. No. S 28/2002 — Companies Act (Amendment of Second Schedule) Notification 2002

Date of commencement : 15 January 2002

51. G. N. No. S 236/2002 — Securities and Futures (Repeal of Provisions) Notification 2002

Date of commencement : 1 July 2002

52. G. N. No. S 239/2002 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 2002

Date of commencement : 1 July 2002

53. Act 12 of 2002 — Companies (Amendment) Act 2002

Date of First Reading : 23 May 2002
(Bill No. 16/2002 published on 24 May 2002)

Date of Second and Third Readings : 8 July 2002

Dates of commencement : 15 August 2002 (sections 2(*a*) and 36)
1 January 2003
13 January 2003

54. G. N. No. S 684/2002 — Companies (Accounts of Public Listed Companies) (Substitution of Period) Order 2002

Date of commencement : 1 January 2003

55. G. N. No. S 19/2003 — Companies Act (Amendment of Second Schedule) Notification 2003

Date of commencement : 13 January 2003

56. G. N. No. S 20/2003 — Companies Act (Amendment of Eighth Schedule) Notification 2003

Date of commencement : 13 January 2003

57. G. N. No. S 213/2003 — Companies (Accounts of Public Listed Companies) (Substitution of Period) Order 2003

Date of commencement	:	28 April 2003

58. Act 8 of 2003 — Companies (Amendment) Act 2003

Date of First Reading	:	28 February 2003 (Bill No. 3/2003 published on 1 March 2003)
Date of Second and Third Readings	:	24 April 2003
Date of commencement	:	15 May 2003

59. Act 9 of 2003 — Statutes (Miscellaneous Amendments) Act 2003

Date of First Reading	:	20 March 2003 (Bill No. 7/2003 published on 21 March 2003)
Date of Second and Third Readings	:	24 April 2003
Date of commencement	:	16 May 2003

60. G. N. No. S 75/2004 — Companies Act (Amendment of Second Schedule) Notification 2004

Date of commencement	:	1 March 2004

61. Act 3 of 2004 — Accounting and Corporate Regulatory Authority Act 2004

(Consequential amendments made to Act by)

Date of First Reading	:	5 January 2004 (Bill No. 1/2004 published on 6 January 2004)
Date of Second and Third Readings	:	6 February 2004
Date of commencement	:	1 April 2004

62. Act 5 of 2004 — Companies (Amendment) Act 2004

Date of First Reading	:	5 January 2004 (Bill No. 3/2004 published on 6 January 2004)

Date of Second and Third Readings	:	6 February 2004
Dates of commencement	:	1 April 2004 1 October 2004

63. Act 4 of 2004 — Accountants Act 2004
(Consequential amendments made to Act by)

Date of First Reading	:	5 January 2004 (Bill No. 2/2004 published on 6 January 2004)
Date of Second and Third Readings	:	6 February 2004
Date of commencement	:	1 April 2004

64. G. N. No. S 193/2004 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 2004

Date of commencement	:	1 April 2004

65. G. N. No. S 262/2004 — Companies Act (Amendment of Second Schedule) (No. 3) Notification 2004

Date of commencement	:	1 April 2004

66. Act 28 of 2004 — Statutes (Miscellaneous Amendments) (No. 2) Act 2004

Date of First Reading	:	15 June 2004 (Bill No. 27/2004 published on 16 June 2004)
Date of Second and Third Readings	:	20 July 2004
Date of commencement	:	1 April 2004 (section 3 only)

67. G. N. No. S 57/2005 — Companies Act (Amendment of Second Schedule) Notification 2005

Date of commencement	:	1 February 2005

68. Act 5 of 2005 — Limited Liability Partnerships Act 2005
(Consequential amendments made to Act by)

Date of First Reading	:	19 October 2004 (Bill No. 64/2004 published on 20 October 2004)
Date of Second and Third Readings	:	25 January 2005

Date of commencement : 11 April 2005

69. Act 17 of 2005 — Statutes (Miscellaneous Amendments and Repeal) Act 2005

Date of First Reading : 18 April 2005
(Bill No. 7/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 15 July 2005

70. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005

Date of First Reading : 17 October 2005
(Bill No. 30/2005 published on 18 October 2005)

Date of Second and Third Readings : 21 November 2005

Dates of commencement : 30 January 2006 (sections 10, 12, 19 and 20(*c*))
1 April 2006

71. Act 21 of 2005 — Companies (Amendment) Act 2005

Date of First Reading : 18 April 2005
(Bill No. 11/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 30 January 2006

72. G. N. No. S 880/2005 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 2005

Date of commencement : 30 January 2006

73. G. N. No. S 55/2006 — Companies Act (Amendment of Second Schedule) Notification 2006

Date of commencement : 30 January 2006

74. G. N. No. S 56/2006 — Companies Act (Amendment of Eighth Schedule) Notification 2006

Date of commencement : 30 January 2006

75. Act 11 of 2005 — Trust Companies Act 2005

Date of First Reading	:	25 January 2005 (Bill No. 1/2005 published on 26 January 2005)
Date of Second and Third Readings	:	18 February 2005
Date of commencement	:	1 February 2006

76. Act 9 of 2006 — Residential Property (Amendment) Act 2006
(Consequential amendments made to Act by)

Date of First Reading	:	16 January 2006 (Bill No. 1/2006 published on 17 January 2006)
Date of Second and Third Readings	:	14 February 2006
Date of commencement	:	31 March 2006

77. Act 1 of 2006 — Payment Systems (Oversight) Act 2006

Date of First Reading	:	21 November 2005 (Bill No. 39/2005 published on 22 November 2005)
Date of Second and Third Readings	:	16 January 2006
Date of commencement	:	23 June 2006

78. 2006 Revised Edition — Companies Act

Date of operation	:	31 October 2006

79. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007

Date of First Reading	:	8 November 2006 (Bill No. 14/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Dates of commencement	:	1 March 2007 (with the exception of Sections 6, 8 and 11)

80. Act 1 of 2007 — Banking (Amendment) Act 2007

Date of First Reading	:	8 November 2006 (Bill No. 13/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Date of commencement	:	31 March 2007

81. Act 39 of 2007 — Accounting Standards Act 2007
(Consequential amendments made to Act by)

Date of First Reading	:	16 July 2007 (Bill No. 27/2007 published on 17 July 2007)
Date of Second and Third Readings	:	27 August 2007
Date of commencement	:	1 November 2007

82. G. N. No. S 604/2007 — Companies Act (Amendment of Second Schedule) Notification 2007

Date of commencement	:	5 November 2007

83. G. N. No. S 605/2007 — Companies Act (Amendment of Eighth Schedule) Notification 2007

Date of commencement	:	5 November 2007

84. Act 5 of 2008 — Workmen's Compensation (Amendment) Act 2008
(Consequential amendments made to Act by)

Date of First Reading	:	12 November 2007 (Bill No. 50/2007 published on 13 November 2007)
Date of Second and Third Readings	:	22 January 2008
Date of commencement	:	1 April 2008

85. Act 7 of 2009 — Civil Law (Amendment) Act 2009
(Consequential amendments made to Act by)

Date of First Reading	:	17 November 2008 (Bill No. 38/2008 published on 18 November 2008)

Date of Second and Third Readings	:	19 January 2009
Dates of commencement	:	1 March 2009

86. Act 5 of 2009 — International Interests in Aircraft Equipment Act 2009
(Consequential amendments made to Act by)

Date of First Reading	:	17 November 2008 (Bill No. 37/2008 published on 18 November 2008)
Date of Second and Third Readings	:	19 January 2009
Date of commencement	:	1 May 2009

87. Act 21 of 2008 — Mental Health (Care and Treatment) Act 2008
(Consequential amendments made to Act by)

Date of First Reading	:	21 July 2008 (Bill No. 11/2008 published on 22 July 2008)
Date of Second and Third Readings	:	16 September 2008
Date of commencement	:	1 March 2010

88. Act 22 of 2008 — Mental Capacity Act 2008
(Consequential amendments made to Act by)

Date of First Reading	:	21 July 2008 (Bill No. 13/2008 published on 22 July 2008)
Date of Second and Third Readings	:	15 September 2008
Date of commencement	:	1 March 2010

89. Act 15 of 2010 — Criminal Procedure Code 2010
(Consequential amendments made to Act by)

Date of First Reading	:	26 April 2010 (Bill No. 11/2010 published on 26 April 2010)
Date of Second and Third Readings	:	19 May 2010
Date of commencement	:	2 January 2011

90. Act 34 of 2010 — Charities (Amendment) Act 2010
(Consequential amendments made to Act by)

Date of First Reading	:	18 October 2010 (Bill No. 29/2010 published on 18 October 2010)
Date of Second and Third Readings	:	22 November 2010
Date of commencement	:	1 March 2011

91. Act 16 of 2011 — Insurance (Amendment) Act 2011
(Consequential amendments made to Act by)

Date of First Reading	:	10 March 2011 (Bill No. 11/2011 published on 10 March 2011)
Date of Second and Third Readings	:	11 April 2011
Date of commencement	:	1 May 2011

92. G.N. No. S 718/2011 — Companies Act (Amendment of Second Schedule) Notification 2011

Date of commencement	:	1 January 2012

93. Act 2 of 2009 — Securities and Futures (Amendment) Act 2009
(Consequential amendments made to Act by)

Date of First Reading	:	15 September 2008 (Bill No. 23/2008 published on 16 September 2008)
Date of Second and Third Readings	:	19 January 2009
Date of commencement	:	19 November 2012 (Sections 2(*p*), (*t*), (*u*), (*v*) and (*w*), 42, 76, 113(*b*) and (*c*), 118(*a*) to (*e*) and (*h*) and 119)

94. Act 10 of 2013 — Financial Institutions (Miscellaneous Amendments) Act 2013
(Consequential amendments made to Act by)

Date of First Reading	:	4 February 2013 (Bill No. 4/2013 published on 4 February 2013)
Date of Second and Third Readings	:	15 March 2013

Date of commencement : 18 April 2013

95. Act 11 of 2013 — Insurance (Amendment) Act 2013
(Consequential amendments made to Act by)

Date of First Reading : 4 February 2013 (Bill No. 5/2013 published on 4 February 2013)

Date of Second and Third Readings : 15 March 2013

Date of commencement : 18 April 2013

96. Act 34 of 2012 — Securities and Futures (Amendment) Act 2012
(Consequential amendments made to Act by)

Date of First Reading : 15 October 2012 (Bill No. 31/2012 published on 15 October 2012)

Date of Second and Third Readings : 15 November 2012

Date of commencement : 1 August 2013

97. G.N. No. S 704/2013 — Companies Act (Amendment of Eighth Schedule) Notification 2013

Date of commencement : 2 December 2013

98. G.N. No. S 97/2014 — Companies Act (Amendment of Eighth Schedule) Notification 2014

Date of commencement : 24 February 2014

99. Act 5 of 2014 — Subordinate Courts (Amendment) Act 2014
(Consequential amendments made to Act by)

Date of First Reading : 11 November 2013 (Bill No. 26/2013 published on 11 November 2013)

Date of Second and Third Readings : 21 January 2014

Date of commencement : 7 March 2014

100. Act 36 of 2014 — Companies (Amendment) Act 2014

Date of First Reading : 8 September 2014 (Bill No. 25/2014)

Date of Second and Third Readings : 8 October 2014

Date of commencement : 1 July 2015
3 January 2016
20 April 2018

101. G.N. No. S 382/2015 — Companies Act (Amendment of Second Schedule) Notification 2015

Date of commencement : 1 July 2015

102. G.N. No. S 383/2015 — Companies Act (Amendment of Eighth Schedule) Notification 2015

Date of commencement : 1 July 2015

103. Act 15 of 2017 — Companies (Amendment) Act 2017

Date of First Reading : 28 February 2017 (Bill No. 13/2017 published on 28 February 2017)

Date of Second and Third Readings : 10 March 2017

Date of commencement : 31 March 2017
23 May 2017
11 October 2017
31 August 2018

104. Act 21 of 2016 — Employment Claims Act 2016

Date of First Reading : 11 July 2016
(Bill No. 20/2016)

Date of Second and Third Readings : 16 August 2016

Date of commencement : 1 April 2017

105. Act 31 of 2017 — Monetary Authority of Singapore (Amendment) Act 2017

Date of First Reading : 8 May 2017 (Bill No. 25/2017 published on 8 May 2017)

Date of Second and Third Readings : 4 July 2017

Date of commencement : 4 June 2018

106. Act 35 of 2018 — Companies (Amendment) Act 2018

Date of First Reading : 9 July 2018 (Bill No. 27/2018 published on 9 July 2018)

Date of Second and Third Readings : 6 August 2018

Date of commencement : 1 October 2018

107. Act 4 of 2017 — Securities and Futures (Amendment) Act 2017

Date of First Reading : 7 November 2016 (Bill No. 35/2016)

Date of Second and Third Readings : 9 January 2017

Date of commencement : 8 October 2018

108. Act 44 of 2018 — Variable Capital Companies Act 2018

Date of First Reading : 10 September 2018 (Bill No. 40/2018)

Date of Second and Third Readings : 1 October 2018

Date of commencement : 14 January 2020

109. Act 28 of 2019 — Variable Capital Companies (Miscellaneous Amendments) Act 2019

Date of First Reading : 5 August 2019 (Bill No. 23/2019)

Date of Second and Third Readings : 3 September 2019

Date of commencement : 15 January 2020

110. Act 2 of 2019 — Payment Services Act 2019

Date of First Reading : 19 November 2018 (Bill No. 48/2018 published on 19 November 2018)

Date of Second and Third Readings : 14 January 2019

Date of commencement : 28 January 2020

111. Act 40 of 2018 — Insolvency, Restructuring and Dissolution Act 2018

Date of First Reading : 10 September 2018 (Bill No. 32/2018)

Date of Second and Third Readings : 31 October 2018

Date of commencement : 30 July 2020

112. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019

Date of First Reading	:	7 October 2019 (Bill No. 32/2019)
Date of Second and Third Readings	:	5 November 2019
Date of commencement	:	2 January 2021

113. Act 27 of 2016 — Credit Bureau Act 2016
(Amendments made by the above Act)

Date of First Reading	:	10 October 2016 (Bill No. 27/2016 published on 10 October 2016)
Second and Third Readings	:	9 November 2016
Date of Commencement	:	31 May 2021

114. Act 1 of 2020 — Banking (Amendment) Act 2020

Date of First Reading	:	4 November 2019 (Bill No. 35/2019)
Date of Second and Third Readings	:	6 January 2020
Date of commencement	:	1 July 2021

115. 2020 Revised Edition — Companies Act 1967

Date of operation	:	31 December 2021

116. Act 25 of 2021 — Courts (Civil and Criminal Justice) Reform Act 2021

Date of First Reading	:	26 July 2021 (Bill No. 18/2021)
Date of Second and Third Readings	:	14 September 2021
Date of commencement	:	1 April 2022

117. Act 2 of 2022 — Corporate Registers (Miscellaneous Amendments) Act 2022

Date of First Reading	:	1 November 2021 (Bill No. 42/2021)
Date of Second and Third Readings	:	10 January 2022
Date of commencement	:	30 May 2022 (Section 2(*a*), (*f*), (*g*), (*h*), (*l*) and (*m*))

4 October 2022 (Sections 2(*b*), (*c*), (*d*), (*e*), (*i*), (*j*) and (*k*) and 3(1)(*a*), (*b*), (*c*) and (*d*) and (2))

118. Act 36 of 2022 — Accountancy Functions (Consolidation) Act 2022

Date of First Reading	:	3 October 2022 (Bill No. 29/2022)
Date of Second and Third Readings	:	9 November 2022
Date of commencement	:	1 April 2023 (Section 31)

119. G. N. No. S 383/2023 — Companies Act 1967 (Amendment of Fifteenth Schedule) Notification 2023

Date of commencement	:	28 June 2023

120. Act 17 of 2023 — Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act 2023

Date of First Reading	:	18 April 2023 (Bill No. 14/2023)
Date of Second and Third Readings	:	9 May 2023
Date of commencement	:	1 July 2023

121. Act 18 of 2022 — Financial Services and Markets Act 2022

Date of First Reading	:	14 February 2022 (Bill No. 4/2022)
Date of Second and Third Readings	:	5 April 2022
Date of commencement	:	28 April 2023 (Section 194(1)) 10 May 2024 (Section 194(2))

122. Act 30 of 2024 — Platform Workers Act 2024

Bill	:	26/2024
First Reading	:	6 August 2024
Second and Third Readings	:	10 September 2024
Commencement	:	1 November 2024

123. Act 21 of 2024 — ACRA (Registry and Regulatory Enhancements) Act 2024

Bill	:	17/2024

Abbreviations

(updated on 29 August 2022)

G.N.	Gazette Notification
G.N. Sp.	Gazette Notification (Special Supplement)
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian)
M.	Malaya/Malaysia (including Federated Malay States, Malayan Union, Federation of Malaya and Federation of Malaysia)
Parl.	Parliament
S	Subsidiary Legislation
S.I.	Statutory Instrument (United Kingdom)
S (N.S.)	Subsidiary Legislation (New Series)
S.S.G.G.	Straits Settlements Government Gazette
S.S.G.G. (E)	Straits Settlements Government Gazette (Extraordinary)

COMPARATIVE TABLE
COMPANIES ACT 1967

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

2020 Ed.	2006 Ed.
—	**3**—(4) [*Deleted by Act 40 of 2018*]
—	**12B**—(3) [*Deleted by Act 36 of 2014*]
—	(4) [*Deleted by Act 36 of 2014*]
[*Omitted as having had effect*]	**29**—(14)
—	**71**—(4) [*Deleted by Act 21 of 2005*]
—	(5) [*Deleted by Act 21 of 2005*]
—	**76F**—(5) [*Deleted by Act 36 of 2014*]
—	(6) [*Deleted by Act 36 of 2014*]
—	**76K**—(5) [*Deleted by Act 36 of 2014*]
—	**81**—(5) [*Deleted by Act 21 of 2005*]
—	**144**—(3) [*Deleted by Act 5 of 2004*]
149—(9) and (9A)	**149**—(9)
—	**158**—(4) [*Deleted by Act 36 of 2014*]
171—(4A)	Proviso to **171**—(4)
—	**177**—(5) [*Deleted by Act 40 of 1989*]
[*Omitted as having had effect*]	**198**—(8)
—	**377**—(14) [*Deleted by Act 40 of 2018*]
[*Omitted as having had effect*]	**379**—(4)
[*Omitted as having had effect*]	**386AF**—(14)
[*Omitted as having had effect*]	**386AL**—(9)

THE STATUTES OF THE REPUBLIC OF SINGAPORE

SECURITIES AND FUTURES ACT 2001

2020 REVISED EDITION

This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021.

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Informal Consolidation – version in force from 9/3/2025

Securities and Futures Act 2001

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

Division 1 — Licensing of Trade Repositories

Division 2 — Regulation of Licensed Trade Repositories

Subdivision (1) — Obligations of licensed trade repositories

Subdivision (2) — Rules of licensed trade repositories

Subdivision (3) — Matters requiring approval of Authority

Subdivision (4) — Powers of Authority

Subdivision (5) — Immunity

Division 3 — Regulation of Licensed Foreign Trade Repositories

Division 4 — General Powers of Authority

Section

Section

PART 3AA

CENTRAL DEPOSITORY SYSTEM

PART 3A

APPROVED HOLDING COMPANIES

Division 2 — Regulation of Approved Holding Companies

Division 3 — Voluntary Transfer of Business of Approved Holding Company

PART 4

HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

Division 1 — Capital Markets Services Licence

Section

Section

PART 5

BOOKS, CUSTOMER ASSETS AND AUDIT

Division 1 — Books

Division 2 — Customer Assets

Division 3 — Audit

PART 6

CONDUCT OF BUSINESS

Division 1 — General

PART 6AA

FINANCIAL BENCHMARKS

Subdivision (5) — Matters requiring approval of Authority

Division 3 — Benchmark Submitters of Designated Benchmarks

Subdivision (1) — Authorised benchmark submitter

Subdivision (2) — Exempt benchmark submitter

Subdivision (3) — Designated benchmark submitter

Subdivision (4) — Obligations of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters

Subdivision (5) — Matters requiring approval of Authority

Division 4 — Information Gathering Powers over Financial Benchmarks, Disclosure of Information and Record Keeping

Division 5 — General Powers

PART 6A

REPORTING OF DERIVATIVES CONTRACTS

PART 6B

CLEARING OF DERIVATIVES CONTRACTS

PART 6C

TRADING OF DERIVATIVES CONTRACTS

PART 7

DISCLOSURE OF INTERESTS

Division 1 — Disclosure of Interest in Corporation

Subdivision (1) — Disclosure by directors and chief executive officer of corporation

Subdivision (2) — Disclosure by substantial shareholders in corporation

Subdivision (3) — Disclosure by corporation

Division 2 — Disclosure of Interest in Business Trust and Interest in Trustee-Manager of Business Trust

Subdivision (1) — Disclosure by substantial unitholders of business trust

Subdivision (2) — Disclosure by directors and chief executive officer of trustee-manager of business trust

Subdivision (3) — Disclosure by holders of voting shares in trustee-manager

Subdivision (4) — Disclosure by trustee-manager

Division 3 — Disclosure of Interests in Real Estate Investment Trust and Interests in Shares of Responsible Person

Subdivision (1) — Disclosure by substantial unitholders of real estate investment trust

Subdivision (2) — Disclosure by directors and chief executive officer of responsible person

Subdivision (3) — Disclosure by holders of voting shares in responsible person

Section

Subdivision (4) — Powers to obtain information

Division 4 — Transfer of evidence

PART 10

ASSISTANCE TO
FOREIGN REGULATORY AUTHORITIES

PART 11

INVESTOR COMPENSATION SCHEME

Section

Section

Section

PART 13

OFFERS OF INVESTMENTS

Division 1 — Securities and Securities-based Derivatives Contracts

Subdivision (1) — Interpretation

Section

Section

Section

Section

Section

An Act relating to the regulation of activities and institutions in the securities and derivatives industry, including leveraged foreign exchange trading, of financial benchmarks and of clearing facilities, and for matters connected therewith.

[34/2012; 4/2017]

[1 January 2002: Parts I, VIII, IX, X and XV (except sections 314 and 342(1) and (3)), First Schedule, Second Schedule and items (4)(*o*) and (*q*) and (7)(*c*) of the Fourth Schedule ;
1 July 2002: Parts XIII and XIV, and items (1)(*a*), (3)(*a*), (4)(*a*)(i), (iii) to (ix), (*b*), (*c*), (*f*), (*g*), (*h*), (*i*), (*l*), (*m*), (*t*) and (*u*), (7)(*b*), (12) and (13) of the Fourth Schedule ;
1 October 2002: Parts II to VII, XI and XII, sections 314 and 342(1) and (3), Third Schedule and items (1)(*b*), (2), (3)(*b*), (4)(*a*)(ii), (*d*), (*e*), (*j*), (*k*), (*n*), (*p*), (*r*), (*s*) and (*v*), (5), (6), (7)(*a*) and (*d*) and (8) to (11) of the Fourth Schedule]

PART 1

PRELIMINARY

Short title

1. This Act is the Securities and Futures Act 2001.

Interpretation

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

"administering a designated benchmark" means —

(*a*) controlling the development of the definition of a designated benchmark for the purpose of determining a designated benchmark;

(*b*) controlling the development of the methodology of determining a designated benchmark;

(*c*) controlling the review of the definition of a designated benchmark for the purpose of determining a designated benchmark;

(*d*) controlling the review of the methodology of determining a designated benchmark;

(*e*) managing any arrangements, processes or mechanisms for the purpose of determining a designated benchmark;

(*f*) collecting, analysing or processing any information or expression of opinion for the purpose of determining a designated benchmark;

(*g*) applying a formula or other methods of calculation to information or expressions of opinion in order to determine a designated benchmark; or

(*h*) monitoring and conducting surveillance of any information or expressions of opinion provided for the purpose of determining a designated benchmark,

but does not include providing information in relation to a designated benchmark or any act that is necessary or incidental to providing such information;

"administering a financial benchmark" means —

(*a*) controlling the development of the definition of a financial benchmark for the purpose of determining a financial benchmark;

(*b*) controlling the development of the methodology of determining a financial benchmark;

(*c*) controlling the review of the definition of a financial benchmark for the purpose of determining a financial benchmark;

(*d*) controlling the review of the methodology of determining a financial benchmark;

(*e*) managing any arrangements, processes or mechanisms for the purpose of determining a financial benchmark;

(*f*) collecting, analysing or processing any information or expression of opinion for the purpose of determining a financial benchmark;

(*g*) applying a formula or other methods of calculation to information or expressions of opinion in order to determine a financial benchmark; or

(*h*) monitoring and conducting surveillance of any information or expressions of opinion provided for the purpose of determining a financial benchmark,

but does not include providing information in relation to a financial benchmark or any act that is necessary or incidental to providing such information;

"advising on corporate finance" has the meaning given in the Second Schedule;

"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 2(1) of the Legal Profession Act 1966;

"appointed representative", in respect of a type of regulated activity, has the meaning given by section 99D, and "appointed representative" means an appointed representative in respect of any type of regulated activity;

"approved clearing house" means a corporation that is approved by the Authority under section 51(1)(*a*) as an approved clearing house;

"approved exchange" means a corporation that is approved by the Authority under section 9(1)(*a*) as an approved exchange;

"approved holding company" means a corporation that is approved by the Authority under section 81W as an approved holding company;

"auditor" means a public accountant who is registered or deemed to be registered under the Accountants Act 2004 and,

in Division 1 of Part 13, when used in relation to an entity not being a company, includes —

(*a*) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue of any opinion, report or other document on the audit of any financial statement) —

(i) under the laws of the place where the entity is formed or constituted; or

(ii) under the laws of the place of his or her practice, if the auditing standards that are or will be applied to the financial statements of the entity are —

(A) auditing standards commonly applied in that place; or

(B) international auditing standards (by whatever name called); or

(*b*) such other person as the Authority may approve in any particular case to be an auditor for such entity;

"authorised benchmark administrator" means a corporation that is authorised by the Authority under section 123F(1) as an authorised benchmark administrator;

"authorised benchmark submitter" means a corporation that is authorised by the Authority under section 123ZE(1) as an authorised benchmark submitter;

"Authority" means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act 1970;

"book" includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

"business rules", in relation to an approved holding company, an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(*a*) the approved holding company, approved exchange, recognised market operator, approved clearing house or recognised clearing house and its members, or the licensed trade repository or licensed foreign trade repository and its participants; and

(*b*) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the approved holding company, approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house or are contained in its constituent documents; but does not include the listing rules of an approved exchange or a recognised market operator (which is an overseas exchange);

"business trust" has the meaning given by section 2 of the Business Trusts Act 2004;

"capital markets products" means any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe as capital markets products;

"capital markets services licence" means a licence that is granted by the Authority under section 86 to a person to carry on a business in any regulated activity;

"chairperson" means a chairperson of a board of directors;

"chief executive officer", in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house,

a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an authorised benchmark administrator, an authorised benchmark submitter, a designated benchmark submitter or any other corporation (called in this definition a relevant person) means any person, by whatever name called, who is —

(*a*) in the direct employment of, or acting for or by arrangement with, the relevant person; and

(*b*) principally responsible for the management and conduct of the business of the relevant person in Singapore;

"clearing facility" has the meaning given in Part 2 of the First Schedule;

"clearing or settlement" has the meaning given in Part 2 of the First Schedule;

"closed-end fund" means an arrangement referred to in paragraph (*a*) or (*b*) of the definition of "collective investment scheme" under which units that are issued are exclusively or primarily non-redeemable at the election of the holders of units, but does not include —

(*a*) an arrangement mentioned in paragraph (*a*) of that definition —

(i) which is a trust;

(ii) which invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(iii) all or any units of which are listed for quotation on an approved exchange;

(*aa*) an arrangement mentioned in paragraph (*a*) of that definition which —

(i) has all of the following characteristics:

(A) the arrangement is constituted in the form of an entity, a sub-fund or as a trust on or after 1 July 2013;

(B) under the investment policy of the arrangement, investments are made for the purpose of giving participants in the arrangement the benefit of the results of the investments of the arrangement;

(C) the arrangement does not carry on any business other than investment business and does not carry on any activity other than any activity that is solely incidental to the investment business; and

(ii) has at least one of the following characteristics:

(A) the investment policy of the arrangement is clearly set out in a document that is provided to each participant in the arrangement before, or at the time, the participant first invests in the arrangement;

(B) the entity, sub-fund or trust of which the arrangement is constituted is contractually bound to every participant in the arrangement to comply with the investment policy of the arrangement, as may be amended from time to time;

(C) the investment policy of the arrangement sets out the types of property which the arrangement is authorised to invest in, and the investment guidelines or restrictions that apply to the arrangement; or

(*b*) an arrangement referred to in paragraph (*a*) of that definition which is, or which belongs to a class or

description of arrangements which is, specified by the Authority, by notification in the *Gazette*, to be an arrangement that is not a closed-end fund, or a class or description of arrangements that are not closed-end funds, as the case may be;

"Code on Collective Investment Schemes" means the Code on Collective Investment Schemes referred to in section 284 which is issued by the Authority under section 321(1);

"collective investment scheme" means —

(*a*) an arrangement in respect of any property —

(i) under which the participants do not have day-to-day control over the management of the property, whether or not the participants have the right to be consulted or to give directions in respect of such management;

(ii) under which either or both of the following characteristics are present:

(A) the property is managed as a whole by or on behalf of a manager;

(B) the contributions of the participants, and the profits or income out of which payments are to be made to the participants, are pooled; and

(iii) under which either or both of the following characteristics are present:

(A) the effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(AA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding,

management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or

(AB) to receive sums paid out of such profits, income, or other payments or returns;

(B) the purpose, purported purpose or purported effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(BA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or

(BB) to receive sums paid out of such profits, income, or other payments or returns,

whether or not —

(BC) the arrangement provides for the participants to receive any benefit other than those set out in sub-paragraph (BA) or (BB) in the event that the purpose, purported purpose or purported effect is not realised; or

(BD) the purpose, purported purpose or purported effect is realised; or

(*b*) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice in the *Gazette*,

but does not include —

(*c*) an arrangement operated by a person otherwise than by way of business;

(*d*) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;

(*e*) an arrangement under which each of the participants is a related corporation of the manager;

(*f*) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —

(i) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or

(ii) a spouse, widow or widower, or a child, adopted child or stepchild below 18 years of age, of such director or equivalent person, former director or equivalent person, employee or former employee;

(*g*) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —

(i) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a

former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or

(ii) a spouse, widow or widower, or a child, adopted child or stepchild below 18 years of age, of such director or equivalent person, former director or equivalent person, employee or former employee;

(*h*) a franchise;

(*i*) an arrangement under which money received by an advocate and solicitor from his or her client, whether as a stakeholder or otherwise, acting in his or her professional capacity in the ordinary course of his or her practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;

(*j*) an arrangement made by any co-operative society registered under the Co-operative Societies Act 1979 in accordance with the objects thereof solely for the benefit of its members;

(*k*) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act 1971;

(*l*) an arrangement arising out of a life policy within the meaning of the Insurance Act 1966;

(*m*) a closed-end fund constituted either as an entity, a sub-fund or a trust;

(*n*) an arrangement under which the whole amount of each participant's contribution is a deposit as defined in section 4B of the Banking Act 1970;

(*o*) an arrangement of which —

(i) the predominant purpose is to enable the participants to share in the use or enjoyment

of the property or to make its use or enjoyment available gratuitously to others; and

(ii) the property does not consist of any of the following:

(A) any currency of any country or territory;

(B) any capital markets products;

(C) any policy as defined in the First Schedule to the Insurance Act 1966;

(D) any deposit as defined in section 4B of the Banking Act 1970;

(E) any credit facilities as defined in section 2(1) of the Banking Act 1970;

(*p*) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice in the *Gazette*;

"commodity" means —

(*a*) any produce, item, goods or article;

(*b*) any index, right or interest in any produce, item, goods or article; or

(*c*) any index, right, interest, tangible property or intangible property of any nature that is, or belongs to a class of indices, rights, interests, tangible properties or intangible properties that is, prescribed for the purposes of this definition,

but does not include —

(*d*) any produce, item, goods or article that is, or that belongs to a class of produce, items, goods or articles that is, prescribed not to be a commodity for the purposes of this definition; or

(*e*) any index, right or interest in any produce, item, goods or article that is, or that belongs to a class of

indices, rights or interests that is, prescribed not to be a commodity for the purposes of this definition;

"company" has the meaning given by section 4(1) of the Companies Act 1967;

"connected person", in relation to —

(*a*) an individual, means —

(i) the individual's spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister; and

(ii) a firm, a limited liability partnership or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm, limited liability partnership or corporation, whether such control is exercised individually or jointly; or

(*b*) a firm, a limited liability partnership or a corporation, means another firm, limited liability partnership or corporation in which the firstmentioned firm, limited liability partnership or corporation has control of not less than 20% of the voting power in that other firm, limited liability partnership or corporation,

and a reference in this Act to a person connected to another person is to be construed accordingly;

"corporation" has the meaning given by section 4(1) of the Companies Act 1967;

"custodian", in relation to a collective investment scheme constituted as a VCC or sub-fund, means an entity to which the assets of the scheme are entrusted for safekeeping;

"customer" means —

(*a*) in relation to a holder of a capital markets services licence —

(i) for the purposes of Parts 4, 6, 7 and 15, a person on whose behalf the holder carries on or will carry on any regulated activity; or

(ii) for the purposes of Part 5 —

(A) a person on whose behalf the holder carries on or will carry on any regulated activity; or

(B) any other person with whom the holder, as principal, enters or will enter into transactions for the sale or purchase of capital markets products,

but does not include such person or class of persons as may be prescribed for the purposes of this sub-paragraph; or

(*b*) for the purposes of Part 3 and the definition of "user", a person on whose behalf a member of an approved exchange, an approved clearing house, a recognised clearing house or a recognised market operator (as the case may be) carries on any activity regulated under this Act, but does not include —

(i) the member, with respect to dealings for the member's own account;

(ii) any officer, director, employee or representative of the member; or

(iii) a related corporation of the member, with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation;

"dealing in capital markets products" has the meaning given in the Second Schedule;

"debenture" includes —

(*a*) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a

corporation or any other entity, whether constituting a charge or not, on the assets of the issuer;

(*b*) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a trustee-manager of a business trust in its capacity as trustee-manager of the business trust, or a trustee of a real estate investment trust in its capacity as trustee of the real estate investment trust, whether constituting a charge or not, on the assets of the business trust or real estate investment trust; or

(*c*) such other product or class of products as the Authority may prescribe,

but does not include —

(*d*) a cheque, letter of credit, order for the payment of money or bill of exchange; or

(*e*) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made under that provision provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

"defalcation" means misapplication, including misappropriation, of any property;

"derivative", in relation to a unit in a business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

"derivatives contract" means —

(*a*) any contract or arrangement under which —

(i) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and

(ii) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:

(A) the value or amount of one or more underlying things;

(B) fluctuations in the values or amounts of one or more underlying things; or

(*b*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed to be a derivatives contract,

but does not include —

(*c*) securities;

(*d*) any unit in a collective investment scheme;

(*e*) a spot contract;

(*f*) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;

(*g*) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

(*h*) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or

(*i*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract;

"designated benchmark" means a financial benchmark that is designated by the Authority under section 123B to be a designated benchmark;

"designated benchmark submitter" means a corporation that is designated by the Authority under section 123ZI(1) to be a designated benchmark submitter;

"director" has the meaning given by section 4(1) of the Companies Act 1967;

"entity" includes a corporation, an unincorporated association, a partnership and the government of any state, but does not include a trust;

"exchange-traded derivatives contract" means a derivatives contract —

(*a*) that is executed on an organised market and is or will be cleared or settled by a clearing facility under an arrangement, process, mechanism or service by which the parties to the derivatives contract substitute or will substitute, through novation or otherwise, the credit of the clearing facility for the credit of the parties to the derivatives contract; and

(*b*) the contractual terms (other than price) of which —

(i) are in the same form as the contractual terms of other derivatives contracts of the same type that are executed on the organised market on which the derivatives contract is executed; and

(ii) conform to a standard that is provided under the business rules or practices of the organised market on which the derivatives contract is executed,

but does not include —

(*c*) any contract under which every contractual term can be negotiated; or

(*d*) any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed not to be an exchange-traded derivatives contract;

"executive officer", in relation to an approved exchange, a recognised market operator, a licensed trade repository, a

licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an authorised benchmark administrator, an authorised benchmark submitter, a designated benchmark submitter or any other corporation (called in this definition a relevant person), means any person, by whatever name called, who is —

(*a*) in the direct employment of, or acting for or by arrangement with, the relevant person; and

(*b*) concerned with or takes part in the management of the relevant person on a day-to-day basis;

"exempt benchmark administrator" means a person who is exempted under section 123K(1) from the requirement to be an authorised benchmark administrator;

"exempt benchmark submitter" means a person who is exempted under section 123ZH(1) from the requirement to be an authorised benchmark submitter;

"exempt person" means a person who is exempted under section 99;

"financial benchmark" means —

(*a*) any price, rate, index or value that is —

(i) determined periodically by the application (whether direct or indirect) of a formula or any other method of calculation to information or expressions of opinion concerning transactions in, or the state of, the market in respect of one or more underlying things;

(ii) made available to the public (whether free of charge or for payment); and

(iii) used for reference —

(A) to determine the interest payable or other sums due on deposits or credit facilities;

(B) to determine the price or value of any investment product as defined in section 2(1) of the Financial Advisers Act 2001; or

(C) to measure the performance of any product offered by a person who is, or who belongs to a class of persons which is, prescribed by regulations made under section 341; or

(*b*) such other price, rate, index or value as may be prescribed by regulations made under section 341 as a financial benchmark,

but does not include —

(*c*) a price, rate, index or value determined by, or on behalf of, the Government or a statutory body established under any Act, unless that price, rate, index or value is prescribed as a financial benchmark;

(*d*) a price, rate, index or value determined by a person which is intended to be for the person's exclusive use in transactions or agreements entered into, or to be entered into, by the person, unless that price, rate, index or value is prescribed as a financial benchmark;

(*e*) the price of a capital markets product; or

(*f*) such other price, rate, index or value as may be prescribed by regulations made under section 341 as not being a financial benchmark;

"financial instrument" includes any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, a group or groups of such financial instruments, and any other thing that is prescribed by the Authority by regulations made under section 341 for the purposes of this definition;

"financial year" has the meaning given by section 4(1) of the Companies Act 1967;

"firm" has the meaning given by section 2(1) of the Business Names Registration Act 2014;

"foreign company" has the meaning given by section 4(1) of the Companies Act 1967;

"franchise" means a written agreement or arrangement between 2 or more persons by which —

(*a*) a party (called in this definition the franchisor) to the agreement or arrangement authorises or permits another party (called in this definition the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;

(*b*) the business carried on by the franchisee or the person associated with the franchisee (as the case may be) is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;

(*c*) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee's business;

(*d*) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and

(*e*) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

"FSMA prohibition order" means a prohibition order made under section 7(1) of the Financial Services and Markets Act 2022;

[Act 18 of 2022 wef 31/07/2024]

"fund management" has the meaning given in the Second Schedule;

"futures contract" means —

(*a*) an exchange-traded derivatives contract under which —

(i) one party agrees to transfer title to an underlying thing, or a specified quantity of an underlying thing, to another party at a specified future time and at a specified price payable at that future time; or

(ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of an underlying thing agreed at the time of the making of the contract and at a specified future time; or

(*b*) an exchange-traded derivatives contract which is an option on an exchange-traded derivatives contract mentioned in paragraph (*a*);

"holding company" has the meaning given by section 5(4) of the Companies Act 1967;

"leveraged foreign exchange trading" has the meaning given in the Second Schedule;

"licensed foreign trade repository" means a corporation that has in force a foreign trade repository licence granted by the Authority under section 46E(2);

"licensed trade repository" means a corporation that has in force a trade repository licence granted by the Authority under section 46E(1);

"limited liability partnership" has the meaning given by section 2(1) of the Limited Liability Partnerships Act 2005;

"listing rules", in relation to a corporation that establishes or operates, or proposes to establish or operate, an organised market of an approved exchange or a recognised market operator, or an overseas exchange that establishes or operates or proposes to establish or operate an organised market of a recognised market operator, means rules governing or relating to —

(*a*) the admission to the official list of the corporation or overseas exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the organised market of the corporation or overseas exchange of securities, securities-based derivatives contracts or units in a collective investment scheme issued, or made available by such corporations, governments, bodies unincorporate or other persons, or the removal from that official list and for other purposes; or

(*b*) the activities or conduct of corporations, governments, bodies unincorporate and other persons who are admitted to that list,

whether those rules are made —

(*c*) by the corporation or overseas exchange, or are contained in any of the constituent documents of the corporation or overseas exchange; or

(*d*) by another person and adopted by the corporation or overseas exchange;

"manager", in relation to a collective investment scheme, means a person, by whatever name called, who is responsible for managing the property of, or operating, the collective investment scheme;

"member", in relation to an approved exchange, a recognised market operator, an approved clearing house or a recognised

clearing house, means a person who holds membership of any class or description in the approved exchange, recognised market operator, approved clearing house or recognised clearing house, whether or not the person holds any share in the share capital of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be;

"newspaper" has the meaning given by section 2 of the Newspaper and Printing Presses Act 1974;

"office copy" has the meaning given by section 4(1) of the Companies Act 1967;

"officer" has the meaning given by section 4(1) of the Companies Act 1967;

"organised market" has the meaning given in the First Schedule;

"overseas exchange" means a person operating an organised market outside Singapore that is regulated by a financial services regulatory authority of a country or territory other than Singapore;

"participant" means —

(*a*) for the purposes of Part 2, a person who may participate in one or more of the services provided by an approved exchange or a recognised market operator, in its capacity as an approved exchange or a recognised market operator, as the case may be;

(*aa*) for the purposes of Part 2A, a person who may participate in one or more of the services provided by a licensed trade repository or licensed foreign trade repository, in its capacity as a licensed trade repository or licensed foreign trade repository, as the case may be;

(*b*) for the purposes of Part 3, a person who, under the business rules of an approved clearing house or a recognised clearing house, may participate in one or more of the services provided by the approved

clearing house or recognised clearing house, in its capacity as an approved clearing house or a recognised clearing house, as the case may be; or

(*c*) for the purposes of any other provision of this Act, a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;

"partner" and "manager", in relation to a limited liability partnership, have the respective meanings given by section 2(1) of the Limited Liability Partnerships Act 2005;

"prescribed written law" means —

(*a*) for the purpose of Division 3 of Part 9 — this Act or any of the following Acts, and any subsidiary legislation made under this Act or those Acts:

(i) Banking Act 1970;

(ii) Credit Bureau Act 2016;

(iii) Deposit Insurance and Policy Owners' Protection Schemes Act 2011;

(iv) Finance Companies Act 1967;

(v) Financial Advisers Act 2001;

(vi) Financial Holding Companies Act 2013;

(vii) Financial Services and Markets Act 2022;

(viii) Insurance Act 1966;

(ix) Monetary Authority of Singapore Act 1970;

(x) Payment Services Act 2019;

(xi) Trust Companies Act 2005;

(xii) such other written law as the Authority may prescribe by regulations made under section 341; and

(*b*) for the purpose of any other provision — this Act or any of the following Acts, and any subsidiary legislation made thereunder:

(i) Banking Act 1970;

(ii) Finance Companies Act 1967;

(iii) Financial Advisers Act 2001;

(iv) Financial Services and Markets Act 2022;

(v) Insurance Act 1966;

(vi) Monetary Authority of Singapore Act 1970;

(vii) Payment Services Act 2019;

(viii) such other written law as the Authority may prescribe by regulations made under section 341;

[Act 12 of 2024 wef 24/01/2025]

"principal", in relation to a representative, means a person whom the representative is in the direct employment of, is acting for or is acting by arrangement with, and on behalf of whom the representative carries or will carry out any regulated activity;

"product financing" has the meaning given in the Second Schedule;

"providing credit rating services" has the meaning given in the Second Schedule;

"providing custodial services" has the meaning given in the Second Schedule;

"providing information in relation to a designated benchmark" means providing any information or expression of opinion —

(*a*) to, or for the purpose of passing the information or expression of opinion on to, a person (*A*) administering a designated benchmark; and

(*b*) that enables *A* to determine that designated benchmark;

"providing information in relation to a financial benchmark" means providing any information or expression of opinion —

(*a*) to, or for the purpose of passing the information or expression of opinion on to, a person (*A*) administering a financial benchmark; and

(*b*) that enables *A* to determine that financial benchmark;

"provisional representative", in respect of a type of regulated activity, has the meaning given to that expression by section 99E, and "provisional representative" means a provisional representative in respect of any type of regulated activity;

"public company" has the meaning given by section 4(1) of the Companies Act 1967;

"public register of representatives" means the register of that name under section 99C(3);

"quote" means to display or provide, on an organised market of an approved exchange or a recognised market operator, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange securities, securities-based derivatives contracts or units in a collective investment scheme are made on that organised market, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, securities-based derivatives contracts or units in a collective investment scheme;

"real estate investment trust", except in Division 3 of Part 7, means a collective investment scheme —

(*a*) that is authorised under section 286 or recognised under section 287;

(*b*) that is a trust;

(*c*) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(*d*) all or any units of which are listed for quotation on an approved exchange;

"real estate investment trust management" has the meaning given in the Second Schedule;

"recognised business trust" means a business trust that is recognised by the Authority under section 239D(1);

"recognised clearing house" means a corporation that is recognised by the Authority under section 51(1)(*b*) or (2) as a recognised clearing house;

"recognised market operator" means a corporation that is recognised by the Authority under section 9(1)(*b*) or (2) as a recognised market operator;

"record" means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

"registered business trust" has the meaning given by section 2 of the Business Trusts Act 2004;

"regulated activity" means an activity specified in the Second Schedule;

"regulated financial institution" means a person who carries on a business the conduct of which is regulated or authorised by the Authority or, if it were carried on in Singapore, would be regulated or authorised by the Authority;

[Act 12 of 2024 wef 30/08/2024]

"regulatory authority", in relation to a foreign country or jurisdiction, means an authority of the foreign country or jurisdiction exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act;

[Act 12 of 2024 wef 30/08/2024]

"related Acts prohibition order" means —

(*a*) a prohibition order made under section 68(1) of the Financial Advisers Act 2001 as in force immediately before the date of commencement of section 200(1)(*b*) and (2) to (7) of the Financial Services and Markets Act 2022;

(*b*) a prohibition order made under section 68(1) of the Financial Advisers Act 2001 as in force immediately before the date of commencement of section 200(1)(*b*) and (2) to (7) of the Financial Services and Markets Act 2022, and as continued by section 217(2) of the Financial Services and Markets Act 2022;

(*c*) an order made under section 74(1) of the Insurance Act 1966 as in force immediately before the date of commencement of section 204(1) to (4) of the Financial Services and Markets Act 2022; or

(*d*) an order made under section 74(1) of the Insurance Act 1966 as in force immediately before the date of commencement of section 204(1) to (4) of the Financial Services and Markets Act 2022, and as continued by section 218(2) of the Financial Services and Markets Act 2022;

[Act 18 of 2022 wef 31/07/2024]

"related corporation" has the meaning given by section 4(1) of the Companies Act 1967;

"representative" —

(*a*) in relation to a person (*A*) who carries on business in any regulated activity, except for the purposes of Part 13 and except as otherwise provided for in paragraphs (*b*) and (*c*) —

(i) means a person (*B*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *A*, who carries out for *A* any regulated activity (other than work ordinarily

performed by accountants, clerks or cashiers), whether or not *B* is remunerated, and whether *B*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

(ii) includes, where *A* is a corporation, any officer of *A* who performs for *A* any regulated activity, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise;

(*b*) in relation to a person (*C*) that is an authorised benchmark administrator or an exempt benchmark administrator —

(i) means a person (*D*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *C*, who carries out the activity of administering a designated benchmark (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *D* is remunerated, and whether *D*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

(ii) includes, where *C* is a corporation, any officer of *C* who performs for *C* the activity of administering a designated benchmark, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise; and

(*c*) in relation to a person (*E*) that is an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter —

(i) means a person (*F*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *E*, who carries out the activity of providing information in relation

to a designated benchmark (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *F* is remunerated, and whether *F*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

(ii) includes, where *E* is a corporation, any officer of *E* who performs for *E* the activity of providing information in relation to a designated benchmark, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise;

"responsible person", in relation to a collective investment scheme, means —

(*a*) in the case of a scheme that is constituted as a VCC or a sub-fund — the VCC;

(*b*) in the case of a scheme that is constituted as a corporation other than a VCC — the corporation; or

(*c*) in the case of any other scheme — the manager for the scheme;

"section 101A prohibition order" means —

(*a*) a prohibition order made under section 101A as in force immediately before the date of commencement of section 209(1)(*a*), (*c*) and (*d*), (4) to (14), (17) and (18) of the Financial Services and Markets Act 2022; or

(*b*) a prohibition order made under section 101A as in force immediately before the date of commencement of section 209(1)(*a*), (*c*) and (*d*), (4) to (14), (17) and (18) of the Financial Services and Markets Act 2022, and as continued by section 220(3) of the Financial Services and Markets Act 2022;

[Act 18 of 2022 wef 31/07/2024]

"section 123ZZC prohibition order" means —

(*a*) a prohibition order made under section 123ZZC as in force immediately before the date of commencement of section 209(1)(*a*), (*c*) and (*d*), (4) to (14), (17) and (18) of the Financial Services and Markets Act 2022; or

(*b*) a prohibition order made under section 123ZZC(1) as in force immediately before the date of commencement of section 209(1)(*a*), (*c*) and (*d*), (4) to (14), (17) and (18) of the Financial Services and Markets Act 2022, and as continued by section 220(5) of the Financial Services and Markets Act 2022;

[Act 18 of 2022 wef 31/07/2024]

"securities" means —

(*a*) shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership;

(*b*) debentures; or

(*c*) any other product or class of products as may be prescribed,

but does not include —

(*d*) any unit of a collective investment scheme;

(*e*) any bill of exchange;

(*f*) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or

(*g*) such other product or class of products as may be prescribed;

"securities-based derivatives contract" means any derivatives contract of which the underlying thing or any of the underlying things is a security or a securities index, but does not include any derivatives contract that is, or that

belongs to a class of derivatives contracts that is, prescribed by regulations made under section 341;

"Securities Industry Council" means the Securities Industry Council referred to in section 138;

"share" has the meaning given by section 4(1) of the Companies Act 1967;

"specified products" means securities, specified securities-based derivatives contracts or units in a collective investment scheme;

"specified securities-based derivatives contract" means a securities-based derivatives contract that is not a futures contract;

"spot contract" means a contract or an arrangement for the sale or purchase of any underlying thing at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the underlying thing immediately or within a period which must not be longer than the period determined by the market convention for delivery of the underlying thing;

"spot foreign exchange contract" has the meaning given in the Second Schedule;

"sub-fund" has the meaning given by section 2(1) of the Variable Capital Companies Act 2018;

"subsidiary" has the meaning given by section 5 of the Companies Act 1967;

"substantial unitholder" —

(*a*) in relation to a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the scheme; or

(*b*) in relation to a business trust, means a person who has an interest or interests in one or more voting units in

the business trust, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the business trust;

"Take-over Code" means the Singapore Code on Take-overs and Mergers referred to in section 139 which is issued by the Authority under section 321(1);

"take-over offer" means —

(*a*) an offer for the acquisition by or on behalf of a person of —

(i) in the case of a public company, or of a corporation all or any of the shares of which are listed for quotation on an approved exchange —

(A) some or all of the shares, or some or all of the shares of a particular class, in the company or corporation made to all members of the company or corporation, or where the person already holds shares in the company or corporation, made to all other members of the company or corporation; or

(B) all of the remaining shares in the company or corporation made to all other members of the company or corporation as a result of the person acquiring or consolidating effective control of that company or corporation within the meaning of the Take-over Code;

(ii) in the case of a registered business trust, or of a business trust all or any of the units of which are listed for quotation on an approved exchange —

(A) some or all of the units, or some or all of the units of a particular class, in the business trust made to all unitholders of the business trust, or where the person already holds units in the business trust, made to all other unitholders of the business trust; or

(B) all of the remaining units in the business trust made to all other unitholders of the business trust as a result of the person acquiring or consolidating effective control of that business trust within the meaning of the Take-over Code; or

(iii) in the case of a collective investment scheme constituted as a unit trust and authorised under section 286, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and all or any of the units in which are listed for quotation on an approved exchange —

(A) some or all of the units, or some or all of the units of a particular class, in the scheme made to all unitholders of the scheme, or where the person already holds units in the scheme, made to all other unitholders of the scheme; or

(B) all of the remaining units in the scheme made to all other unitholders of the scheme as a result of the person acquiring or consolidating effective control of that scheme within the meaning of the Take-over Code; or

(*b*) a proposed compromise or arrangement which —

(i) in the case of a public company, is referred to in section 210 of the Companies Act 1967; or

(ii) in the case of a corporation all or any of the shares of which are listed for quotation on an approved exchange, complies with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country or territory in which that corporation was incorporated,

and which, if executed, would result in a change in effective control of the public company or corporation within the meaning of the Take-over Code;

"temporary representative", in respect of a type of regulated activity, has the meaning given to that expression by section 99F, and "temporary representative" means a temporary representative in respect of any type of regulated activity;

"transaction information" means information relating to —

(*a*) offers or invitations to enter into, purchase, sell, or exchange capital markets products;

(*b*) executed transactions in capital markets products;

(*c*) transactions cleared or settled by an approved clearing house or a recognised clearing house; or

(*d*) transactions reported to a licensed trade repository or licensed foreign trade repository;

"treasury share" —

(*a*) in relation to a company, has the meaning given by section 4(1) of the Companies Act 1967; and

(*b*) in relation to a corporation (other than a company), means any share equivalent to a treasury share in a company;

"trustee-manager" —

(*a*) in relation to a registered business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

(*b*) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act 2004, means the company proposed to be named as the trustee-manager in the application made under that section;

(*c*) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust, by whatever name called and whether incorporated or not; and

(*d*) in relation to a business trust for which an application for recognition has been made under section 239D(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;

"underlying thing" means —

(*a*) in relation to a derivatives contract or a spot contract —

(i) a unit in a collective investment scheme;

(ii) a commodity;

(iii) a financial instrument;

(iv) the credit of any person; or

(v) an arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by regulations made under section 341 to be an underlying thing in relation to a derivatives contract or a spot contract,

but does not include any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by regulations made under section 341 not to be an underlying thing in relation to a derivatives contract or a spot contract; and

(*b*) in relation to a financial benchmark —

(i) an investment product as defined in section 2(1) of the Financial Advisers Act 2001;

(ii) a commodity;

(iii) a financial instrument;

(iv) any intangible property or class of intangible properties; or

(v) any arrangement, event or transaction that is, or that belongs to a class of arrangements, events or transactions that is, prescribed by regulations made under section 341 to be an underlying thing in relation to a financial benchmark,

but does not include any arrangement, event, intangible property or transaction that is, or that belongs to a class of arrangements, events, intangible properties or transactions that is, prescribed by regulations made under section 341 not to be an underlying thing in relation to a financial benchmark;

"unit" —

(*a*) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and

(*b*) in relation to a business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

"unitholder" —

(*a*) in relation to a collective investment scheme, means a participant of the scheme; and

(*b*) in relation to a business trust, means a person who holds a unit in the business trust;

"user" means —

(*a*) in relation to an approved exchange, a recognised market operator, an approved clearing house or a recognised clearing house, a person who is —

(i) a member of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be; or

(ii) a customer of a member of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be; or

(*b*) in relation to a licensed trade repository or a licensed foreign trade repository, a person who is —

(i) a participant of the licensed trade repository or licensed foreign trade repository; or

(ii) a client of a participant of the licensed trade repository or licensed foreign trade repository;

"user information" means transaction information that is referable to —

(*a*) a named user; or

(*b*) a group of users, from which the name of a user can be directly inferred;

"VCC" means a VCC or variable capital company as defined in section 2(1) of the Variable Capital Companies Act 2018;

"voting share" has the meaning given by section 4(1) of the Companies Act 1967;

"voting unit" —

(*a*) in relation to a business trust, means an issued unit in the business trust, other than —

(i) a unit to which in no circumstances is there attached a right to vote; or

(ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:

(A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;

(B) upon a proposal to reduce the unitholders' equity of the business trust;

(C) upon a proposal that affects rights attached to the unit;

(D) upon a proposal to wind up the business trust;

(E) upon a proposal for the disposal of the whole of the property, business and undertakings of the business trust;

(F) during the winding up of the business trust; and

(*b*) in relation to a collective investment scheme, means an issued unit in the scheme, other than —

(i) a unit to which in no circumstances is there attached a right to vote; or

(ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:

(A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;

(B) upon a proposal to reduce the participants' funds of the scheme;

(C) upon a proposal that affects rights attached to the unit;

(D) upon a proposal to wind up the scheme;

(E) upon a proposal for the disposal of the whole of the property, business and undertakings of the scheme;

(F) during the winding up of the scheme.

[2/2009; 34/2012; 29/2014; 4/2017; 44/2018; 2/2019; 1/2020; S 376/2008; S 20/2012]

(2) Any reference in this Act to the affairs of a corporation, unless the contrary intention appears, is to be construed as including a reference to —

(*a*) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

(*b*) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting paragraph (*a*)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(*c*) the internal management and proceeding of the corporation;

(*d*) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;

(ii) the corporation is under judicial management;

(iii) a compromise or an arrangement referred to in section 210 of the Companies Act 1967 or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 made between the corporation and another person or other persons is being administered; or

(iv) the corporation is being wound up,

and without limiting sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;

(*e*) the ownership of shares in, debentures of, units of shares in, units of debentures of, and units in a collective investment scheme issued by the corporation;

(*f*) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

(*g*) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;

(*h*) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of,

shares in, debentures of, units of shares in, units of debentures of, or units in a collective investment scheme issued by, the corporation;

(*i*) where the corporation has issued units in a collective investment scheme, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the units in a collective investment scheme relate; or

(*j*) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (*a*) to (*i*).

[40/2018]

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act 1967, the change of name does not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

(4) For the purposes of this Act, a person has a substantial shareholding in a corporation if —

(*a*) the person has an interest or interests in one or more voting shares (excluding treasury shares) in the corporation; and

(*b*) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in the corporation.

[2/2009]

(5) For the purposes of this Act, a person has a substantial shareholding in a corporation, being a corporation the share capital of which is divided into 2 or more classes of shares, if —

(*a*) the person has an interest or interests in one or more voting shares (excluding treasury shares) in one of those classes; and

(*b*) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in that class.

[2/2009]

(6) For the purposes of this Act, a person who has a substantial shareholding in a corporation is a substantial shareholder in that corporation.

[2/2009]

Associated person

3.—(1) Unless the context otherwise requires, any reference in this Act to a person associated with another person is a reference to —

(*a*) where the other person is a corporation —

(i) a director or secretary of the corporation;

(ii) a related corporation; or

(iii) a director or secretary of such a related corporation;

(*b*) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —

(i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or

(iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,

except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;

(*c*) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;

(*d*) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —

(i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or

(ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;

(*e*) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;

(*f*) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or

(*g*) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*), that last-mentioned person.

(2) Where, in any proceedings under this Act, it is alleged that a person referred to in subsection (1)(*d*)(i) was associated with another person at a particular time, the firstmentioned person is not considered to be so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the firstmentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person (*A*) is not taken to be associated with another person by virtue of subsection (1)(*b*), (*c*), (*e*) or (*f*) by reason only of one or more of the following:

(*a*) that one of those persons (*B*) provides advice to, or acts on behalf of, *A* in the proper performance of the functions attaching to *B*'s professional capacity or to *B*'s business relationship with *A*;

(*b*) that one of those persons, a customer, gives specific instructions to *A*, whose ordinary business includes dealing in capital markets products, to acquire shares on the customer's behalf in the ordinary course of that business;

(*c*) that one of those persons has sent, or proposes to send, to *A* a take-over offer, or has made, or proposes to make, offers under a take-over announcement, within the meaning of the Take-over Code, in relation to shares held by *A*;

(*d*) that one of those persons has appointed *A*, otherwise than for valuable consideration given by *A* or by an associate of *A*, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

[4/2017]

Interest in securities, securities-based derivatives contracts or units in collective investment scheme

4.—(1) Subject to this section, a person has an interest in securities, securities-based derivatives contracts or units in a collective investment scheme, if the person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be.

[4/2017]

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case

may be) is, or is capable of being made, subject to restraint or restriction.

[4/2017]

(3) Where any property held in trust consists of or includes securities, securities-based derivatives contracts or units in a collective investment scheme, and a person knows, or has reasonable grounds for believing, that the person has an interest under the trust, the person is treated as having an interest in those securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be.

[4/2017]

(4) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if a corporation has, or is by the provisions of this section treated as having, an interest in that security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) and —

(*a*) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person; or

(*b*) the person has a controlling interest in the corporation.

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(5) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if —

(*a*) a corporation has, or is by the provisions of this section (apart from this subsection) treated as having, an interest in that security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be; and

(*b*) the person, the associates of the person, or the person and the person's associates are entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation.

[4/2017]

(6) For the purposes of subsection (5), a person is an associate of another person if the firstmentioned person is —

(*a*) a subsidiary of that other person;

(*b*) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) referred to in subsection (5); or

(*c*) a corporation that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be.

[35/2014; 4/2017]

(7) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme in any one or more of the following circumstances:

(*a*) where the person has entered into a contract to purchase the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;

(*b*) where the person has a right, otherwise than by reason of having an interest under a trust, to have the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be), transferred to the person or to the person's order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(*c*) where the person has the right to acquire any of the following under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not:

(i) the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;

(ii) an interest in the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;

(*d*) where the person is entitled, otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to any of the following, as the case may be:

(i) the security, not being a security of which the person is a registered holder;

(ii) the securities-based derivatives contract, not being a contract to which the person is a party;

(iii) the unit in a collective investment scheme, not being a unit of which the person is a registered holder.

[4/2017]

(8) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if that security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) is held jointly by the person with another person.

[4/2017]

(9) For the purpose of determining whether a person has an interest in a security, securities-based derivatives contract or unit in a collective investment scheme, it is immaterial that the interest cannot be related to a particular security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be.

[4/2017]

(10) The following interests are to be disregarded:

(*a*) an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if the interest is that of a person who holds the security, securities-based derivatives contract or unit in a

collective investment scheme (as the case may be) as bare trustee;

(*b*) an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if —

(i) the interest is that of a person whose ordinary business includes the lending of money; and

(ii) the person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(*c*) an interest of a person in a security, securities-based derivatives contract or unit in a collective investment scheme if that interest is an interest held by the person by reason of the person holding a prescribed office;

(*d*) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act 1967;

(*e*) a prescribed interest in a security, securities-based derivatives contract or unit in a collective investment scheme being an interest of such person, or of the persons included in such class of persons, as may be prescribed;

(*f*) for the purposes of Part 7, an interest in a securities-based derivatives contract the obligations under which are to be discharged by one party to the other at some future time by cash settlement only.

[4/2017]

(11) An interest in a security, securities-based derivatives contract or unit in a collective investment scheme is not to be disregarded by reason only of —

(*a*) its remoteness;

(*b*) the manner in which it arose; or

(*c*) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

[4/2017]

Specific classes of investors

4A.—(1) Subject to subsection (2), unless the context otherwise requires —

(*a*) "accredited investor" means —

(i) an individual —

(A) whose net personal assets exceed in value $2 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;

(B) whose financial assets (net of any related liabilities) exceed in value $1 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount, where "financial asset" means —

(BA) a deposit as defined in section 4B of the Banking Act 1970;

(BB) an investment product as defined in section 2(1) of the Financial Advisers Act 2001; or

(BC) any other asset as may be prescribed by regulations made under section 341; or

(C) whose income in the preceding 12 months is not less than $300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;

(ii) a corporation with net assets exceeding $10 million in value (or its equivalent in a foreign currency) or

such other amount as the Authority may prescribe, in place of the first amount, as determined by —

(A) the most recent audited balance sheet of the corporation; or

(B) where the corporation is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which date must be within the preceding 12 months;

(iii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(iv) such other person as the Authority may prescribe;

(*b*) "expert investor" means —

(i) a person whose business involves the acquisition and disposal, or the holding, of capital markets products, whether as principal or agent;

(ii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(iii) such other person as the Authority may prescribe;

(*c*) "institutional investor" means —

(i) the Government;

(ii) a statutory board as may be prescribed by regulations made under section 341;

(iii) an entity that is wholly and beneficially owned, whether directly or indirectly, by a central government of a country and whose principal activity is —

(A) to manage its own funds;

(B) to manage the funds of the central government of that country (which may include the reserves

of that central government and any pension or provident fund of that country); or

(C) to manage the funds (which may include the reserves of that central government and any pension or provident fund of that country) of another entity that is wholly and beneficially owned, whether directly or indirectly, by the central government of that country;

(iv) any entity —

(A) that is wholly and beneficially owned, whether directly or indirectly, by the central government of a country; and

(B) whose funds are managed by an entity mentioned in sub-paragraph (iii);

(v) a central bank in a jurisdiction other than Singapore;

(vi) a central government in a country other than Singapore;

(vii) an agency (of a central government in a country other than Singapore) that is incorporated or established in a country other than Singapore;

(viii) a multilateral agency, international organisation or supranational agency as may be prescribed by regulations made under section 341;

(ix) a bank that is licensed under the Banking Act 1970;

(x) a merchant bank that is licensed under the Banking Act 1970;

(xi) a finance company that is licensed under the Finance Companies Act 1967;

(xii) a company or co-operative society that is licensed under the Insurance Act 1966 to carry on insurance business in Singapore;

(xiii) a company licensed under the Trust Companies Act 2005;

(xiv) a holder of a capital markets services licence;

(xv) an approved exchange;

(xvi) a recognised market operator;

(xvii) an approved clearing house;

(xviii) a recognised clearing house;

(xix) a licensed trade repository;

(xx) a licensed foreign trade repository;

(xxi) an approved holding company;

(xxii) a Depository as defined in section 81SF;

(xxiii) an entity or a trust formed or incorporated in a jurisdiction other than Singapore, which is regulated for the carrying on of any financial activity in that jurisdiction by a public authority of that jurisdiction that exercises a function that corresponds to a regulatory function of the Authority under this Act, the Banking Act 1970, the Finance Companies Act 1967, the Financial Services and Markets Act 2022, the Monetary Authority of Singapore Act 1970, the Insurance Act 1966, the Trust Companies Act 2005 or such other Act as may be prescribed by regulations made under section 341;

[Act 18 of 2022 wef 28/04/2023]

(xxiv) a pension fund, or collective investment scheme, whether constituted in Singapore or elsewhere;

(xxv) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors;

(xxvi) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(xxvii) such other person as the Authority may prescribe.

[4/2017; 1/2020]

(1A) In determining the value of an individual's net personal assets for the purposes of subsection (1)(*a*)(i)(A), the value of the individual's primary residence —

(*a*) is to be calculated by deducting any outstanding amounts in respect of any credit facility that is secured by the residence from the estimated fair market value of the residence; and

(*b*) is taken to be the lower of the following:

(i) the value calculated under paragraph (*a*);

(ii) $1 million.

[4/2017]

(2) The definitions in subsection (1) may be subject to such modifications as the Authority may prescribe for any specified provision of this Act.

Application

4B. This Act does not apply to a person in respect of whom a transitional approval or transitional licence mentioned in section 66 of the Commodity Trading Act 1992 is in force, to the extent that the activities carried out by the person are regulated under, and authorised by, that section.

[4/2017]

PART 2

ORGANISED MARKETS

Objectives of this Part

5. The objectives of this Part are —

(*a*) to promote fair, orderly and transparent markets;

(*b*) to facilitate efficient markets for the allocation of capital and the transfer of risks; and

(*c*) to reduce systemic risk.

[4/2017]

Interpretation of this Part

6. In this Part, unless the context otherwise requires —

"foreign corporation" means a corporation that is formed or incorporated outside Singapore;

"Singapore corporation" means a corporation that is formed or incorporated in Singapore;

[Act 12 of 2024 wef 24/01/2025]

"Singapore recognised market operator" means a recognised market operator that is a Singapore corporation.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

Division 1 — Establishment of Organised Markets

Requirement for approval or recognition

7.—(1) A person must not establish or operate an organised market, or hold itself out as operating an organised market, unless the person is —

(*a*) an approved exchange; or

(*b*) a recognised market operator.

[4/2017]

(2) A person must not hold itself out —

(*a*) as an approved exchange, unless the person is an approved exchange; or

(*b*) as a recognised market operator, unless the person is a recognised market operator.

[4/2017]

(3) Except with the written approval of the Authority, a person, other than an approved exchange or a recognised market operator, must not take or use, or have attached to or exhibited at any place —

(*a*) the title or description "securities exchange", "stock exchange", "futures exchange" or "derivatives exchange" in any language; or

(*b*) any title or description that resembles a title or description referred to in paragraph (*a*).

[4/2017]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Despite section 337(1), the Authority may, by regulations made under section 44, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(7) The Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 5.

[4/2017]

(8) It is not necessary to publish any exemption granted under subsection (7) in the *Gazette*.

[4/2017]

(9) The Authority may, at any time, by written notice —

(*a*) add to the conditions or restrictions mentioned in subsection (7); or

(*b*) vary or revoke any condition or restriction mentioned in that subsection.

[4/2017]

(10) Every corporation that is exempted under subsection (6) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(11) Every corporation that is exempted under subsection (7) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (9).

[4/2017]

(12) Any corporation which contravenes subsection (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Application for approval or recognition

8.—(1) A Singapore corporation may apply to the Authority to be —

(*a*) approved as an approved exchange; or

(*b*) recognised as a recognised market operator.

[4/2017]

(2) A foreign corporation may apply to the Authority to be recognised as a recognised market operator.

[4/2017]

(3) An application made under subsection (1) or (2) must be —

(*a*) made in such form and manner as the Authority may specify; and

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 44, which must be paid in the manner specified by the Authority.

[4/2017]

(4) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

Power of Authority to approve exchanges and recognise market operators

9.—(1) Where a Singapore corporation makes an application under section 8(1), the Authority may —

(*a*) in the case of an application to be approved as an approved exchange, approve the Singapore corporation as an approved exchange; or

(*b*) in the case of an application to be recognised as a recognised market operator, recognise the Singapore corporation as a recognised market operator.

[4/2017]

(2) Where a foreign corporation makes an application under section 8(2), the Authority may recognise the foreign corporation as a recognised market operator.

[4/2017]

(3) Despite subsection (1), the Authority may, with the consent of the applicant —

(*a*) treat an application under section 8(1)(*a*) as an application under section 8(1)(*b*) if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or

(*b*) treat an application under section 8(1)(*b*) as an application under section 8(1)(*a*) if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

[4/2017]

(4) The Authority may approve a Singapore corporation as an approved exchange under subsection (1)(*a*), recognise a Singapore corporation as a recognised market operator under subsection (1)(*b*), or recognise a foreign corporation as a recognised market operator under subsection (2), subject to such conditions or restrictions of a general or specific nature as the Authority may impose by written notice, including conditions or restrictions relating to —

(*a*) the activities that the corporation may undertake;

(*b*) the products that may be traded on any organised market established or operated by the corporation;

(*c*) the nature of the investors or participants who may use, invest in, or participate in any product traded on any organised market established or operated by the corporation; and

(*d*) the financial requirements to be imposed on the corporation.

[4/2017]

(5) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose further conditions or restrictions.

[4/2017]

(6) An approved exchange or a recognised market operator must, for the duration of the approval or recognition, satisfy every condition or restriction that may be imposed on it under subsections (4) and (5).

[4/2017]

(7) The Authority must not approve an applicant as an approved exchange, or recognise an applicant as a recognised market operator, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe by regulations made under section 44, either generally or specifically.

[4/2017]

(8) The Authority may refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, if —

(*a*) the corporation has not provided the Authority with such information as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties

they are to perform in connection with the establishment or operation of any organised market;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with the establishment or operation of any organised market;

(*m*) there are other circumstances that are likely to —

(i) lead to the improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*n*) in the case of any organised market that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a fair, orderly and transparent organised market;

(*o*) the corporation does not satisfy the criteria prescribed under section 10 to be approved as an approved exchange or recognised as a recognised market operator, as the case may be; or

(*p*) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[4/2017]

(9) Subject to subsection (10), the Authority must not refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, under subsection (8), without giving the corporation an opportunity to be heard.

[4/2017]

(10) The Authority may refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[4/2017]

(11) The Authority must give notice in the *Gazette* of any corporation approved as an approved exchange under subsection (1)(*a*) or recognised as a recognised market operator under subsection (1)(*b*) or (2), and such notice may include all or any

of the conditions and restrictions imposed by the Authority on the corporation under subsections (4) and (5).

[4/2017]

(12) Any applicant who is aggrieved by a refusal of the Authority to approve the applicant under subsection (1)(*a*) or a refusal of the Authority to recognise the applicant under subsection (1)(*b*) or (2) may, within 30 days after the applicant is notified of the refusal, appeal to the Minister whose decision is final.

[4/2017]

(13) Any approved exchange or recognised market operator which contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

General criteria to be taken into account by Authority

10.—(1) The Authority may by regulations made under section 44 prescribe the criteria that the Authority may take into account for the purposes of deciding —

(*a*) whether a Singapore corporation mentioned in section 8(1) or 12(1) should be approved as an approved exchange or recognised as a recognised market operator;

(*b*) whether a foreign corporation mentioned in section 8(2) should be recognised as a recognised market operator; and

(*c*) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 12(4) should be approved as an approved exchange or recognised as a recognised market operator.

[4/2017]

(2) Without affecting section 9 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised market operator under section 9(2), have regard, in addition to any requirements prescribed under section 9(7) and any criteria prescribed under subsection (1), to —

(*a*) whether adequate arrangements exist for cooperation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 5 are achieved, to the requirements and supervision to which approved exchanges and recognised market operators are subject under this Act.

[4/2017]

(3) In considering whether a foreign corporation has met the requirements mentioned in subsection (2)(*b*), the Authority may have regard to —

(*a*) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) the rules and practices of the foreign corporation.

[4/2017]

Annual fees payable by approved exchange and recognised market operator

11.—(1) Every approved exchange and every recognised market operator must pay to the Authority such annual fees as may be prescribed by regulations made under section 44 in such manner as the Authority may specify.

[4/2017]

(2) The Authority may, where it considers appropriate, refund or remit the whole or any part of any annual fee paid or payable to it.

[4/2017]

Change in status

12.—(1) A Singapore corporation that is an approved exchange or a recognised market operator may apply to the Authority to change its status in the manner mentioned in subsection (5).

[4/2017]

(2) An application under subsection (1) must be —

(*a*) made in such form and manner as the Authority may specify; and

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 44, which must be paid in the manner specified by the Authority.

[4/2017]

(3) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

(4) The Authority may, on its own initiative, review the status of a Singapore corporation that is an approved exchange or a recognised market operator to determine whether the Singapore corporation continues to meet the requirements prescribed under section 9(7) and the criteria prescribed under section 10(1).

[4/2017]

(5) Where an application is made by a Singapore corporation under subsection (1), or where a review of the status of a Singapore corporation is conducted by the Authority under subsection (4), the Authority may —

(*a*) if the Singapore corporation is an approved exchange, withdraw the approval as such and recognise the Singapore corporation as a recognised market operator under section 9(1)(*b*);

(*b*) if the Singapore corporation is a recognised market operator, withdraw the recognition as such and approve the Singapore corporation as an approved exchange under section 9(1)(*a*); or

(*c*) make no change to the status of the Singapore corporation as an approved exchange or a recognised market operator, as the case may be.

[4/2017]

(6) Where an application is made under subsection (1), the Authority must not exercise its power under subsection (5)(*c*) without giving the Singapore corporation an opportunity to be heard.

[4/2017]

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority must not exercise its powers under subsection (5)(*a*) or (*b*) without giving the Singapore corporation an opportunity to be heard.

[4/2017]

(8) Any Singapore corporation that is aggrieved by a decision of the Authority made in relation to the Singapore corporation after a review under subsection (4) may, within 30 days after the Singapore corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

Cancellation of approval or recognition

13.—(1) An approved exchange or a recognised market operator that intends to cease operating its organised market or, where it operates more than one organised market, all of its organised markets, may apply to the Authority to cancel its approval as an approved exchange or recognition as a recognised market operator, as the case may be.

[4/2017]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may specify.

[4/2017]

(3) The Authority may cancel the approval of an approved exchange, or the recognition of a recognised market operator, on the application mentioned in subsection (1) if the Authority is satisfied that —

(*a*) the approved exchange or recognised market operator mentioned in subsection (1) has ceased operating its organised market or all of its organised markets, as the case may be; and

(*b*) the cancellation of the approval or recognition (as the case may be) will not detract from the objectives specified in section 5.

[4/2017]

Power of Authority to revoke approval and recognition

14.—(1) The Authority may revoke any approval of a Singapore corporation as an approved exchange under section 9(1)(*a*), any recognition of a Singapore corporation as a recognised market operator under section 9(1)(*b*), or any recognition of a foreign corporation as a recognised market operator under section 9(2), if —

(*a*) there exists at any time a ground under section 9(7) or (8) on which the Authority may refuse an application;

(*b*) the corporation does not commence operating its organised market or, where it operates more than one organised market, all of its organised markets, within 12 months starting on the date on which it was approved under section 9(1)(*a*) or was recognised under section 9(1)(*b*) or (2), as the case may be;

(*c*) the corporation ceases to operate its organised market or, where it operates more than one organised market, all of its organised markets;

(*d*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;

(ii) any direction issued to it by the Authority under this Act; or

(iii) any provision of this Act;

(*e*) upon the Authority exercising any power under section 46AAB(2) or the Minister exercising any power under Division 2, 4, 5 or 6 of Part 8 of the Financial

Services and Markets Act 2022 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;

[Act 18 of 2022 wef 10/05/2024]

(*f*) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or

(*g*) any information or document provided by the corporation to the Authority is false or misleading.

[4/2017; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 9(1)(*a*), or recognition under section 9(1)(*b*) or (2), that was granted to a corporation without giving the corporation an opportunity to be heard.

[4/2017]

(3) The Authority may revoke an approval under section 9(1)(*a*), or a recognition under section 9(1)(*b*) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[4/2017]

(4) For the purposes of subsection (1)(*c*), a corporation is to be treated to have ceased to operate its organised market if —

(*a*) it has ceased to operate the organised market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or

(*b*) it has ceased to operate the organised market under a direction issued by the Authority under section 45.

[4/2017]

(5) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as the Minister considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 9(1) or (2) does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of an organised market operated by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of any approval or recognition of a corporation under section 9(1) or (2).

[4/2017]

Division 2 — Regulation of Approved Exchanges

Subdivision (1) — Obligations of approved exchanges

General obligations

15.—(1) An approved exchange must —

(*a*) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;

(*b*) manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) ensure that access for participation in its facilities is subject to criteria that —

(i) are fair and objective; and

(ii) are designed to ensure the orderly functioning of the organised market that it operates and to protect the interests of the investing public;

(*e*) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —

(i) the organised market to be operated in a fair, orderly and transparent manner; and

(ii) the proper regulation and supervision of its members;

(*f*) enforce compliance with its business rules and, where appropriate, its listing rules;

(*g*) have sufficient financial, human and system resources —

(i) to operate a fair, orderly and transparent organised market;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and

(*i*) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[4/2017]

Obligation to notify Authority of certain matters

16.—(1) An approved exchange must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the approved exchange in its application under section 8(1) or 12(1);

(*b*) any change to the type or number of organised markets it operates;

(*c*) the carrying on of any business (called in this section a proscribed business) by the approved exchange other than such business or such class of businesses prescribed by regulations made under section 44;

(*d*) the acquisition by the approved exchange of a substantial shareholding in a corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 44;

(*e*) the approved exchange becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a member of the approved exchange to meet its financial obligations to the approved exchange;

(*f*) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;

(*g*) any other matter that the Authority may —

(i) prescribe by regulations made under section 44 for the purposes of this subsection; or

(ii) specify by written notice to the approved exchange in any particular case.

[4/2017]

(2) Without limiting section 45(1), the Authority may, at any time after receiving a notice mentioned in subsection (1), issue directions to the approved exchange —

(*a*) where the notice relates to a matter mentioned in subsection (1)(*c*) —

(i) requiring it to cease carrying on the proscribed business; or

(ii) permitting it to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that the carrying on of the proscribed business subject to those conditions or restrictions is necessary for any purpose mentioned in section 45(1)(*a*) to (*d*); or

(*b*) where the notice relates to a matter mentioned in subsection (1)(*d*) —

(i) requiring it to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

(ii) requiring it to exercise its rights relating to such shareholding, or to not exercise such rights, subject

to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that such exercise or non-exercise of rights subject to those conditions or restrictions is necessary for any purpose mentioned in section 45(1)(*a*) to (*d*).

[4/2017]

(3) An approved exchange must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An approved exchange must notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An approved exchange must notify the Authority of any matter that the Authority may specify by written notice to the approved exchange, no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to manage risks prudently

17.—(1) Without limiting section 15(1)(*b*), an approved exchange must ensure that the systems and controls concerning the assessment and management of risks to every organised market that the approved exchange operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

(2) Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Obligation to maintain proper records

18.—(1) An approved exchange must maintain a record of all transactions effected through its organised market in accordance with regulations mentioned in subsection (2).

[4/2017]

(2) The Authority may prescribe by regulations made under section 44 —

(*a*) the form and manner in which the record mentioned in subsection (1) is to be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[4/2017]

Obligation to submit periodic reports

19. An approved exchange must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe by regulations made under section 44.

[4/2017]

Obligation to assist Authority

20. An approved exchange must provide such assistance to the Authority as the Authority may require for the performance of the Authority's functions and duties, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the approved exchange;

(B) in respect of any transaction or class of transactions, whether completed or

uncompleted, effected through the organised market of the approved exchange; or

(C) in respect of any product or class of products traded on the organised market of the approved exchange; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[4/2017]

Obligation to maintain confidentiality

21.—(1) Subject to subsection (2), an approved exchange and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

(*a*) comes to the knowledge of the approved exchange or any of its officers or employees; or

(*b*) is in the possession of the approved exchange or any of its officers or employees.

[4/2017]

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe by regulations made under section 44;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[4/2017]

(3) To avoid doubt, nothing in this section is to be construed as preventing an approved exchange from entering into a written agreement with a user that obliges the approved exchange to maintain a higher degree of confidentiality than that specified in this section.

[4/2017]

Penalties under this Subdivision

22. Any approved exchange which contravenes section 15(1), 16(1) or (3), 18(1), 19, 20 or 21(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Subdivision (2) — Rules of approved exchanges

Business rules and listing rules of approved exchanges

23.—(1) Without limiting sections 15 and 44 —

(*a*) the Authority may by regulations made under section 44 prescribe the matters that an approved exchange must provide for in the business rules or listing rules of the approved exchange; and

(*b*) the approved exchange must provide for those matters in its business rules or listing rules, as the case may be.

[4/2017]

(2) An approved exchange must not make any amendment to its business rules or listing rules unless it complies with such requirements as the Authority may prescribe by regulations made under section 44.

[4/2017]

(3) In this Subdivision, any reference to an amendment to a business rule or listing rule is to be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule or listing rule (as the case may be), whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the approved exchange.

[4/2017]

(4) Any approved exchange which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence,

to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Business rules of approved exchanges have effect as contract

24.—(1) The business rules of an approved exchange are to be treated, and are to operate, as a binding contract —

(*a*) between the approved exchange and each member; and

(*b*) between each member and every other member.

[4/2017]

(2) The approved exchange and each member are treated to have agreed to observe and perform the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved exchange or that member, as the case may be.

[4/2017]

Power of court to order observance or enforcement of business rules or listing rules

25.—(1) Where any person (*A*) which is under an obligation to comply with, observe, enforce or give effect to the business rules or listing rules of an approved exchange fails to do so, the General Division of the High Court may, on the application of the Authority, an approved exchange or a person aggrieved by the failure (*B*), and after giving *A* an opportunity to be heard, make an order directing *A* to comply with, observe, enforce or give effect to those business rules or listing rules.

[4/2017; 40/2019]

(2) This section is in addition to, and not in derogation of, any other remedy available to *B*.

[4/2017]

(3) Any person which, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(4) Subject to subsection (5), subsection (3) does not affect the powers of the court in relation to the punishment of contempt of the court.

[4/2017]

(5) Where a person is convicted of an offence under subsection (3) in respect of any contravention of an order made under subsection (1), such contravention is not punishable as a contempt of court.

[4/2017]

(6) A person must not be convicted of an offence under subsection (3) in respect of any contravention of an order made under subsection (1) that has been punished as a contempt of court.

[4/2017]

Non-compliance with business rules or listing rules not to substantially affect rights of person

26. Any failure by an approved exchange to comply with —

(*a*) this Act;

(*b*) its business rules; or

(*c*) where applicable, its listing rules,

in relation to a matter does not prevent that matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

[4/2017]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in approved exchange

27.—(1) A person must not enter into any agreement to acquire shares in an approved exchange by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved exchange without first obtaining the approval of the Authority to enter into the agreement.

[4/2017]

(2) A person must not become —

(*a*) a 12% controller; or

(*b*) a 20% controller,

of an approved exchange without first obtaining the approval of the Authority.

[4/2017]

(3) In subsection (2) —

"12% controller" means a person, not being a 20% controller, who alone or together with the person's associates —

(*a*) holds not less than 12% of the shares in the approved exchange; or

(*b*) is in a position to control not less than 12% of the votes in the approved exchange;

"20% controller" means a person who, alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the approved exchange; or

(*b*) is in a position to control not less than 20% of the votes in the approved exchange.

[4/2017]

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in an approved exchange is to be construed as a reference to the control, whether direct or indirect, of that percentage of the

total number of votes that might be cast in a general meeting of the approved exchange; and

(*c*) a person (*A*) is an associate of another person (*B*) if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iv) *A* is a subsidiary of *B*;

(v) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control not less than 20% of the votes in *A*; or

(vi) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved exchange.

[4/2017]

(5) The Authority may grant its approval mentioned in subsection (1) or (2) subject to conditions or restrictions.

[4/2017]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2), or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved exchange in which a substantial shareholder,

12% controller or 20% controller of the approved exchange has an interest.

[4/2017]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares that are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the constitution or other constituent document or documents of the approved exchange —

(*a*) no voting rights are exercisable in respect of the shares that are the subject of the direction;

(*b*) the approved exchange must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares that are the subject of the direction; and

(*c*) except in a liquidation of the approved exchange, the approved exchange must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares that are the subject of the direction.

[4/2017]

(8) Any issue of shares by an approved exchange in contravention of subsection (7)(*b*) is treated as void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the approved exchange, upon which the approved exchange must return to the person any payment received from the person in respect of those shares.

[4/2017]

(9) Any payment made by an approved exchange in contravention of subsection (7)(*c*) is treated as void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the approved exchange.

[4/2017]

(10) The Authority may, by regulations made under section 44, exempt —

(*a*) any person or class of persons; or

(*b*) any class or description of shares or interests in shares,

from the requirement under subsection (1) or (2), subject to such conditions or restrictions as may be prescribed in those regulations.

[4/2017]

(11) The Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[4/2017]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(14) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Approval of chairperson, chief executive officer, director and key persons

28.—(1) An approved exchange must not appoint a person as its chairperson, chief executive officer or director unless the approved exchange has obtained the approval of the Authority.

[4/2017]

(2) The Authority may, by written notice, require an approved exchange to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the

approved exchange and the approved exchange must comply with the notice.

[4/2017]

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may specify.

[4/2017]

(4) Without limiting section 44 and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe by regulations made under section 44 or notify in writing to the approved exchange.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the approved exchange an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved exchange an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) An approved exchange must, as soon as practicable, give written notice to the Authority of the resignation or removal of its

chairperson, chief executive officer or director, or of any person mentioned in any notice issued by the Authority to the approved exchange under subsection (2).

[4/2017]

(9) The Authority may make regulations under section 44 relating to the composition and duties of the board of directors or any committee of an approved exchange.

[4/2017]

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of an approved exchange, or any body responsible for disciplinary action against a member of an approved exchange.

[4/2017]

(11) The Authority may, by regulations made under section 44, exempt any approved exchange or class of approved exchanges from complying with subsection (1) or (8), subject to such conditions or restrictions as may be prescribed in those regulations.

[4/2017]

(12) The Authority may, by written notice, exempt any approved exchange from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[4/2017]

(14) Any approved exchange which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Listing, de-listing or trading of certain instruments, contracts and transactions

29.—(1) An approved exchange must, in respect of any relevant product that is listed or permitted for trading on any organised market operated by the approved exchange, comply with requirements

prescribed by regulations made under section 44 or specified in directions issued under section 45 relating to —

(*a*) the limits that the approved exchange must establish on the number of open positions that may be held by any participant in respect of the relevant product;

(*b*) the steps that the approved exchange must take to ensure compliance with the limits established under paragraph (*a*);

(*c*) the positions that the approved exchange must reckon for the purpose of determining if limits established under paragraph (*a*) have been exceeded;

(*d*) the settlement procedures that the approved exchange must establish in respect of the relevant product;

(*e*) the limits that the approved exchange must establish on the price movements of the relevant product; and

(*f*) any other matter in respect of the relevant product that the Authority considers necessary or expedient for the furtherance of the objectives mentioned in section 5.

[4/2017]

(2) An approved exchange must, within such time and in such form and manner as the Authority may specify, notify the Authority that it has taken measures to comply with the requirements mentioned in subsection (1) —

(*a*) before listing or de-listing, or permitting the trading of, any relevant product on any organised market operated by the approved exchange; and

(*b*) after listing or permitting the trading of any relevant product on any organised market operated by the approved exchange.

[4/2017]

(3) An approved exchange which is required under subsection (2) to notify the Authority must use due care to ensure that the notification is not false or misleading in any material particular.

[4/2017]

(4) Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any approved exchange which contravenes subsection (2)(*a*) or (*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Any approved exchange which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

(7) Any participant who wilfully exceeds any limit established by an approved exchange in accordance with the requirements imposed under subsection (1)(*a*) on the number of open positions that may be held by any participant in respect of any relevant product shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000.

[4/2017]

(8) In this section, "relevant product" means any instrument, contract or transaction on any organised market operated by the approved exchange, but does not include —

(*a*) securities;

(*b*) any unit in a collective investment scheme;

(*c*) a spot contract;

(*d*) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;

(*e*) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

(*f*) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or

(*g*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract.

[4/2017; 1/2020]

Listing of approved exchange on organised market

30.—(1) The securities or securities-based derivatives contracts of an approved exchange must not be listed for quotation on an organised market that is operated by the approved exchange or any of its related corporations unless the approved exchange and the operator of the organised market have entered into such arrangements as the Authority may require —

(*a*) for dealing with possible conflicts of interest that may arise from such listing; and

(*b*) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved exchange on the organised market.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved exchange are listed for quotation on an organised market operated by the approved exchange or any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

(*a*) the admission of the approved exchange to, or the removal of the approved exchange from, the official list of the organised market; and

(*b*) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved exchange to be, or the stopping or suspending of the securities or securities-based derivatives

contracts (as the case may be) of the approved exchange from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

(*a*) modify the listing rules of the organised market for the purpose of their application to the listing for quotation or trading of the securities or securities-based derivatives contracts of the approved exchange; or

(*b*) waive the application of any listing rule of the organised market to the approved exchange.

[4/2017]

(4) Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Auditors of approved exchanges — appointment and duties

31.—(1) Despite any other provision of this Act or any other written law, every approved exchange must —

(*a*) on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and

(*b*) where, for any reason, the auditor ceases to act for the approved exchange, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor must not be approved by the Authority as an auditor for an approved exchange unless the auditor is able to comply with such conditions in relation to the discharge of an auditor's duties as the Authority may determine.

(3) The Authority may appoint an auditor for an approved exchange if —

(*a*) the approved exchange fails to appoint an auditor in accordance with subsection (1); or

(*b*) the Authority considers it desirable that another auditor should act with an auditor for the approved exchange appointed under subsection (1),

and may at any time fix the remuneration to be paid by the approved exchange to that auditor.

(4) The duties of an auditor appointed under subsections (1) and (3) are —

(*a*) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the approved exchange; and

(*b*) to make a report in respect of the latest financial statements of the approved exchange or, where the approved exchange is a parent company for which consolidated financial statements are prepared, the consolidated financial statements, in accordance with section 207 of the Companies Act 1967.

(5) The Authority may, by written notice, impose all or any of the following duties on an auditor in addition to those in subsection (4):

(*a*) a duty to submit to the Authority such additional information in relation to the auditor's audit as the Authority considers necessary;

(*b*) a duty to enlarge or extend the scope of the auditor's audit of the business and affairs of the approved exchange;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit to the Authority a report on any of the matters mentioned in paragraphs (*b*) and (*c*).

(6) An auditor to whom a notice is given under subsection (5) must comply with each direction specified in the notice.

(7) The approved exchange must remunerate the auditor in respect of the discharge by the auditor of the duties mentioned in subsection (5).

(8) Despite any other provision of this Act or the provisions of the Companies Act 1967, the Authority may, if it is not satisfied with the performance of any duty by an auditor of an approved exchange, at any time —

(*a*) direct the approved exchange to remove the auditor; and

(*b*) direct the approved exchange to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the approved exchange must comply with such direction.

(9) If an auditor discloses in good faith to the Authority any information mentioned in subsection (5)(*a*) or report mentioned in subsection (5)(*d*), the disclosure is not to be treated as a breach of any restriction on the disclosure imposed by any law, contract or rules of professional conduct, and the auditor is not liable for any loss arising from the disclosure or any act or omission as a result of the disclosure.

(10) An approved exchange that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(11) An approved exchange that fails to comply with a direction under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

(12) Any auditor who fails to carry out any duty mentioned in subsection (4), or who fails to comply with subsection (6), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a

further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Auditors of approved exchanges to report certain matters and irregularities to Authority

31A.—(1) If an auditor of an approved exchange, in the course of performing the auditor's duties mentioned in section 31(4) or (5), becomes aware of any matter or irregularity mentioned in the following paragraphs, the auditor must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter that, in the auditor's opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;

(*b*) any matter that, in the auditor's opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(*c*) any irregularity that has or may have a material effect upon the accounts of the approved exchange, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

(2) An auditor of an approved exchange is not, in the absence of malice on the auditor's part, liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of an approved exchange may have, apart from this section, as a defendant in an action for defamation.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to appoint auditor to examine and audit books of approved exchange

31B.—(1) Where —

(*a*) an approved exchange is required under section 19 to submit to the Authority an auditor's report but fails to do so; or

(*b*) the Authority receives a report under section 31A(1),

the Authority may, without affecting its powers under section 31, if it is satisfied that it is in the interests of the approved exchange, the participants of the approved exchange or the general public to do so, appoint in writing an auditor to examine and audit (either generally or in relation to any particular matter) the books of the approved exchange.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the approved exchange, the Authority may, in writing, direct the approved exchange to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where an approved exchange fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

[Act 12 of 2024 wef 24/01/2025]

Restriction on auditor's and employee's right to communicate certain matters

31C. Except as may be necessary for carrying into effect the provisions of this Act or so far as may be required for the purposes of any legal proceedings (whether civil or criminal), an auditor who is carrying out any duty imposed under section 31(5) or who is appointed under section 31B, or any employee of such auditor, must not disclose any information which may come to his or her knowledge or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

(*a*) the Authority;

(*b*) in the case of an employee of such auditor, the auditor; and

(*c*) any other person authorised by the Authority in writing to receive such information.

[Act 12 of 2024 wef 24/01/2025]

Subdivision (4) — Immunity

Immunity from criminal or civil liability

32.—(1) No criminal or civil liability is incurred by —

(*a*) an approved exchange; or

(*b*) any person acting on behalf of an approved exchange,

for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved exchange under this Act or under the business rules or, where appropriate, listing rules of the approved exchange.

[4/2017]

(2) For the purposes of subsection (1), the reference to a person acting on behalf of an approved exchange includes —

(*a*) any director of an approved exchange; or

(*b*) any member of any committee established by an approved exchange.

[4/2017]

Division 3 — Regulation of Recognised Market Operators

General obligations

33.—(1) A recognised market operator must —

(*a*) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;

(*b*) manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) ensure that access for participation in its facilities is subject to criteria that are —

(i) fair and objective; and

(ii) designed to ensure the orderly functioning of its organised market and to protect the interests of the investing public;

(*e*) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —

(i) the organised market to be operated in a fair, orderly and transparent manner; and

(ii) the proper regulation and supervision of its members;

(*f*) enforce compliance with its business rules and, where appropriate, its listing rules;

(*g*) have sufficient financial, human and system resources —

(i) to operate a fair, orderly and transparent organised market;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and

(*i*) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[4/2017]

Obligation to notify Authority of certain matters

34.—(1) A recognised market operator must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the recognised market operator in its application under section 8(1) or (2) or 12(1);

(*b*) the recognised market operator becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a participant of the recognised market operator to meet its financial obligations to the recognised market operator;

(*c*) any other matter that the Authority may —

(i) prescribe by regulations made under section 44 for the purposes of this paragraph; or

(ii) specify by written notice to the recognised market operator in any particular case.

[4/2017]

(2) A recognised market operator must notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(3) A recognised market operator must notify the Authority of any matter that the Authority may specify by written notice to the recognised market operator, no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to manage risks prudently

35.—(1) Without limiting section 33(1)(*b*), a recognised market operator must ensure that the systems and controls concerning the

assessment and management of risks to every organised market that the recognised market operator operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

(2) Any recognised market operator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Obligation to maintain proper records

36.—(1) A recognised market operator must maintain a record of all transactions effected through its organised market in accordance with regulations mentioned in subsection (2).

[4/2017]

(2) The Authority may by regulations made under section 44 prescribe —

(*a*) the form and manner in which the record mentioned in subsection (1) is to be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[4/2017]

Obligation to submit periodic reports

37. A recognised market operator must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe by regulations made under section 44.

[4/2017]

Obligation to assist Authority

38. A recognised market operator must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the recognised market operator;

(B) in respect of any transaction or class of transactions, whether completed or uncompleted, effected through the organised market of the recognised market operator; or

(C) in respect of any product or class of products traded on the organised market of the recognised market operator; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[4/2017]

Obligation to maintain confidentiality

39.—(1) Subject to subsection (2), a recognised market operator and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

(*a*) comes to the knowledge of the recognised market operator or any of its officers or employees; or

(*b*) is in the possession of the recognised market operator or any of its officers or employees.

[4/2017]

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe by regulations made under section 44;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[4/2017]

(3) To avoid doubt, nothing in this section is to be construed as preventing a recognised market operator from entering into a written agreement with a user that obliges the recognised market operator to maintain a higher degree of confidentiality than that specified in this section.

[4/2017]

Non-compliance with business rules or listing rules not to substantially affect rights of person

40. Any failure by a recognised market operator to comply with —

(*a*) this Act;

(*b*) its business rules; or

(*c*) where applicable, its listing rules,

in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

[4/2017]

Listing, de-listing or trading of certain instruments, contracts and transactions

41.—(1) A recognised market operator must, in respect of any relevant product that is listed or permitted for trading on any organised market operated by the recognised market operator, comply with requirements prescribed by regulations made under section 44 or specified in directions issued under section 45 relating to —

(*a*) the limits that the recognised market operator must establish on the number of open positions that may be held by any participant in respect of the relevant product;

(*b*) the steps that the recognised market operator must take to ensure compliance with the limits established under paragraph (*a*);

(*c*) the positions that the recognised market operator must reckon for the purpose of determining if limits established under paragraph (*a*) have been exceeded;

(*d*) the settlement procedures that the recognised market operator must establish in respect of the relevant product;

(*e*) the limits that the recognised market operator must establish on the price movements of the relevant product; and

(*f*) any other matter in respect of the relevant product that the Authority considers necessary or expedient for the furtherance of the objectives mentioned in section 5.

[4/2017]

(2) A recognised market operator must, within such time and in such form and manner as the Authority may specify, notify the Authority that it has taken measures to comply with the requirements mentioned in subsection (1) —

(*a*) before listing or de-listing, or permitting the trading of, any relevant product on any organised market operated by the recognised market operator; and

(*b*) after listing or permitting the trading of any relevant product on any organised market operated by the recognised market operator.

[4/2017]

(3) A recognised market operator which is required under subsection (2) to notify the Authority must use due care to ensure that the notification is not false or misleading in any material particular.

[4/2017]

(4) Any recognised market operator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every

day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any recognised market operator which contravenes subsection (2)(*a*) or (*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Any recognised market operator which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

(7) Any participant who wilfully exceeds any limit established by a recognised market operator in accordance with the requirements imposed under subsection (1)(*a*) on the number of open positions that may be held by any participant in respect of any relevant product shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000.

[4/2017]

(8) In this section, "relevant product" means any instrument, contract or transaction on any organised market operated by the recognised market operator, but does not include —

(*a*) securities;

(*b*) any unit in a collective investment scheme;

(*c*) a spot contract;

(*d*) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;

(*e*) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

(*f*) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or

(*g*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract.

[4/2017; 1/2020]

Control of shareholding in Singapore recognised market operator

41A.—(1) A person must not become a 20% controller of a Singapore recognised market operator without first obtaining the approval of the Authority.

(2) In this section and section 41B, "20% controller", in relation to a Singapore recognised market operator, means a person who, alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the Singapore recognised market operator; or

(*b*) is in a position to control not less than 20% of the votes in the Singapore recognised market operator.

(3) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in a Singapore recognised market operator is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the Singapore recognised market operator; and

(*c*) a person (*A*) is an associate of another person (*B*) if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iii) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iv) *A* is a subsidiary of *B*;

(v) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control not less than 20% of the votes in *A*; or

(vi) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the Singapore recognised market operator.

(4) The Authority may grant its approval mentioned in subsection (1) subject to such conditions or restrictions as the Authority may impose.

(5) Without affecting subsection (12), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (4), by written notice, direct the transfer or disposal of all or any of the shares of a Singapore recognised market operator in which a 20% controller of the Singapore recognised market operator has an interest.

(6) Until a person to whom a direction has been issued under subsection (5) transfers or disposes of the shares that are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the constitution or other constituent document or documents of the Singapore recognised market operator —

(*a*) no voting rights are exercisable in respect of the shares that are the subject of the direction;

(*b*) the Singapore recognised market operator must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares that are the subject of the direction; and

(*c*) except in a liquidation of the Singapore recognised market operator, the Singapore recognised market operator must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares that are the subject of the direction.

(7) Any issue of shares by a Singapore recognised market operator in contravention of subsection (6)(*b*) is void, and a person to whom a direction has been issued under subsection (5) must immediately return those shares to the Singapore recognised market operator, upon which the Singapore recognised market operator must return to the person any payment received from the person in respect of those shares.

(8) Any payment made by a Singapore recognised market operator in contravention of subsection (6)(*c*) is void, and a person to whom a direction has been issued under subsection (5) must immediately return the payment the person has received to the Singapore recognised market operator.

(9) The Authority may, by regulations made under section 44, exempt —

(*a*) any person or class of persons; or

(*b*) any class or description of shares or interests in shares,

from the requirement under subsection (1), subject to such conditions or restrictions as may be prescribed in those regulations.

(10) The Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice.

(11) It is not necessary to publish any exemption granted under subsection (10) in the *Gazette*.

(12) Any person who contravenes subsection (1), or any condition or restriction imposed by the Authority under subsection (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(13) Any person who contravenes subsection (6)(*b*) or (*c*), (7) or (8) or any direction issued by the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Objection to control of Singapore recognised market operator

41B.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 41A; or

(*b*) any person who, whether before, on or after the date of commencement of section 37 of the Financial Institutions (Miscellaneous Amendments) Act 2024, is a 20% controller of a Singapore recognised market operator,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 41A(4) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to be a 20% controller of the Singapore recognised market operator;

(*e*) having regard to the likely influence of the person, the Singapore recognised market operator is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 41A; or

(*h*) the Authority would not have granted its approval under section 41A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

(*a*) take such steps as are necessary to ensure that the person ceases to be a 20% controller of a Singapore recognised market operator; or

(*b*) comply with such other requirements as the Authority may specify.

(4) Any person served with a notice of objection under this section must comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[Act 12 of 2024 wef 24/01/2025]

Chairperson, chief executive officer, director and key persons, etc., of Singapore recognised market operator

41C.—(1) A Singapore recognised market operator must not appoint a person as its chairperson, chief executive officer or director unless the Singapore recognised market operator has obtained the approval of the Authority.

(2) The Authority may, by written notice, require a Singapore recognised market operator to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the Singapore recognised market operator, and the Singapore recognised market operator must comply with the notice.

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may specify.

(4) The Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe by regulations made under section 44 or notify the Singapore recognised market operator in writing, or to any other matter that the Authority may consider relevant.

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the Singapore recognised market operator an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the Singapore recognised market operator an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 37 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) A Singapore recognised market operator must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director, or of any person mentioned in any notice issued by the Authority to the Singapore recognised market operator under subsection (2).

(9) The Authority may make regulations under section 44 relating to the composition and duties of the board of directors or any committee of a Singapore recognised market operator.

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of a Singapore recognised market operator, or any body responsible for disciplinary action against a member of a Singapore recognised market operator.

(11) The Authority may, by regulations made under section 44, exempt any Singapore recognised market operator or class of Singapore recognised market operators from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(12) The Authority may, by written notice, exempt any Singapore recognised market operator from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

(14) Any Singapore recognised market operator which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Penalties under this Division

42. Any recognised market operator which contravenes section 33(1), 34, 36(1), 37, 38 or 39(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Division 4 — General Powers of Authority

Disqualification or removal of director or executive officer

43.—(1) Despite the provisions of any other written law, an approved exchange, or a Singapore recognised market operator, must not, without the prior written consent of the Authority, permit an individual to act as its director or executive officer, if the individual —

(*a*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 38 of the Financial Institutions (Miscellaneous Amendments) Act 2024, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*b*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

(*d*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*e*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order, or an FSMA prohibition order made against him or her that remains in force; or

(*f*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked (without any application by the regulated financial institution for withdrawal, cancellation or revocation) by the Authority or, in the case of a regulated financial institution in a foreign country or jurisdiction, by the regulatory authority in that foreign country or jurisdiction.

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director or executive officer of an approved exchange or a Singapore recognised market operator is not a fit and proper person to be a director or executive officer (as the case may be) of the approved exchange or Singapore recognised market operator (as the case may be), the Authority may, by notice in writing to the approved exchange or Singapore recognised market operator, direct it to remove the director or executive officer from his or her office or employment within such period as may be specified by the Authority in the notice, and the approved exchange or Singapore recognised market operator must comply with the notice.

(3) For the purpose of subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

(*a*) the individual has wilfully contravened or wilfully caused the approved exchange or Singapore recognised market operator to contravene any provision of this Act or the business rules or listing rules of the approved exchange or Singapore recognised market operator;

(*b*) the individual has, without reasonable excuse, failed to secure the compliance of the approved exchange or Singapore recognised market operator with this Act, the Monetary Authority of Singapore Act 1970, any of the written laws set out in the Schedule to that Act, or the business rules or listing rules of the approved exchange or Singapore recognised market operator;

(*c*) the individual has failed to discharge any of the duties of his or her office or employment;

(*d*) the individual's removal is necessary in the public interest or for the protection of investors; or

(*e*) the individual comes within any of the grounds mentioned in subsection (1).

(4) The Authority must, in determining whether an individual has failed to discharge the duties of his or her office or employment for

the purposes of subsection (3)(*c*), have regard to such criteria as may be prescribed.

(5) The Authority must not direct an approved exchange or Singapore recognised market operator to remove an individual from his or her office or employment under subsection (2) without giving the approved exchange or Singapore recognised market operator and that individual, an opportunity to be heard except in any of the following circumstances:

(*a*) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 101A prohibition order or an FSMA prohibition order against the individual has been made and remains in force;

(*c*) the individual has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 38 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the individual had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) An approved exchange or Singapore recognised market operator must, as soon as practicable after receiving a direction under subsection (2), notify the affected director or executive officer of the direction.

(7) Any approved exchange or Singapore recognised market operator who receives a direction under subsection (2), or any director or executive officer of an approved exchange or Singapore recognised market operator in relation to whom a direction under subsection (2) is given, may, within 30 days after the approved exchange or Singapore recognised market operator receives the direction, appeal to the Minister whose decision is final.

(8) Despite the lodging of an appeal under subsection (7), a direction under subsection (2) continues to have effect pending the Minister's decision.

(9) The Minister may, when deciding an appeal under subsection (7), modify the direction under subsection (2), and such modified action has effect starting on the date of the Minister's decision.

(10) No criminal or civil liability is incurred by an approved exchange, a Singapore recognised market operator, or any person acting on behalf of an approved exchange or a Singapore recognised market operator, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any approved exchange, or Singapore recognised market operator, which, without reasonable excuse, contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to make regulations

44.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations —

(*a*) relating to the approval of approved exchanges and the recognition of recognised market operators;

(*b*) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating an organised market, whether or not the person is approved as an approved exchange under section 9(1)(*a*) or recognised as a recognised market operator under section 9(1)(*b*) or (2); and

(*c*) specifying measures to manage any risks assumed by an approved exchange or a recognised market operator.

[4/2017]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision of the regulations made under this section shall be an offence; and

(*b*) for a penalty not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to issue directions

45.—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to an approved exchange or a recognised market operator, or a class of approved exchanges or class of recognised market operators, if the Authority thinks it necessary or expedient —

(*a*) for ensuring the fair, orderly and transparent operation of any organised market operated by the approved exchange or recognised market operator, or of organised markets operated by approved exchanges or recognised market operators of the class, or by approved exchanges or recognised market operators in general;

[Act 12 of 2024 wef 30/08/2024]

(*b*) for ensuring the integrity and stability of the capital markets or the financial system;

(*c*) in the interests of the public or a section of the public or for the protection of investors;

(*d*) for the effective administration of this Act; or

(*e*) for ensuring compliance with any condition or restriction that the Authority may impose under section 9(4) or (5),

16(2), 27(5), (10) or (11), 28(11) or (12), 41A(4), (9) or (10), 41C(11) or (12) or 46AAG(1) or (2), or such other obligations or requirements under this Act or as may be prescribed by regulations made under section 44.

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

[Act 12 of 2024 wef 24/01/2025]

(2) An approved exchange or a recognised market operator must comply with every direction issued to it under subsection (1).

[4/2017]

(3) Any approved exchange or recognised market operator that, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

Power of Authority in organised market

46.—(1) Without limiting section 45, where the Authority is of the opinion that it is necessary to prohibit trading in —

(*a*) particular securities of, or made available by, an entity;

(*b*) particular securities-based derivatives contracts of, or made available by, an entity; or

(*c*) particular units in a collective investment scheme,

on an organised market of an approved exchange or a recognised market operator —

(*d*) in order to protect persons buying or selling the securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be; or

(*e*) in the interests of the public,

the Authority may give written notice to the approved exchange or recognised market operator stating that it is of that opinion and setting out the reasons for its opinion.

[4/2017]

(2) If, after the receipt of the notice given under subsection (1), the approved exchange or recognised market operator fails to take any action in relation to the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market and the Authority continues to be of the opinion that it is necessary to prohibit trading in the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market so as to achieve the objectives under subsection (1)(*d*) or (*e*), the Authority may, by written notice to the approved exchange or recognised market operator —

(*a*) prohibit trading in the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market for such period not exceeding 14 days, as specified in the notice; and

(*b*) impose conditions or restrictions on the approved exchange or recognised market operator, as specified in the notice.

[4/2017]

(3) The Authority may, at any time, by written notice, add to, vary or revoke any condition or restriction mentioned in subsection (2)(*b*).

[4/2017]

(4) An approved exchange or a recognised market operator on which a condition or restriction is imposed under subsection (2)(*b*) or (3) must satisfy that condition or restriction.

[4/2017]

(5) Where the Authority gives a notice to an approved exchange or a recognised market operator under subsection (2), the Authority must —

(*a*) at the same time send a copy of the notice to —

(i) in the case of securities, the entity;

(ii) in the case of securities-based derivatives contracts, the entity; or

(iii) in the case of units in a collective investment scheme, the responsible person of the collective investment scheme,

together with a statement setting out the reasons for the giving of the notice; and

(*b*) as soon as practicable, submit to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the approved exchange or recognised market operator.

[4/2017]

(6) Any person who is aggrieved by any action taken by the Authority, an approved exchange or a recognised market operator under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision is final.

[4/2017]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority, an approved exchange or a recognised market operator under this section continues to have effect pending the Minister's decision.

[4/2017]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as the Minister considers necessary to any action taken by the Authority, an approved exchange or a recognised market operator under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(9) Any approved exchange or recognised market operator which permits trading in securities, securities-based derivatives contracts or units in a collective investment scheme, on the organised market of the approved exchange or recognised market operator in contravention of a notice given under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not

exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Emergency powers of Authority

46AA.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may by written notice direct an approved exchange or a recognised market operator (as the case may be) to take such action as the Authority considers necessary to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator, as the case may be.

[4/2017]

(2) Without affecting subsection (1), the actions which the Authority may direct an approved exchange or a recognised market operator (as the case may be) to take include —

(*a*) terminating or suspending trading on the organised market operated by the approved exchange or recognised market operator;

(*b*) confining trading to liquidation of positions in capital markets products;

(*c*) ordering the liquidation of any position or all positions or the reduction in any position or all positions;

(*d*) limiting trading to a specific price range;

(*e*) modifying trading days or hours;

(*f*) altering conditions of delivery;

(*g*) fixing the settlement price at which positions are to be liquidated;

(*h*) requiring any person to act in a specified manner in relation to trading in capital markets products or any class of capital markets products;

(*i*) requiring margins or additional margins for any capital markets products; and

(*j*) modifying or suspending any of the business rules, or listing rules (as the case may be) of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(3) Where an approved exchange or a recognised market operator fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

(*a*) set margin levels in any capital markets products or class of capital markets products to cater for the emergency;

(*b*) set limits that may apply to positions acquired in good faith by any person prior to the date of the notice issued by the Authority; or

(*c*) take such other action to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) In this section, "emergency" means any threatened or actual market manipulation or cornering, and includes —

(*a*) any act of any government affecting any commodity or financial instrument;

(*b*) any major market disturbance that prevents an organised market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or

(*c*) any undesirable situation or practice that, in the opinion of the Authority, constitutes an emergency.

[4/2017]

(5) The Authority may modify any action taken by an approved exchange or a recognised market operator under subsection (1), including the setting aside of that action.

[4/2017]

(6) Any person which is aggrieved by any action taken under this section by the Authority, an approved exchange or a recognised market operator, may, within 30 days after the person is notified of the action, appeal to the Minister whose decision is final.

[4/2017]

(7) Despite the lodging of an appeal under subsection (6), any action taken under this section by the Authority, an approved exchange or a recognised market operator, continues to have effect pending the Minister's decision.

[4/2017]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as the Minister considers necessary to any action taken under this section by the Authority, an approved exchange or a recognised market operator, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(9) Any approved exchange or recognised market operator which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Interpretation of sections 46AAA to 46AAF

46AAA. In this section and sections 46AAB to 46AAF, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved exchange or a recognised market operator, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved exchange or recognised market operator (as the case may be), or acting in an equivalent capacity in relation to the approved exchange or recognised market operator (as the case may be);

"relevant business" means any business of an approved exchange or a recognised market operator —

(*a*) that the Authority has assumed control of under section 46AAB; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 46AAB;

"statutory adviser" means a statutory adviser appointed under section 46AAB;

"statutory manager" means a statutory manager appointed under section 46AAB.

[4/2017]

Action by Authority if approved exchange or recognised market operator unable to meet obligations, etc.

46AAB.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) an approved exchange or a recognised market operator informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) an approved exchange or a recognised market operator becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved exchange or a recognised market operator —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or to the protection of investors, or to the objectives specified in section 5;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 9(4) or (5); or

(*d*) the Authority considers it in the public interest to do so.

[4/2017]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved exchange or recognised market operator (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved exchange or recognised market operator (as the case may be) on the proper management of such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[4/2017]

(3) In the case of a recognised market operator that is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised market operator (as the case may be) under subsection (2) is only in relation to —

(*a*) the business or affairs of the recognised market operator carried on in, or managed in or from, Singapore; or

(*b*) the property of the recognised market operator located in Singapore, or reflected in the books of the recognised

market operator in Singapore (as the case may be) in relation to its operations in Singapore.

[4/2017]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved exchange or a recognised market operator, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[4/2017]

(5) Where the Authority has exercised any power under subsection (2), the Authority may, at any time and without affecting its power under section 14(1)(*e*), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[4/2017]

(6) No liability is incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[4/2017]

(7) Any approved exchange or recognised market operator that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Effect of assumption of control under section 46AAB

46AAC.—(1) Upon assuming control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[4/2017]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved exchange or recognised market operator (as the case may be) in the name of and on behalf of the approved exchange or recognised market operator, as the case may be; and

(*b*) is to be treated to be an agent of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(3) In managing the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public mentioned in section 46AAB(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved exchange or recognised market operator (as the case may be) (collectively and individually) under this Act, the

Companies Act 1967 and the constitution of the approved exchange or recognised market operator (as the case may be), including powers of delegation, in relation to the relevant business of the approved exchange or recognised market operator (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved exchange or recognised market operator (as the case may be) under the Companies Act 1967 or the constitution of the approved exchange or recognised market operator (as the case may be).

[4/2017]

(4) Upon the assumption of control of the relevant business of an approved exchange or a recognised market operator by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be), which was in force immediately before the assumption of control, is treated to be revoked unless the Authority gives its approval, by written notice to the person and the approved exchange or recognised market operator (as the case may be), for the person to remain in the appointment.

[4/2017]

(5) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, a person must not, except with the approval of the Authority, be appointed as the chief executive officer or a director of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(6) Where the Authority has given its approval under subsection (4) or (5) for a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved exchange or a recognised market operator, the Authority may at any time, by written notice to the person, and the approved exchange or recognised market operator (as the case may be), revoke that approval, and the appointment is treated to be revoked on the date specified in the notice.

[4/2017]

(7) If any person, whose appointment as the chief executive officer or a director of an approved exchange or a recognised market operator is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[4/2017]

(8) If any person who is appointed as the chief executive officer or a director of an approved exchange or a recognised market operator in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[4/2017]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision given to a person or body of persons mentioned in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of

directors, of the approved exchange or recognised market operator (as the case may be),

the direction or decision mentioned in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision mentioned in sub-paragraph (ii); and

(*b*) a person must not exercise any voting or other right attached to any share in the approved exchange or recognised market operator (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[4/2017]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Subsections (4), (5), (7) and (8) have effect despite any written law or rule of law to the contrary.

[4/2017]

Duration of control

46AAD.—(1) The Authority must cease control of the relevant business of an approved exchange or a recognised market operator if the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control have ceased to exist; or

(*b*) the Authority's assumption of control is no longer necessary in the interests of the public or the section of the public mentioned in section 46AAB(1)(*c*)(i), or for the protection of investors.

[4/2017]

(2) A statutory manager is treated to have assumed control of the relevant business of an approved exchange or a recognised market operator on the date of appointment as a statutory manager.

[4/2017]

(3) The appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) the appointment is no longer necessary in the interests of the public or the section of the public mentioned in section 46AAB(1)(*c*)(i), or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager must cease control of the relevant business of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved exchange or a recognised market operator;

(*b*) the cessation of the Authority's control of the relevant business of an approved exchange or a recognised market operator;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved exchange or a recognised market operator.

[4/2017]

Responsibilities of officers, member, etc., of approved exchange or recognised market operator

46AAE.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who ceased to be or still is a chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved exchange or recognised market operator (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved exchange or recognised market operator (as the case may be), and which is in the person's possession or control; and

(*b*) any person who ceased to be or still is a chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved exchange or recognised market operator (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[4/2017; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Remuneration and expenses of Authority and others in certain cases

46AAF.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange or a recognised market operator —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved exchange or recognised market operator (as the case may be), whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved exchange or recognised market operator (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[4/2017]

(2) The approved exchange or recognised market operator (as the case may be) must reimburse the Authority any remuneration and expenses payable by the approved exchange or recognised market operator (as the case may be) to a statutory manager or statutory adviser.

[4/2017]

Power of Authority to exempt approved exchange or recognised market operator from provisions of this Part

46AAG.—(1) The Authority may, by regulations made under section 44, exempt —

(*a*) any approved exchange or recognised market operator; or

(*b*) any class of approved exchanges or class of recognised market operators,

from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(2) The Authority may, by written notice, exempt any approved exchange or recognised market operator from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that such exemption will not detract from the objectives specified in section 5.

[4/2017]

(3) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(4) An approved exchange or a recognised market operator that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(5) An approved exchange or a recognised market operator that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (3).

[4/2017]

(6) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

Division 5 — Voluntary Transfer of Business of Approved Exchange or Recognised Market Operator

Interpretation of this Division

46AAH. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved exchange or a recognised market operator, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved exchange or a recognised market operator, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means an approved exchange or a recognised market operator the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[4/2017; 40/2019]

Voluntary transfer of business

46AAI.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved exchange or a recognised market operator) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved exchange or a recognised market operator; and

(*c*) the Court has approved the transfer.

[4/2017]

(2) Subsection (1) does not affect the right of an approved exchange or a recognised market operator to transfer the whole or any part of its business under any law.

[4/2017]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[4/2017]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part of a transferor's business) under this Division.

[4/2017]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[4/2017]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[4/2017]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[4/2017]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[4/2017]

Approval of transfer

46AAJ.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[4/2017]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 46AAI(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report mentioned in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or

newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed by regulations made under section 44;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report mentioned in paragraph (*a*) for a period of 15 days after the notice referred to in paragraph (*d*) is published in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants who are affected by the transfer, at least 15 days before the application is made, a copy of the report mentioned in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[4/2017]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[4/2017]

(4) The Court must not approve the transfer if the Authority has not consented under section 46AAI(1)(*a*) to the transfer.

[4/2017]

(5) The Court may, after considering the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[4/2017]

(6) If the transferee is not approved as an approved exchange or recognised as a recognised market operator by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved exchange or recognised as a recognised market operator by the Authority.

[4/2017]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[4/2017]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[4/2017]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part of the business) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[4/2017]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[4/2017]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[4/2017]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[4/2017]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[4/2017]

PART 2A

TRADE REPOSITORIES

[34/2012]

Objectives of this Part

46A. The objectives of this Part are —

(*a*) to promote safe and efficient trade repositories;

(*b*) to promote transparent markets through timely and reliable access to information on transactions; and

(*c*) to reduce systemic risks.

[34/2012]

Interpretation of this Part

46B. In this Part, unless the context otherwise requires —

"foreign trade repository" means a trade repository which is incorporated or formed outside Singapore;

"foreign trade repository licence" means a licence that is granted by the Authority to a foreign trade repository under section 46E(2);

"Singapore trade repository" means a trade repository which is incorporated in Singapore;

"trade repository" means a corporation that collects and maintains information on any transactions relating to any capital markets products, or any other transactions or class of transactions that the Authority may prescribe by regulations made under section 341 for the purposes of this definition;

"trade repository licence" means a licence that is granted by the Authority to a Singapore trade repository under section 46E(1).

[34/2012; 4/2017]

Holding out as licensed trade repository or licensed foreign trade repository

46C.—(1) A person must not hold out that the person is —

(*a*) a licensed trade repository, unless the person has in force a trade repository licence granted by the Authority under section 46E(1); or

(*b*) a licensed foreign trade repository, unless the person has in force a foreign trade repository licence granted by the Authority under section 46E(2).

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Application for licence

46D.—(1) A corporation that is, or intends to be, a Singapore trade repository may apply to the Authority for the grant of a trade repository licence.

[34/2012]

(2) A corporation that is, or intends to be, a foreign trade repository may apply to the Authority for the grant of a foreign trade repository licence.

[34/2012]

(3) An application under subsection (1) or (2) must be —

(*a*) made in such form and manner as the Authority may prescribe; and

(*b*) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

[34/2012]

(4) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[34/2012]

Power of Authority to grant trade repository licence or foreign trade repository licence

46E.—(1) Where a corporation referred to in section 46D(1) has made an application under that provision, the Authority may grant the corporation a trade repository licence.

[34/2012]

(2) Where a corporation referred to in section 46D(2) has made an application under that provision, the Authority may grant the corporation a foreign trade repository licence.

[34/2012]

(3) The Authority may grant a corporation a trade repository licence under subsection (1) or a foreign trade repository licence under subsection (2) subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

(*a*) the activities that the corporation may undertake;

(*b*) the transactions that may be reported to the corporation in its capacity as a trade repository; and

(*c*) the nature of the investors or participants who may use or have an interest in the corporation as a trade repository.

[34/2012]

(4) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

[34/2012]

(5) A licensed trade repository or licensed foreign trade repository must, for the duration of the licence, satisfy every condition or restriction that may be imposed on it under subsection (3) or (4).

[34/2012]

(6) The Authority must not grant an applicant a trade repository licence or foreign trade repository licence, unless the applicant meets

such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

[34/2012]

(7) Without affecting subsections (3), (4) and (6), the Authority may, for the purposes of granting a foreign trade repository licence under subsection (2), have regard, in addition to any requirements prescribed under subsection (6), to —

(*a*) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign trade repository in the country or territory in which the head office or principal place of business of the foreign trade repository is situated; and

(*b*) whether the foreign trade repository is, in the country or territory in which the head office or principal place of business is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 46A are achieved, to the requirements and supervision to which licensed trade repositories are subject under this Act.

[34/2012]

(8) In considering whether a foreign trade repository has satisfied the requirements specified in subsection (7)(*b*), the Authority may have regard to —

(*a*) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign trade repository is situated; and

(*b*) the rules and practices of the foreign trade repository acting in its capacity as a trade repository.

[34/2012]

(9) The Authority may refuse to grant a corporation a trade repository licence or foreign trade repository licence, if —

(*a*) the corporation has not provided the Authority with such information as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be), being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 1 August 2013;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of its participants, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;

(*m*) there are other circumstances which are likely to —

(i) lead to the improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*n*) the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient trade repository; or

(*o*) the Authority is of the opinion that it would be contrary to the interests of the public to grant the corporation a trade repository licence or foreign trade repository licence.

[34/2012]

(10) Subject to subsection (11), the Authority must not refuse to grant a corporation a trade repository licence or foreign trade repository licence under subsection (9) without giving the corporation an opportunity to be heard.

[34/2012]

(11) The Authority may refuse to grant a corporation a trade repository licence or foreign trade repository licence on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(12) The Authority must give notice in the *Gazette* of any corporation granted a trade repository licence under subsection (1) or a foreign trade repository licence under subsection (2), and such

notice may include all or any of the conditions or restrictions imposed by the Authority on the corporation under subsections (3) and (4).

[34/2012]

(13) Any applicant which is aggrieved by a refusal of the Authority under subsection (6), (9) or (11) to grant to the applicant a trade repository licence or foreign trade repository licence may, within 30 days after the applicant is notified of the refusal, appeal to the Minister, whose decision is final.

[34/2012]

(14) Any licensed trade repository or licensed foreign trade repository which contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Annual fees payable by licensed trade repository or licensed foreign trade repository

46F.—(1) Every licensed trade repository and every licensed foreign trade repository must pay to the Authority such annual fees as may be prescribed in such manner as the Authority may specify.

[34/2012]

(2) The Authority may, where it considers appropriate, refund or remit the whole or any part of any annual fee paid or payable to it.

[34/2012]

Cancellation of trade repository licence or foreign trade repository licence

46G.—(1) A corporation which intends to cease operating as a licensed trade repository or licensed foreign trade repository may apply to the Authority to cancel its trade repository licence or foreign trade repository licence, as the case may be.

[34/2012]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may prescribe.

[34/2012]

(3) The Authority may cancel the trade repository licence or foreign trade repository licence on such application if the Authority is satisfied that the cancellation of the trade repository licence or foreign trade repository licence (as the case may be) will not detract from the objectives specified in section 46A.

[34/2012]

Power of Authority to revoke trade repository licence or foreign trade repository licence

46H.—(1) The Authority may revoke a trade repository licence or foreign trade repository licence granted to a corporation, if —

(*a*) there exists at any time a ground under section 46E(6) or (9) on which the Authority may refuse an application;

(*b*) the corporation does not commence operating as a licensed trade repository or licensed foreign trade repository (as the case may be) within 12 months after the date on which it was granted the trade repository licence or foreign trade repository licence, as the case may be;

(*c*) the corporation ceases to operate as a trade repository;

(*d*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its trade repository licence or foreign trade repository licence, as the case may be;

(ii) any direction issued to it by the Authority under this Act; or

(iii) any provision in this Act;

(*da*) upon the Authority exercising any power under section 46ZIB(2) or the Minister exercising any power under Division 2, 4, 5 or 6 of Part 8 of the Financial Services and Markets Act 2022 in relation to the corporation, the Authority considers that it is in the public interest to revoke the trade repository licence or foreign trade repository licence, as the case may be;

[Act 18 of 2022 wef 10/05/2024]

(*e*) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or

(*f*) any information or document provided by the corporation to the Authority is false or misleading.

[34/2012; 10/2013; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) a trade repository licence or foreign trade repository licence that was granted to a corporation without giving the corporation an opportunity to be heard.

[34/2012]

(3) The Authority may revoke a trade repository licence or foreign trade repository licence that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(4) For the purposes of subsection (1)(*c*), a corporation is deemed to have ceased to operate as a trade repository if —

(*a*) it has ceased to operate as a trade repository for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or

(*b*) it has ceased to operate as a trade repository under a direction issued by the Authority under section 46ZK.

[34/2012]

(5) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modifications as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

[34/2012]

(8) Any revocation under subsection (1) or (3) of a trade repository licence or foreign trade repository licence granted to a corporation does not operate as to affect any report to the corporation made under Part 6A, or any obligation under Part 6A that was satisfied by making a report to the corporation, while the corporation was a licensed trade repository or licensed foreign trade repository, as the case may be.

[34/2012]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of a trade repository licence or foreign trade repository licence.

[34/2012]

Division 2 — Regulation of Licensed Trade Repositories

Subdivision (1) — Obligations of licensed trade repositories

General obligations

46I.—(1) A licensed trade repository —

(*a*) must operate in a safe and efficient manner in its capacity as a trade repository;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in the licensed trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed trade repository and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for the licensed trade repository to be operated in a safe and efficient manner;

(*f*) must enforce compliance by its participants with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate in a safe and efficient manner in its capacity as a trade repository;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must ensure that the Authority is provided with access to all information on transactions reported to the licensed trade repository;

(*i*) must maintain governance arrangements that are adequate for the licensed trade repository to be operated in a safe and efficient manner; and

(*j*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[34/2012]

Obligation to manage risks prudently

46J. Without limiting section 46I(1)(*b*), a licensed trade repository must —

(*a*) ensure that the systems and controls concerning the assessment and management of risks to the licensed trade repository are adequate and appropriate for the scale and nature of its operations; and

(*b*) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed trade repository.

[34/2012]

Obligation to notify Authority of certain matters

46K.—(1) A licensed trade repository must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the licensed trade repository in its application under section 46D(1);

(*b*) the carrying on by the licensed trade repository of any business (called in this section a proscribed business) other than such business or such class of businesses prescribed by regulations made under section 46ZJ;

(*c*) the acquisition by the licensed trade repository of a substantial shareholding in any corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 46ZJ;

(*d*) the licensed trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;

(*e*) the licensed trade repository reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a participant of the licensed trade repository;

(*f*) any other matter that the Authority may —

(i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or

(ii) specify by written notice to the licensed trade repository in any particular case.

[34/2012; 4/2017]

(2) Without limiting section 46ZK(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the licensed trade repository —

(*a*) where the notice relates to a matter referred to in subsection (1)(*b*) —

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1); or

(*b*) where the notice relates to a matter referred to in subsection (1)(*c*) —

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1).

[34/2012]

(3) A licensed trade repository must comply with every direction issued to it under subsection (2), despite anything to the contrary in the Companies Act 1967 or any other law.

[34/2012]

Obligation to maintain proper records

46L.—(1) A licensed trade repository must maintain a record of all transactions reported to the licensed trade repository.

[34/2012]

(2) The Authority may prescribe by regulations made under section 46ZJ —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the information and details relating to each transaction that are to be maintained in the record; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

46M. A licensed trade repository must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

46N. A licensed trade repository must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business or operations of the licensed trade repository; or

(B) in respect of any transaction or class of transactions reported to the licensed trade repository; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

46O.—(1) Subject to subsection (2), a licensed trade repository and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information and transaction information that —

(*a*) comes to the knowledge of the licensed trade repository or any of its officers or employees; or

(*b*) is in the possession of the licensed trade repository or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information or transaction information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a licensed trade repository from entering into a written agreement with a participant which obliges the licensed trade repository to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

(4) A licensed trade repository must comply with such other requirements relating to confidentiality as the Authority may prescribe.

[34/2012]

Penalties under this Subdivision

46P. Any licensed trade repository which contravenes section 46I(1), 46J, 46K(1) or (3), 46L(1), 46M, 46N or 46O(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Subdivision (2) — Rules of licensed trade repositories

Business rules of licensed trade repositories

46Q.—(1) Without limiting sections 46I and 46ZJ —

(*a*) the Authority may prescribe the matters that a licensed trade repository must provide for in the business rules of the licensed trade repository; and

(*b*) the licensed trade repository must provide for those matters in its business rules.

[34/2012]

(2) A licensed trade repository must not make any amendments to its business rules unless it complies with such requirements as the Authority may prescribe.

[34/2012]

(3) In this Subdivision, any reference to an amendment to a business rule is to be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule, whether the change is made by an alteration to the text of the business rule or by any other notice issued by or on behalf of the licensed trade repository.

[34/2012]

(4) Any licensed trade repository which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Business rules of licensed trade repositories have effect as contract

46R.—(1) The business rules of a licensed trade repository are deemed to be, and operate as, a binding contract between the licensed trade repository and each participant.

[34/2012]

(2) The licensed trade repository and each participant are deemed to have agreed to observe, and perform the obligations under, the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the licensed trade repository or participant, as the case may be.

[34/2012]

Power of court to order observance or enforcement of business rules

46S.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a licensed trade repository fails to do so, the General Division of the High Court may, on the application of the Authority, the licensed trade repository or a person aggrieved by the failure, and after giving the firstmentioned person an opportunity to be heard, make an order directing the firstmentioned person to comply with, observe, enforce or give effect to those business rules.

[34/2012; 40/2019]

(2) In this section, "person" includes a licensed trade repository.

[34/2012]

(3) This section is in addition to, and not in derogation of, any other remedy available to an aggrieved person referred to in subsection (1).

[34/2012]

Non-compliance with business rules not to substantially affect rights of person

46T. Any failure by a licensed trade repository to comply with this Act or its business rules in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules, so long as the failure does not

substantially affect the rights of any person entitled to require compliance with the business rules.

[34/2012]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in licensed trade repository

46U.—(1) A person must not enter into any agreement to acquire shares in a licensed trade repository, being an agreement by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the licensed trade repository, without first obtaining the approval of the Authority to enter into the agreement.

[34/2012]

(2) A person must not become either of the following without first obtaining the approval of the Authority:

(*a*) a 12% controller of a licensed trade repository;

(*b*) a 20% controller of a licensed trade repository.

[34/2012]

(3) In subsection (2) —

"12% controller", in relation to a licensed trade repository, means a person, not being a 20% controller, who alone or together with the person's associates —

(*a*) holds not less than 12% of the shares in the licensed trade repository; or

(*b*) is in a position to control not less than 12% of the votes in the licensed trade repository;

"20% controller", in relation to a licensed trade repository, means a person who, alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the licensed trade repository; or

(*b*) is in a position to control not less than 20% of the votes in the licensed trade repository.

[34/2012]

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in a licensed trade repository is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the licensed trade repository; and

(*c*) a person, *A*, is an associate of another person, *B*, if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) [*Deleted by Act 35 of 2014*]

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the licensed trade repository.

[34/2012; 35/2014]

(5) The Authority may grant its approval referred to in subsection (1) or (2) subject to such conditions or restrictions as the Authority may think fit.

[34/2012]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of a licensed trade repository in which a substantial shareholder, 12% controller or 20% controller of the licensed trade repository has an interest.

[34/2012]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the licensed trade repository —

(*a*) no voting rights are exercisable in respect of the shares which are the subject of the direction;

(*b*) the licensed trade repository must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(*c*) except in a liquidation of the licensed trade repository, the licensed trade repository must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

[34/2012]

(8) Any issue of shares by a licensed trade repository in contravention of subsection (7)(*b*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the licensed trade repository, upon which the licensed trade repository must return to the person any payment received from the person in respect of those shares.

[34/2012]

(9) Any payment made by a licensed trade repository in contravention of subsection (7)(*c*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the licensed trade repository.

[34/2012]

(10) Without affecting sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(*a*) any person or class of persons;

(*b*) any class or description of shares or interests in shares.

[34/2012]

(11) Without affecting sections 46ZL(2) and 337(3) and (4), the Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[34/2012]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under

subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(14) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Approval of chairperson, chief executive officer, director and key persons

46V.—(1) A licensed trade repository must not appoint a person as its chairperson, chief executive officer or director unless the licensed trade repository has obtained the approval of the Authority.

[34/2012]

(2) The Authority may, by written notice, require a licensed trade repository to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the licensed trade repository, and the licensed trade repository must comply with the notice.

[34/2012]

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may prescribe.

[34/2012]

(4) Without limiting section 46ZJ and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

[34/2012]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the licensed trade repository an opportunity to be heard.

[34/2012]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the licensed trade repository an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[34/2012]

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[34/2012]

(8) A licensed trade repository must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director or of any person referred to in the notice issued by the Authority under subsection (2).

[34/2012]

(9) The Authority may make regulations under section 46ZJ relating to the composition and duties of the board of directors or any committee of a licensed trade repository.

[34/2012]

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of a licensed trade repository, and any body responsible for disciplinary action against a participant of a licensed trade repository.

[34/2012]

(11) Without affecting sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository or class of licensed trade repositories from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(12) Without affecting sections 46ZL(2) and 337(3) and (4), the Authority may, by written notice, exempt any licensed trade repository from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[34/2012]

(14) Subject to subsections (11) and (12), any licensed trade repository which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Subdivision (4) — Powers of Authority

46W. [*Repealed by Act 10 of 2013*]

Auditors of licensed trade repositories — appointment and duties

46X.—(1) Despite any other provision of this Act or any other written law, every licensed trade repository must —

(*a*) on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and

(*b*) where, for any reason, the auditor ceases to act for the licensed trade repository, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor must not be approved by the Authority as an auditor for a licensed trade repository unless the auditor is able to comply with such conditions in relation to the discharge of an auditor's duties as the Authority may determine.

(3) The Authority may appoint an auditor for a licensed trade repository if —

(*a*) the licensed trade repository fails to appoint an auditor in accordance with subsection (1); or

(*b*) the Authority considers it desirable that another auditor should act with an auditor for the licensed trade repository appointed under subsection (1),

and may at any time fix the remuneration to be paid by the licensed trade repository to that auditor.

(4) The duties of an auditor appointed under subsections (1) and (3) are —

(*a*) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the licensed trade repository; and

(*b*) to make a report in respect of the latest financial statements of the licensed trade repository or, where the licensed trade repository is a parent company for which consolidated financial statements are prepared, the consolidated financial statements, in accordance with section 207 of the Companies Act 1967.

(5) The Authority may, by written notice, impose all or any of the following duties on an auditor in addition to those in subsection (4):

(*a*) a duty to submit to the Authority such additional information in relation to the auditor's audit as the Authority considers necessary;

(*b*) a duty to enlarge or extend the scope of the auditor's audit of the business and affairs of the licensed trade repository;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit to the Authority a report on any of the matters mentioned in paragraphs (*b*) and (*c*).

(6) An auditor to whom a notice is given under subsection (5) must comply with each direction specified in the notice.

(7) The licensed trade repository must remunerate the auditor in respect of the discharge by the auditor of the duties mentioned in subsection (5).

(8) Despite any other provision of this Act or the provisions of the Companies Act 1967, the Authority may, if it is not satisfied with the performance of any duty by an auditor of a licensed trade repository, at any time —

(*a*) direct the licensed trade repository to remove the auditor; and

(*b*) direct the licensed trade repository to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the licensed trade repository must comply with such direction.

(9) If an auditor discloses in good faith to the Authority any information mentioned in subsection (5)(*a*) or report mentioned in subsection (5)(*d*), the disclosure is not to be treated as a breach of any restriction on the disclosure imposed by any law, contract or rules of professional conduct, and the auditor is not liable for any loss arising from the disclosure or any act or omission as a result of the disclosure.

(10) A licensed trade repository that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(11) A licensed trade repository that fails to comply with a direction under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

(12) Any auditor who fails to carry out any duty mentioned in subsection (4), or who fails to comply with subsection (6), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Auditors of licensed trade repositories to report certain matters and irregularities to Authority

46XA.—(1) If an auditor of a licensed trade repository, in the course of performing the auditor's duties mentioned in section 46X(4) or (5), becomes aware of any matter or irregularity mentioned in the following paragraphs, the auditor must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter that, in the auditor's opinion, adversely affects or may adversely affect the financial position of the licensed trade repository to a material extent;

(*b*) any matter that, in the auditor's opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(*c*) any irregularity that has or may have a material effect upon the accounts of the licensed trade repository, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

(2) An auditor of a licensed trade repository is not, in the absence of malice on the auditor's part, liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of a licensed trade repository may have, apart from this section, as a defendant in an action for defamation.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to appoint auditor to examine and audit books of licensed trade repository

46XB.—(1) Where —

(*a*) a licensed trade repository is required under section 46M to submit to the Authority an auditor's report but fails to do so; or

(*b*) the Authority receives a report under section 46XA(1),

the Authority may, without affecting its powers under section 46X, if it is satisfied that it is in the interests of the licensed trade repository, the participants of the licensed trade repository or the general public to do so, appoint in writing an auditor to examine and audit (either generally or in relation to any particular matter) the books of the licensed trade repository.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the licensed trade repository, the Authority may, in writing, direct the licensed trade repository to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a licensed trade repository fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

[Act 12 of 2024 wef 24/01/2025]

Restriction on auditor's and employee's right to communicate certain matters

46XC. Except as may be necessary for carrying into effect the provisions of this Act or so far as may be required for the purposes of any legal proceedings (whether civil or criminal), an auditor who is carrying out any duty imposed under section 46X(5) or who is appointed under section 46XB, or any employee of such auditor, must

not disclose any information which may come to his or her knowledge or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

(*a*) the Authority;

(*b*) in the case of an employee of such auditor, the auditor; and

(*c*) any other person authorised by the Authority in writing to receive such information.

[Act 12 of 2024 wef 24/01/2025]

Emergency powers of Authority

46Y.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by written notice a licensed trade repository to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the licensed trade repository.

[34/2012]

(2) Where a licensed trade repository fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may take such action as the Authority thinks fit to maintain or restore the safe and efficient operation of the licensed trade repository.

[34/2012]

(3) In this section, "emergency" includes —

(*a*) any threatened or actual market manipulation;

(*b*) any act of any government affecting any commodity or financial instrument;

(*c*) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for such commodity or financial instrument; or

(*d*) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[34/2012; 4/2017]

(4) The Authority may modify any action taken by a licensed trade repository under subsection (1), including the setting aside of that action.

[34/2012]

(5) Any person who is aggrieved by any action taken by the Authority, or by a licensed trade repository, under this section may, within 30 days after the person is notified of the action, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority, or by a licensed trade repository, under this section continues to have effect pending the Minister's decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he or she considers necessary to any action taken by the Authority, or by a licensed trade repository, under this section, and any such modified action has effect from the date of the Minister's decision.

[34/2012]

(8) Any licensed trade repository which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Disqualification or removal of director or executive officer

46Z.—(1) Despite the provisions of any other written law, a licensed trade repository must not, without the prior written consent of the Authority, permit an individual to act as its director or executive officer, if the individual —

(*a*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 41 of the Financial Institutions (Miscellaneous Amendments) Act 2024, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*b*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

(*d*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*e*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order, or an FSMA prohibition order made against him or her that remains in force; or

(*f*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked (without any application by the regulated financial institution for withdrawal, cancellation or revocation) by the Authority or, in the case of a regulated financial institution in a foreign country or jurisdiction, by the regulatory authority in that foreign country or jurisdiction.

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director or executive officer of a licensed trade repository is not a fit and proper person to be a director or executive officer (as the case may be) of the licensed trade repository, the Authority may, by notice in writing to the licensed trade

repository, direct it to remove the director or executive officer from his or her office or employment within such period as may be specified by the Authority in the notice, and the licensed trade repository must comply with the notice.

(3) For the purpose of subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

(*a*) the individual has wilfully contravened or wilfully caused the licensed trade repository to contravene any provision of this Act or the business rules of the licensed trade repository;

(*b*) the individual has, without reasonable excuse, failed to secure the compliance of the licensed trade repository with this Act, the Monetary Authority of Singapore Act 1970, any of the written laws set out in the Schedule to that Act, or the business rules of the licensed trade repository;

(*c*) the individual has failed to discharge any of the duties of his or her office or employment;

(*d*) the individual's removal is necessary in the public interest or for the protection of investors; or

(*e*) the individual comes within any of the grounds mentioned in subsection (1).

(4) The Authority must, in determining whether an individual has failed to discharge the duties of his or her office or employment for the purposes of subsection (3)(*c*), have regard to such criteria as may be prescribed.

(5) The Authority must not direct a licensed trade repository to remove an individual from his or her office or employment under subsection (2) without giving the licensed trade repository and that individual, an opportunity to be heard except in any of the following circumstances:

(*a*) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 101A prohibition order or an FSMA prohibition order against the individual has been made and remains in force;

(*c*) the individual has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 41 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the individual had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) A licensed trade repository must, as soon as practicable after receiving a direction under subsection (2), notify the affected director or executive officer of the direction.

(7) Any licensed trade repository who receives a direction under subsection (2), or any director or executive officer of a licensed trade repository in relation to whom a direction under subsection (2) is given, may, within 30 days after the licensed trade repository receives the direction, appeal to the Minister whose decision is final.

(8) Despite the lodging of an appeal under subsection (7), a direction under subsection (2) continues to have effect pending the Minister's decision.

(9) The Minister may, when deciding an appeal under subsection (7), modify the direction under subsection (2), and such modified action has effect starting on the date of the Minister's decision.

(10) No criminal or civil liability is incurred by a licensed trade repository or any person acting on behalf of a licensed trade repository in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any licensed trade repository which, without reasonable excuse, contravenes subsection (1) or fails to comply with a notice

issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Subdivision (5) — Immunity

Immunity from criminal or civil liability

46ZA.—(1) No criminal or civil liability shall be incurred by a licensed trade repository, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the licensed trade repository under this Act or under the business rules of the licensed trade repository.

[34/2012]

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the licensed trade repository, including —

(*a*) any director of the licensed trade repository; or

(*b*) any member of any committee established by the licensed trade repository.

[34/2012]

Division 3 — Regulation of Licensed Foreign Trade Repositories

General obligations

46ZB.—(1) A licensed foreign trade repository —

(*a*) must operate in a safe and efficient manner in its capacity as a trade repository;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in the licensed foreign trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed foreign trade repository and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for the licensed foreign trade repository to be operated in a safe and efficient manner;

(*f*) must enforce compliance by its participants with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate in a safe and efficient manner in its capacity as a trade repository;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must ensure that the Authority is provided with access to all information on transactions reported to the licensed foreign trade repository;

(*i*) must maintain governance arrangements that are adequate for the licensed foreign trade repository to be operated in a safe and efficient manner; and

(*j*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[34/2012]

Obligation to manage risks prudently

46ZC. Without limiting section 46ZB(1)(*b*), a licensed foreign trade repository must —

(*a*) ensure that the systems and controls concerning the assessment and management of risks to the licensed foreign trade repository are adequate and appropriate for the scale and nature of its operations; and

(*b*) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed foreign trade repository.

[34/2012]

Obligation to notify Authority of certain matters

46ZD. A licensed foreign trade repository must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the licensed foreign trade repository in its application under section 46D(2);

(*b*) the licensed foreign trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;

(*c*) any other matter that the Authority may —

(i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or

(ii) specify by written notice to the licensed foreign trade repository in any particular case.

[34/2012]

Obligation to maintain proper records

46ZE.—(1) A licensed foreign trade repository must maintain a record of all transactions reported to the licensed foreign trade repository.

[34/2012]

(2) The Authority may prescribe by regulations made under section 46ZJ —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the information and details relating to each transaction that are to be maintained in the record; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

46ZF. A licensed foreign trade repository must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

46ZG. A licensed foreign trade repository must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business or operations of the licensed foreign trade repository; or

(B) in respect of any transaction or class of transactions reported to the licensed foreign trade repository; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

46ZH.—(1) Subject to subsection (2), a licensed foreign trade repository and its officers and employees must maintain, and aid in

maintaining, the confidentiality of all user information or transaction information that —

(*a*) comes to the knowledge of the licensed foreign trade repository or any of its officers or employees; or

(*b*) is in the possession of the licensed foreign trade repository or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information or transaction information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a licensed foreign trade repository from entering into a written agreement with a participant which obliges the licensed foreign trade repository to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

(4) A licensed foreign trade repository must comply with such other requirements relating to confidentiality as the Authority may prescribe.

[34/2012]

Penalties under this Division

46ZI. Any licensed foreign trade repository which contravenes section 46ZB(1), 46ZC, 46ZD, 46ZE(1), 46ZF, 46ZG or 46ZH(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence,

to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Division 4 — General Powers of Authority

Interpretation of sections 46ZIA to 46ZIF

46ZIA. In this section and sections 46ZIB to 46ZIF, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to a licensed trade repository or licensed foreign trade repository, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the licensed trade repository or licensed foreign trade repository (as the case may be), or acting in an equivalent capacity in relation to the licensed trade repository or licensed foreign trade repository, as the case may be;

"relevant business" means any business of a licensed trade repository or licensed foreign trade repository —

(*a*) which the Authority has assumed control of under section 46ZIB; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 46ZIB;

"statutory adviser" means a statutory adviser appointed under section 46ZIB;

"statutory manager" means a statutory manager appointed under section 46ZIB.

[10/2013]

Action by Authority if licensed trade repository unable to meet obligations, etc.

46ZIB.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) a licensed trade repository or licensed foreign trade repository informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) a licensed trade repository or licensed foreign trade repository becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that a licensed trade repository or licensed foreign trade repository —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 46A;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 46E(3) or (4); or

(*d*) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the licensed trade repository or licensed foreign trade repository (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the licensed trade repository or licensed foreign trade repository (as the case may be) on the proper management of such of the business of the licensed trade

repository or licensed foreign trade repository (as the case may be) as the Authority may determine; or

(*c*) assume control of and manage such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a licensed foreign trade repository, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the licensed foreign trade repository under subsection (2) is only in relation to —

(*a*) the business or affairs of the licensed foreign trade repository carried on in, or managed in or from, Singapore; or

(*b*) the property of the licensed foreign trade repository located in Singapore or reflected in the books of the licensed foreign trade repository in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of a licensed trade repository or licensed foreign trade repository, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 46H(1)(*da*), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[10/2013]

(7) Any licensed trade repository or licensed foreign trade repository that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 46ZIB

46ZIC.—(1) Upon assuming control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

(*a*) must manage the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) in the name of and on behalf of the licensed trade repository or licensed foreign trade repository, as the case may be; and

(*b*) is deemed to be an agent of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(3) In managing the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 46ZIB(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the licensed trade repository or licensed foreign trade repository (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the licensed trade repository or licensed foreign trade repository (as the case may be), including powers of delegation, in relation to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the licensed trade repository or licensed foreign trade repository (as the case may be) under the Companies Act 1967 or the constitution of the licensed trade repository or licensed foreign trade repository (as the case may be).

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of a licensed trade repository or

licensed foreign trade repository by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be), which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository, the Authority may at any time, by written notice to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the licensed trade repository or licensed foreign trade repository, as the case may be,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the licensed trade repository or licensed

foreign trade repository (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Duration of control

46ZID.—(1) The Authority must cease to be in control of the relevant business of a licensed trade repository or licensed foreign trade repository when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of a licensed trade repository or licensed foreign trade repository on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in

section 46ZIB(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository;

(*b*) the cessation of the Authority's control of the relevant business of a licensed trade repository or licensed foreign trade repository;

(*c*) the appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of a licensed trade repository or licensed foreign trade repository.

[10/2013]

Responsibilities of officers, member, etc., of licensed trade repository

46ZIE.—(1) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign

trade repository (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the licensed trade repository or licensed foreign trade repository (as the case may be) which is comprised in, forms part of or relates to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

46ZIF.—(1) The Authority may at any time fix the remuneration and expenses to be paid by a licensed trade repository or licensed foreign trade repository —

(*a*) to a statutory manager or statutory adviser appointed in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The licensed trade repository or licensed foreign trade repository (as the case may be) must reimburse the Authority any remuneration and expenses payable by the licensed trade repository or licensed foreign trade repository (as the case may be) to a statutory manager or statutory adviser.

[10/2013]

Power of Authority to make regulations

46ZJ.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

(*a*) the grant of a trade repository licence or foreign trade repository licence;

(*b*) the requirements applicable to a licensed trade repository or licensed foreign trade repository;

(*c*) the measures that a licensed trade repository or licensed foreign trade repository must adopt for the purposes of managing or mitigating risks;

(*d*) the maintenance of records of transactions reported to a licensed trade repository or licensed foreign trade repository; and

(*e*) the submission of reports by a licensed trade repository or licensed foreign trade repository.

[34/2012]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for a penalty not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

Power of Authority to issue directions

46ZK.—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to a licensed trade repository or licensed foreign trade repository, or a class of licensed trade repositories or class of licensed foreign trade repositories, if the Authority thinks it necessary or expedient —

(*a*) for ensuring the safe and efficient operation of the licensed trade repository or licensed foreign trade repository, of licensed trade repositories or licensed foreign trade repositories of the class, or of licensed trade repositories or licensed foreign trade repositories in general;

[Act 12 of 2024 wef 30/08/2024]

(*b*) for ensuring the integrity and stability of the capital markets or the financial system;

(*c*) in the interests of the public or a section of the public or for the protection of investors;

(*d*) for the effective administration of this Act; or

(*e*) for ensuring compliance with any condition or restriction that the Authority may impose under section 46E(3) or (4), 46K(2), 46U(5), (10) or (11), 46V(11) or (12) or 46ZL(1) or (2), or such other obligations or requirements under this Act or as the Authority may prescribe.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

[Act 12 of 2024 wef 30/08/2024]

(2) Without limiting subsection (1), the Authority may issue directions, by written notice, to a licensed trade repository or licensed foreign trade repository, or a class of licensed trade repositories or class of licensed foreign trade repositories —

(*a*) with respect to the publication of any information relating to any transaction reported to the licensed trade repository or licensed foreign trade repository, or to licensed trade repositories or licensed foreign trade repositories of the class, as the case may be; or

[Act 12 of 2024 wef 30/08/2024]

(*b*) for ensuring that the Authority and such other entities as the Authority may specify are provided with access to any information on any transaction reported to the licensed trade repository or licensed foreign trade repository or to licensed trade repositories or licensed foreign trade repositories of the class.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

[Act 12 of 2024 wef 30/08/2024]

(3) A licensed trade repository or licensed foreign trade repository must comply with every direction issued to it under subsection (1) or (2).

[34/2012]

(4) Any licensed trade repository or licensed foreign trade repository which, without reasonable excuse, contravenes a direction issued to it under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not

exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) It is not necessary to publish any direction issued under subsection (1) or (2) in the *Gazette*.

[34/2012]

Power of Authority to exempt licensed trade repository or licensed foreign trade repository from provisions of this Part

46ZL.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository, licensed foreign trade repository, or class of licensed trade repositories or licensed foreign trade repositories from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any licensed trade repository or licensed foreign trade repository from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that licensed trade repository or licensed foreign trade repository with that provision will not detract from the objectives specified in section 46A.

[34/2012]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) A licensed trade repository or licensed foreign trade repository that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(2C) A licensed trade repository or licensed foreign trade repository that is exempted under subsection (2) must, for the duration of the

exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

Division 5 — Voluntary Transfer of Business of Licensed Trade Repository or Licensed Foreign Trade Repository

Interpretation of this Division

46ZM. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means a licensed trade repository or licensed foreign trade repository, or a corporation which has applied or will be applying for a trade repository licence or foreign trade repository licence, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means a licensed trade repository or licensed foreign trade repository the whole or any part of the

business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

46ZN.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a licensed trade repository or licensed foreign trade repository) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of a licensed trade repository or licensed foreign trade repository; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of a licensed trade repository or licensed foreign trade repository to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

46ZO.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 46ZN(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 46ZN(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not granted a trade repository licence or foreign trade repository licence by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being granted a trade repository licence or foreign trade repository licence by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

PART 3

CLEARING FACILITIES

[34/2012]

Objectives of this Part

47. The objectives of this Part are —

(*a*) to promote safe and efficient clearing facilities; and

(*b*) to reduce systemic risk.

[34/2012]

Interpretation of this Part

48.—(1) In this Part, unless the context otherwise requires —

"default proceedings" means any proceedings or other action taken by an approved clearing house or a recognised clearing house under its default rules;

"default rules", in relation to an approved clearing house or a recognised clearing house, means the business rules of the approved clearing house or recognised clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable or to be likely to become unable, to meet the participant's obligations for any unsettled or open market contract to which the participant is a party;

"defaulter" means a participant who is the subject of any default proceedings;

"foreign corporation" means a corporation which is incorporated or formed outside Singapore;

"market charge" means a security interest, whether fixed or floating, granted in favour of an approved clearing house, or a recognised clearing house, over market collateral;

"market collateral" means any property held by or deposited with an approved clearing house or a recognised clearing house, for the purpose of securing any liability arising directly in connection with the ensuring of the performance of market contracts by the approved clearing house or recognised clearing house;

"market contract" means —

(*a*) a contract subject to the business rules of an approved clearing house or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or

(*b*) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with

the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (*a*) is to take place;

"property", in relation to a market charge or market collateral, means —

(*a*) any money, letter of credit, banker's draft, certified cheque, guarantee or other similar instrument;

(*b*) any securities;

(*c*) any unit in a collective investment scheme;

(*d*) any derivatives contract; or

(*e*) any other asset of value acceptable to an approved clearing house or a recognised clearing house;

"relevant office holder" means —

(*a*) the Official Assignee exercising his or her powers under the Insolvency, Restructuring and Dissolution Act 2018;

(*b*) a person acting in relation to a corporation as the liquidator, the provisional liquidator, the receiver, the receiver and manager or the judicial manager of the corporation, or acting in an equivalent capacity in relation to a corporation; or

(*c*) a person acting in relation to an individual as the trustee in bankruptcy, or the interim receiver of the property, of the individual, or acting in an equivalent capacity in relation to an individual;

"settlement", in relation to a market contract, includes partial settlement;

"Singapore corporation" means a corporation which is incorporated in Singapore;

[Act 12 of 2024 wef 24/01/2025]

"Singapore recognised clearing house" means a recognised clearing house that is a Singapore corporation.

[34/2012; 4/2017; 40/2018]

[Act 12 of 2024 wef 24/01/2025]

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" in subsection (1) and partly for any other purpose or purposes, the charge is treated as a market charge under this Part insofar as it has effect for that specified purpose.

[34/2012]

(3) Where any collateral is granted partly for the purpose specified in the definition of "market collateral" in subsection (1) and partly for any other purpose or purposes, the collateral is treated as market collateral under this Part insofar as it has been provided for that specified purpose.

[34/2012]

(4) Any references in this Part to the law of insolvency is a reference to —

(*a*) the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) [*Deleted by Act 40 of 2018*]

(*c*) any other written law, whether in Singapore or elsewhere, which is concerned with, or in any way related to, the bankruptcy or insolvency of a person, other than the Banking Act 1970.

[34/2012; 40/2018]

(5) Any reference in this Part to a settlement, in relation to a market contract, is a reference to the discharge of the rights and liabilities of the parties to the market contract, whether by performance, compromise or otherwise.

[34/2012]

Division 1 — Establishment of Clearing Facilities

Requirement for approval or recognition

49.—(1) A person must not establish or operate a clearing facility, or hold out that the person is operating a clearing facility, unless the person is —

(*a*) an approved clearing house; or

(*b*) a recognised clearing house.

[34/2012]

(2) A person must not hold out that the person is —

(*a*) an approved clearing house, unless the person is an approved clearing house; or

(*b*) a recognised clearing house, unless the person is a recognised clearing house.

[34/2012]

(3) Except with the written approval of the Authority, no person, other than an approved clearing house or a recognised clearing house, may take or use, or have attached to or exhibited at any place —

(*a*) the title or description "securities clearing house" or "futures clearing house" in any language; or

(*b*) any title or description which resembles a title or description referred to in paragraph (*a*).

[34/2012]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) Without affecting section 337(1), the Authority may, by regulations made under section 81Q, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(7) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 47.

[34/2012]

(8) It is not necessary to publish any exemption granted under subsection (7) in the *Gazette*.

[34/2012]

(9) The Authority may, at any time, by written notice —

(*a*) add to the conditions and restrictions referred to in subsection (7); or

(*b*) vary or revoke any condition or restriction referred to in that subsection.

[34/2012]

(10) Every corporation that is granted an exemption under subsection (6) must satisfy every condition or restriction imposed on it under that subsection.

[34/2012]

(11) Every corporation that is granted an exemption under subsection (7) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection or subsection (9).

[34/2012]

(12) Any corporation which contravenes subsection (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Application for approval or recognition

50.—(1) A Singapore corporation may apply to the Authority to be —

(*a*) approved as an approved clearing house; or

(*b*) recognised as a recognised clearing house.

[34/2012]

(2) A foreign corporation may apply to the Authority to be recognised as a recognised clearing house.

[34/2012]

(3) An application under subsection (1) or (2) must be —

(*a*) made in such form and manner as the Authority may prescribe; and

(*b*) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

[34/2012]

(4) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[34/2012]

Power of Authority to approve or recognise clearing house

51.—(1) Where a Singapore corporation has made an application under section 50(1), the Authority may —

(*a*) in the case of an application to be approved as an approved clearing house, approve the Singapore corporation as an approved clearing house; or

(*b*) in the case of an application to be recognised as a recognised clearing house, recognise the Singapore corporation as a recognised clearing house.

[34/2012]

(2) Where a foreign corporation has made an application under section 50(2), the Authority may recognise the corporation as a recognised clearing house.

[34/2012]

(3) Despite subsection (1), the Authority may, with the consent of the applicant —

(*a*) treat an application under section 50(1)(*a*) as an application under section 50(1)(*b*), if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised clearing house; or

(*b*) treat an application under section 50(1)(*b*) as an application under section 50(1)(*a*), if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved clearing house.

[34/2012]

(4) The Authority may approve a Singapore corporation as an approved clearing house under subsection (1)(*a*), recognise a Singapore corporation as a recognised clearing house under subsection (1)(*b*) or recognise a foreign corporation as a recognised clearing house under subsection (2), subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

(*a*) the activities that the corporation may undertake;

(*b*) the products that may be cleared or settled by any clearing facility established or operated by the corporation; and

(*c*) the nature of the investors or participants who may use or have an interest in any clearing facility established or operated by the corporation.

[34/2012]

(5) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

[34/2012]

(6) An approved clearing house or a recognised clearing house must, for the duration of the approval or recognition, satisfy every condition or restriction that may be imposed on it under subsection (4) or (5).

[34/2012]

(7) The Authority must not approve an applicant as an approved clearing house, or recognise an applicant as a recognised clearing house, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

[34/2012]

(8) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, if —

(*a*) the corporation has not provided the Authority with such information as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or

(ii) any circumstances likely to affect the corporation's manner of conducting business;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the

case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 1 August 2013;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any clearing facility;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard

to the nature of the business which the corporation may carry on in connection with the establishment or operation of any clearing facility;

(*m*) there are other circumstances which are likely to —

(i) lead to the improper conduct of business by the corporation or any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business of the corporation or any of its substantial shareholders;

(*n*) in the case of any clearing facility that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient clearing facility;

(*o*) the corporation does not satisfy the criteria prescribed under section 52 to be approved as an approved clearing house or recognised as a recognised clearing house, as the case may be; or

(*p*) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[34/2012]

(9) Subject to subsection (10), the Authority must not refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, under subsection (8) without giving the corporation an opportunity to be heard.

[34/2012]

(10) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(11) The Authority must give notice in the *Gazette* of any corporation approved as an approved clearing house under subsection (1)(*a*) or recognised as a recognised clearing house under subsection (1)(*b*) or (2), and such notice may include all or any of the conditions and restrictions imposed by the Authority on the corporation under subsections (4) and (5).

[34/2012]

(12) Any applicant which is aggrieved by a refusal of the Authority to grant to the applicant an approval under subsection (1)(*a*) or a refusal of the Authority to recognise the applicant under subsection (1)(*b*) or (2) may, within 30 days after the applicant is notified of the refusal, appeal to the Minister, whose decision is final.

[34/2012]

(13) Any approved clearing house or recognised clearing house which contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

General criteria to be taken into account by Authority

52.—(1) The Authority may prescribe the criteria which it may take into account for the purposes of deciding —

(*a*) whether a Singapore corporation referred to in section 50(1) or 54(1) should be approved as an

approved clearing house or recognised as a recognised clearing house;

(*b*) whether a foreign corporation referred to in section 50(2) should be recognised as a recognised clearing house; and

(*c*) whether an approved clearing house or a recognised clearing house that is subject to a review by the Authority under section 54(4) should be approved as an approved clearing house or recognised as a recognised clearing house.

[34/2012]

(2) Without affecting section 51 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised clearing house under section 51(2), have regard, in addition to any requirements prescribed under section 51(7) and any criteria prescribed under subsection (1), to —

(*a*) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 47 are achieved, to the requirements and supervision to which approved clearing houses and recognised clearing houses are subject under this Act.

[34/2012]

(3) In considering whether a foreign corporation has met the requirements mentioned in subsection (2)(*b*), the Authority may have regard to —

(*a*) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) the rules and practices of the foreign corporation.

[34/2012]

Annual fees payable by approved clearing house or recognised clearing house

53.—(1) Every approved clearing house and every recognised clearing house must pay to the Authority such annual fees as may be prescribed in such manner as the Authority may specify.

[34/2012]

(2) The Authority may, where it considers appropriate, refund or remit the whole or any part of any annual fee paid or payable to it.

[34/2012]

Change in status

54.—(1) A Singapore corporation which is an approved clearing house or a recognised clearing house may apply to the Authority to change its status in the manner referred to in subsection (5).

[34/2012]

(2) An application under subsection (1) must be —

(*a*) made in such form and manner as the Authority may prescribe; and

(*b*) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

[34/2012]

(3) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[34/2012]

(4) The Authority may, on its own initiative, review the status of a Singapore corporation that is an approved clearing house or a recognised clearing house in accordance with the requirements prescribed under section 51(7) and the criteria prescribed under section 52(1).

[34/2012]

(5) Where an application is made by a Singapore corporation under subsection (1), or where a review of the status of a Singapore

corporation is conducted by the Authority under subsection (4), the Authority may —

(*a*) if the corporation is an approved clearing house, withdraw the approval as such and recognise the corporation as a recognised clearing house under section 51(1)(*b*);

(*b*) if the corporation is a recognised clearing house, withdraw the recognition as such and approve the corporation as an approved clearing house under section 51(1)(*a*); or

(*c*) make no change to the status of the corporation as an approved clearing house or a recognised clearing house.

[34/2012]

(6) Where an application is made under subsection (1), the Authority must not exercise its power under subsection (5)(*c*) without giving the Singapore corporation an opportunity to be heard.

[34/2012]

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority must not exercise its powers under subsection (5)(*a*) or (*b*) without giving the corporation an opportunity to be heard.

[34/2012]

(8) Any Singapore corporation which is aggrieved by a decision of the Authority made in relation to the corporation after a review under subsection (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[34/2012]

Cancellation of approval or recognition

55.—(1) An approved clearing house or a recognised clearing house which intends to cease operating its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities, may apply to the Authority to cancel its approval as an approved clearing house or recognition as a recognised clearing house, as the case may be.

[34/2012]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may prescribe.

[34/2012]

(3) The Authority may cancel the approval of an approved clearing house, or the recognition of a recognised clearing house, on such application if the Authority is satisfied that —

(*a*) the approved clearing house or recognised clearing house has ceased operating its clearing facility or all of its clearing facilities, as the case may be; and

(*b*) the cancellation of the approval or recognition (as the case may be) will not detract from the objectives specified in section 47.

[34/2012]

Power of Authority to revoke approval and recognition

56.—(1) The Authority may revoke any approval of a Singapore corporation as an approved clearing house under section 51(1)(*a*), any recognition of a Singapore corporation as a recognised clearing house under section 51(1)(*b*) or any recognition of a foreign corporation as a recognised clearing house under section 51(2), if —

(*a*) there exists at any time a ground under section 51(7) or (8) on which the Authority may refuse an application;

(*b*) the corporation does not commence operating its clearing facility, or, where it operates more than one clearing facility, all of its clearing facilities, within 12 months starting on the date on which it was granted the approval under section 51(1)(*a*) or was recognised under section 51(1)(*b*) or (2), as the case may be;

(*c*) the corporation ceases to operate its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities;

(*d*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;

(ii) any direction issued to it by the Authority under this Act; or

(iii) any provision in this Act;

(*da*) upon the Authority exercising any power under section 81SAA(2) or the Minister exercising any power under Division 2, 4, 5 or 6 of Part 8 of the Financial Services and Markets Act 2022 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;

[Act 18 of 2022 wef 10/05/2024]

(*e*) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or

(*f*) any information or document provided by the corporation to the Authority is false or misleading.

[34/2012; 10/2013; 4/2017; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 51(1)(*a*) or recognition under section 51(1)(*b*) or (2) that was granted to a corporation without giving the corporation an opportunity to be heard.

[34/2012]

(3) The Authority may revoke an approval under section 51(1)(*a*), or a recognition under section 51(1)(*b*) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the

conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(4) For the purposes of subsection (1)(*c*), a corporation is deemed to have ceased to operate its clearing facility if —

(*a*) it has ceased to operate the clearing facility for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or

(*b*) it has ceased to operate the clearing facility under a direction issued by the Authority under section 81R.

[34/2012]

(5) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he or she considers necessary to any action taken by the Authority under this section, and the modified action has effect from the date of the decision of the Minister.

[34/2012]

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 51(1) or (2) does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of a clearing facility operated by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[34/2012]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of any approval or recognition of a corporation under section 51(1) or (2).

[34/2012]

Division 2 — Regulation of Approved Clearing Houses

Subdivision (1) — Obligations of approved clearing houses

General obligations

57.—(1) An approved clearing house —

(*a*) must operate a safe and efficient clearing facility;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for —

(i) the clearing facility to be operated in a safe and efficient manner; and

(ii) the proper regulation and supervision of its members;

(*f*) must enforce compliance by its members with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate a safe and efficient clearing facility;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and

(*i*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) The obligations imposed on an approved clearing house under this Act apply to all facilities for clearing or settlement operated by the approved clearing house.

[34/2012]

(3) Despite subsection (2), the Authority may by written notice exempt any clearing facility operated by an approved clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.

[34/2012]

(4) It is not necessary to publish any exemption granted under subsection (3) in the *Gazette*.

[34/2012]

(5) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[34/2012]

Obligation to notify Authority of certain matters

58.—(1) An approved clearing house must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the approved clearing house in its application under section 50(1) or 54(1);

(*b*) the carrying on of any business (called in this section a proscribed business) by the approved clearing house other than such business or such class of businesses prescribed by regulations made under section 81Q;

(*c*) the acquisition by the approved clearing house of a substantial shareholding in any corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 81Q;

(*d*) the approved clearing house becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a member of the approved clearing house to meet its financial obligations to the approved clearing house;

(*e*) the approved clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved clearing house;

(*f*) any other matter that the Authority may —

(i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or

(ii) specify by written notice to the approved clearing house in any particular case.

[34/2012; 4/2017]

(2) Without limiting section 81R(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the approved clearing house —

(*a*) where the notice relates to a matter referred to in subsection (1)(*b*) —

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1); or

(*b*) where the notice relates to a matter referred to in subsection (1)(*c*) —

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1).

[34/2012]

(3) An approved clearing house must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[34/2012]

(4) An approved clearing house must notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[34/2012]

(5) An approved clearing house must notify the Authority of any matter that the Authority may specify by written notice to the approved clearing house, no later than such time as the Authority may specify in that notice.

[34/2012; 4/2017]

Obligation to manage risks prudently, etc.

59. Without limiting section 57(1)(*b*), an approved clearing house must ensure that the systems and controls concerning the assessment and management of risks of the clearing facility that the approved

clearing house operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

Obligation in relation to customers' money and assets held by approved clearing house

60.—(1) Without affecting sections 81Q and 341, the Authority may make regulations —

(*a*) relating to how any money or assets deposited with or paid to an approved clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the approved clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;

(*b*) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (*a*) may be used by the approved clearing house;

(*c*) relating to how the approved clearing house may invest the money or assets referred to in paragraph (*a*); and

(*d*) for any other purpose relating to the handling of the money and assets referred to in paragraph (*a*).

[34/2012]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for a penalty not exceeding a fine of $200,000 and, in the case of a continuing offence, for a further penalty not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Obligation to maintain proper records

61.—(1) An approved clearing house must maintain a record of all transactions effected through its clearing facility.

[34/2012]

(2) The Authority may prescribe by regulations made under section 81Q —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

62. An approved clearing house must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

63. An approved clearing house must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the approved clearing house; or

(B) in respect of any transaction or class of transactions cleared or settled by the approved clearing house; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

64.—(1) Subject to subsection (2), an approved clearing house and its officers and employees must maintain, and aid in maintaining, confidentiality of all user information that —

(*a*) comes to the knowledge of the approved clearing house or any of its officers or employees; or

(*b*) is in the possession of the approved clearing house or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing an approved clearing house from entering into a written agreement with a user which obliges the approved clearing house to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

Penalties under this Subdivision

65. Any approved clearing house which contravenes section 57(1), 58(1) or (3), 59, 61(1), 62, 63 or 64(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012; 4/2017]

Subdivision (2) — Rules of approved clearing houses

Business rules of approved clearing houses

66.—(1) Without limiting sections 57 and 81Q —

(*a*) the Authority may prescribe the matters that an approved clearing house must provide for in the business rules of the approved clearing house; and

(*b*) the approved clearing house must provide for those matters in its business rules.

[34/2012]

(2) An approved clearing house must not make any amendment to its business rules unless it complies with such requirements as the Authority may prescribe.

[34/2012]

(3) In this Subdivision, any reference to an amendment to a business rule is to be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule, whether the change is made by an alteration to the text of the business rule or by any other notice issued by or on behalf of the approved clearing house.

[34/2012]

(4) Any approved clearing house which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Business rules of approved clearing houses have effect as contract

67.—(1) The business rules of an approved clearing house are treated as, and are to operate as, a binding contract —

(*a*) between the approved clearing house and each issuer;

(*b*) between the approved clearing house and each participant;

(*c*) between each issuer and each participant; and

(*d*) between each participant and every other participant.

[4/2017]

(2) The approved clearing house, each issuer and each participant are treated as having agreed to observe, and to perform the obligations under, the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved clearing house, issuer or participant, as the case may be.

[4/2017]

(3) In this section, "issuer" means a person who issued or made available, or proposes to issue or make available, securities, securities-based derivatives contracts or units in a collective investment scheme that are cleared or settled by the approved clearing house.

[4/2017]

Power of court to order observance or enforcement of business rules

68.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of an approved clearing house fails to do so, the General Division of the High Court may, on the application of the Authority, the approved clearing house or a person aggrieved by the failure, and after giving the firstmentioned person an opportunity to be heard, make an order directing the firstmentioned person to comply with, observe, enforce or give effect to those business rules.

[34/2012; 40/2019]

(2) In this section, "person" includes an approved clearing house.

[34/2012]

(3) This section is in addition to, and not in derogation of, any other remedy available to the aggrieved person referred to in subsection (1).

[34/2012]

Non-compliance with business rules not to substantially affect rights of person

69. Any failure by an approved clearing house to comply with this Act or its business rules in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules, so long as the failure does not

substantially affect the rights of any person entitled to require compliance with the business rules.

[34/2012]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in approved clearing house

70.—(1) A person must not enter into any agreement to acquire shares in an approved clearing house, being an agreement by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved clearing house, without first obtaining the approval of the Authority to enter into the agreement.

[34/2012]

(2) A person must not become either of the following without first obtaining the approval of the Authority:

(*a*) a 12% controller of an approved clearing house;

(*b*) a 20% controller of an approved clearing house.

[34/2012]

(3) In subsection (2) —

"12% controller", in relation to an approved clearing house, means a person, not being a 20% controller, who alone or together with the person's associates —

(*a*) holds not less than 12% of the shares in the approved clearing house; or

(*b*) is in a position to control not less than 12% of the votes in the approved clearing house;

"20% controller", in relation to an approved clearing house, means a person who, alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the approved clearing house; or

(*b*) is in a position to control not less than 20% of the votes in the approved clearing house.

[34/2012]

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in an approved clearing house is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved clearing house; and

(*c*) a person, *A*, is an associate of another person, *B*, if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) [*Deleted by Act 35 of 2014*]

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in

sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved clearing house.

[34/2012; 35/2014]

(5) The Authority may grant its approval referred to in subsection (1) or (2) subject to such conditions or restrictions as the Authority may think fit.

[34/2012]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved clearing house in which a substantial shareholder, 12% controller or 20% controller of the approved clearing house has an interest.

[34/2012]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the approved clearing house —

(*a*) no voting rights are exercisable in respect of the shares which are the subject of the direction;

(*b*) the approved clearing house must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(*c*) except in a liquidation of the approved clearing house, the approved clearing house must not make any payment

(whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

[34/2012]

(8) Any issue of shares by an approved clearing house in contravention of subsection (7)(*b*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the approved clearing house, upon which the approved clearing house must return to the person any payment received from the person in respect of those shares.

[34/2012]

(9) Any payment made by an approved clearing house in contravention of subsection (7)(*c*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment that the person has received to the approved clearing house.

[34/2012]

(10) Without affecting sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(*a*) any person or class of persons;

(*b*) any class or description of shares or interests in shares.

[34/2012]

(11) Without affecting sections 81SB(2) and 337(3) and (4), the Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[34/2012]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a

continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(14) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Approval of chairperson, chief executive officer, director and key persons

71.—(1) An approved clearing house must not appoint a person as its chairperson, chief executive officer or director unless the approved clearing house has obtained the approval of the Authority.

[34/2012]

(2) The Authority may, by written notice, require an approved clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved clearing house, and the approved clearing house must comply with the notice.

[34/2012]

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may specify.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

(4) Without limiting section 81Q and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as may be prescribed by regulations made under section 81Q or notified by the Authority to the approved clearing house in writing.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the approved clearing house an opportunity to be heard.

[34/2012]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved clearing house an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[34/2012]

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[34/2012]

(8) An approved clearing house must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director or of any person referred to in any notice issued by the Authority to the approved clearing house under subsection (2).

[34/2012]

(9) The Authority may make regulations under section 81Q relating to the composition and duties of the board of directors or any committee of an approved clearing house.

[34/2012]

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of an

approved clearing house, and any body responsible for disciplinary action against a member of an approved clearing house.

[34/2012]

(11) Without affecting sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house or class of approved clearing houses from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(12) Without affecting sections 81SB(2) and 337(3) and (4), the Authority may, by written notice, exempt any approved clearing house from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[34/2012]

(14) Any approved clearing house which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012; 4/2017]

Listing of approved clearing houses on organised market

72.—(1) The securities or securities-based derivatives contracts of an approved clearing house must not be listed for quotation on an organised market that is operated by any of its related corporations, unless the approved clearing house and the operator of the organised market have entered into such arrangements as the Authority may require —

(*a*) for dealing with possible conflicts of interest that may arise from such listing; and

(*b*) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved clearing house are listed for quotation on an organised market operated by any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

(*a*) the admission of the approved clearing house to, or the removal of the approved clearing house from, the official list of the organised market; and

(*b*) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

(*a*) modify the listing rules of the organised market for the purpose of their application to the listing for quotation or trading of the securities or securities-based derivatives contracts of the approved clearing house; or

(*b*) waive the application of any listing rule of the organised market to the approved clearing house.

[4/2017]

(4) Any approved clearing house which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a

further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Auditors of approved clearing houses — appointment and duties

73.—(1) Despite any other provision of this Act or any other written law, every approved clearing house must —

(*a*) on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and

(*b*) where, for any reason, the auditor ceases to act for the approved clearing house, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor must not be approved by the Authority as an auditor for an approved clearing house unless the auditor is able to comply with such conditions in relation to the discharge of an auditor's duties as the Authority may determine.

(3) The Authority may appoint an auditor for an approved clearing house —

(*a*) if the approved clearing house fails to appoint an auditor in accordance with subsection (1); or

(*b*) if the Authority considers it desirable that another auditor should act with an auditor for the approved clearing house appointed under subsection (1),

and may at any time fix the remuneration to be paid by the approved clearing house to that auditor.

(4) The duties of an auditor appointed under subsections (1) and (3) are —

(*a*) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the approved clearing house; and

(*b*) to make a report in respect of the latest financial statements of the approved clearing house or, where the approved

clearing house is a parent company for which consolidated financial statements are prepared, the consolidated financial statements, in accordance with section 207 of the Companies Act 1967.

(5) The Authority may, by written notice, impose all or any of the following duties on an auditor in addition to those in subsection (4):

(*a*) a duty to submit to the Authority such additional information in relation to the auditor's audit as the Authority considers necessary;

(*b*) a duty to enlarge or extend the scope of the auditor's audit of the business and affairs of the approved clearing house;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit to the Authority a report on any of the matters mentioned in paragraphs (*b*) and (*c*).

(6) An auditor to whom a notice is given under subsection (5) must comply with each direction specified in the notice.

(7) The approved clearing house must remunerate the auditor in respect of the discharge by the auditor of the duties mentioned in subsection (5).

(8) Despite any other provision of this Act or the provisions of the Companies Act 1967, the Authority may, if it is not satisfied with the performance of any duty by an auditor of an approved clearing house, at any time —

(*a*) direct the approved clearing house to remove the auditor; and

(*b*) direct the approved clearing house to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the approved clearing house must comply with such direction.

(9) If an auditor discloses in good faith to the Authority any information mentioned in subsection (5)(*a*) or report mentioned in subsection (5)(*d*), the disclosure is not to be treated as a breach of any

restriction on the disclosure imposed by any law, contract or rules of professional conduct, and the auditor is not liable for any loss arising from the disclosure or any act or omission as a result of the disclosure.

(10) An approved clearing house that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(11) An approved clearing house that fails to comply with a direction under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

(12) Any auditor who fails to carry out any duty mentioned in subsection (4), or who fails to comply with subsection (6), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Auditors of approved clearing houses to report certain matters and irregularities to Authority

73A.—(1) If an auditor of an approved clearing house, in the course of performing the auditor's duties mentioned in section 73(4) or (5), becomes aware of any matter or irregularity mentioned in the following paragraphs, the auditor must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter that, in the auditor's opinion, adversely affects or may adversely affect the financial position of the approved clearing house to a material extent;

(*b*) any matter that, in the auditor's opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(*c*) any irregularity that has or may have a material effect upon the accounts of the approved clearing house, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

(2) An auditor of an approved clearing house is not, in the absence of malice on the auditor's part, liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of an approved clearing house may have, apart from this section, as a defendant in an action for defamation.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to appoint auditor to examine and audit books of approved clearing house

73B.—(1) Where —

(*a*) an approved clearing house is required under section 62 to submit to the Authority an auditor's report but fails to do so; or

(*b*) the Authority receives a report under section 73A(1),

the Authority may, without affecting its powers under section 73, if it is satisfied that it is in the interests of the approved clearing house, the participants of the approved clearing house or the general public to do so, appoint in writing an auditor to examine and audit (either generally or in relation to any particular matter) the books of the approved clearing house.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the approved clearing house, the Authority may, in writing, direct the approved clearing house to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where an approved clearing house fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

[Act 12 of 2024 wef 24/01/2025]

Restriction on auditor's and employee's right to communicate certain matters

73C. Except as may be necessary for carrying into effect the provisions of this Act or so far as may be required for the purposes of any legal proceedings (whether civil or criminal), an auditor who is carrying out any duty imposed under section 73(5) or who is appointed under section 73B, or any employee of such auditor, must not disclose any information which may come to his or her knowledge or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

(*a*) the Authority;

(*b*) in the case of an employee of such auditor, the auditor; and

(*c*) any other person authorised by the Authority in writing to receive such information.

[Act 12 of 2024 wef 24/01/2025]

Subdivision (4) — Immunity

Immunity from criminal or civil liability

74.—(1) No criminal or civil liability shall be incurred by an approved clearing house, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved clearing house under this Act or under the business rules of the approved clearing house (including the default rules of the approved clearing house).

[34/2012]

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the approved clearing house, including —

(*a*) any director of the approved clearing house; or

(*b*) any member of any committee established by the approved clearing house.

[34/2012]

Division 3 — Regulation of Recognised Clearing Houses

General obligations

75.—(1) A recognised clearing house —

(*a*) must operate a safe and efficient clearing facility;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for —

(i) the clearing facility to be operated in a safe and efficient manner; and

(ii) the proper regulation and supervision of its members;

(*f*) must enforce compliance by its members with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate a safe and efficient clearing facility;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and

(*i*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) The obligations imposed on a recognised clearing house under this Act apply to all facilities for clearing or settlement operated by the recognised clearing house.

[34/2012]

(3) Despite subsection (2), the Authority may by written notice exempt any clearing facility operated by a recognised clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.

[34/2012]

(4) It is not necessary to publish any exemption granted under subsection (3) in the *Gazette*.

[34/2012]

(5) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[34/2012]

Obligation to notify Authority of certain matters

76.—(1) A recognised clearing house must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the recognised clearing house in its application under section 50(1) or (2) or 54(1);

(*b*) the recognised clearing house becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a member of the recognised clearing house to meet its financial obligations to the recognised clearing house;

(*c*) any other matter that the Authority may —

(i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or

(ii) specify by written notice to the recognised clearing house in any particular case.

[34/2012]

(2) A recognised clearing house must notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[34/2012]

(3) A recognised clearing house must notify the Authority of any matter that the Authority may specify by written notice to the recognised clearing house, no later than such time as the Authority may specify in that notice.

[34/2012]

Obligation in relation to customers' money and assets held by recognised clearing house

77.—(1) Without affecting sections 81Q and 341, the Authority may make regulations —

(*a*) relating to how any money or assets deposited with or paid to a recognised clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the recognised clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;

(*b*) relating to the circumstances under which, and the purposes for which, the money or assets referred to in

paragraph (*a*) may be used by the recognised clearing house;

(*c*) relating to how the recognised clearing house may invest the money or assets referred to in paragraph (*a*); and

(*d*) for any other purpose relating to the handling of the money or assets referred to in paragraph (*a*).

[34/2012]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for a penalty not exceeding a fine of $150,000 and, in the case of a continuing offence, for a further penalty not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Obligation to maintain proper records

78.—(1) A recognised clearing house must maintain a record of all transactions effected through its clearing facility.

[34/2012]

(2) The Authority may prescribe by regulations made under section 81Q —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

79. A recognised clearing house must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

80. A recognised clearing house must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the recognised clearing house; or

(B) in respect of any transaction or class of transactions cleared or settled by the recognised clearing house; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

81.—(1) Subject to subsection (2), a recognised clearing house and its officers and employees must maintain, and aid in maintaining, confidentiality of all user information that —

(*a*) comes to the knowledge of the recognised clearing house or any of its officers or employees; or

(*b*) is in the possession of the recognised clearing house or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a recognised clearing house from entering into a written agreement with a user which obliges the recognised clearing house to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

Control of shareholding in Singapore recognised clearing house

81AA.—(1) A person must not become a 20% controller of a Singapore recognised clearing house without first obtaining the approval of the Authority.

(2) In this section and section 81AB, "20% controller", in relation to a Singapore recognised clearing house, means a person who, alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the Singapore recognised clearing house; or

(*b*) is in a position to control not less than 20% of the votes in the Singapore recognised clearing house.

(3) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in a Singapore recognised clearing house is a reference to the control, whether direct or indirect, of that percentage of the

total number of votes that might be cast in a general meeting of the Singapore recognised clearing house; and

(*c*) a person (*A*) is an associate of another person (*B*) if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iii) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iv) *A* is a subsidiary of *B*;

(v) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control not less than 20% of the votes in *A*; or

(vi) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the Singapore recognised clearing house.

(4) The Authority may grant its approval mentioned in subsection (1) subject to such conditions or restrictions as the Authority may impose.

(5) Without affecting subsection (12), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (4), by written notice, direct the transfer or disposal of all or any of the shares of a Singapore

recognised clearing house in which a 20% controller of the Singapore recognised clearing house has an interest.

(6) Until a person to whom a direction has been issued under subsection (5) transfers or disposes of the shares that are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the constitution or other constituent document or documents of the Singapore recognised clearing house —

(*a*) no voting rights are exercisable in respect of the shares that are the subject of the direction;

(*b*) the Singapore recognised clearing house must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares that are the subject of the direction; and

(*c*) except in a liquidation of the Singapore recognised clearing house, the Singapore recognised clearing house must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares that are the subject of the direction.

(7) Any issue of shares by a Singapore recognised clearing house in contravention of subsection (6)(*b*) is void, and a person to whom a direction has been issued under subsection (5) must immediately return those shares to the Singapore recognised clearing house, upon which the Singapore recognised clearing house must return to the person any payment received from the person in respect of those shares.

(8) Any payment made by a Singapore recognised clearing house in contravention of subsection (6)(*c*) is void, and a person to whom a direction has been issued under subsection (5) must immediately return the payment the person has received to the Singapore recognised clearing house.

(9) The Authority may, by regulations made under section 81Q, exempt —

(*a*) any person or class of persons; or

(*b*) any class or description of shares or interests in shares,

from the requirement under subsection (1), subject to such conditions or restrictions as may be prescribed in those regulations.

(10) The Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice.

(11) It is not necessary to publish any exemption granted under subsection (10) in the *Gazette*.

(12) Any person who contravenes subsection (1), or any condition or restriction imposed by the Authority under subsection (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(13) Any person who contravenes subsection (6)(*b*) or (*c*), (7) or (8) or any direction issued by the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Objection to control of Singapore recognised clearing house

81AB.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 81AA; or

(*b*) any person who, whether before, on or after the date of commencement of section 47 of the Financial Institutions (Miscellaneous Amendments) Act 2024, is a 20% controller of a Singapore recognised clearing house,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 81AA(4) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to be a 20% controller of the Singapore recognised clearing house;

(*e*) having regard to the likely influence of the person, the Singapore recognised clearing house is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 81AA; or

(*h*) the Authority would not have granted its approval under section 81AA had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

(*a*) take such steps as are necessary to ensure that the person ceases to be a 20% controller of a Singapore recognised clearing house; or

(*b*) comply with such other requirements as the Authority may specify.

(4) Any person served with a notice of objection under this section must comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[Act 12 of 2024 wef 24/01/2025]

Chairperson, chief executive officer, director and key persons, etc., of Singapore recognised clearing house

81AC.—(1) A Singapore recognised clearing house must not appoint a person as its chairperson, chief executive officer or director unless the Singapore recognised clearing house has obtained the approval of the Authority.

(2) The Authority may, by written notice, require a Singapore recognised clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the Singapore recognised clearing house, and the Singapore recognised clearing house must comply with the notice.

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may specify.

(4) The Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe by regulations made under section 81Q or notify the Singapore recognised clearing house in writing, or to any other matter that the Authority may consider relevant.

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the Singapore recognised clearing house an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the Singapore recognised clearing house an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 47 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) A Singapore recognised clearing house must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director, or of any person mentioned in any notice issued by the Authority to the Singapore recognised clearing house under subsection (2).

(9) The Authority may make regulations under section 81Q relating to the composition and duties of the board of directors or any committee of a Singapore recognised clearing house.

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of a Singapore recognised clearing house, or any body responsible for disciplinary action against a member of a Singapore recognised clearing house.

(11) The Authority may, by regulations made under section 81Q, exempt any Singapore recognised clearing house or class of Singapore recognised clearing houses from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(12) The Authority may, by written notice, exempt any Singapore recognised clearing house from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

(14) Any Singapore recognised clearing house which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Penalties under this Division

81A. Any recognised clearing house which contravenes section 75(1), 76, 78(1), 79, 80 or 81(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Division 4 — Insolvency

Application of this Division

81B. This Division applies to such transaction or class of transactions cleared or settled by any approved clearing house or recognised clearing house, or by any class of approved clearing houses or recognised clearing houses, and to such extent, as the Authority may prescribe.

[34/2012]

Proceedings of approved clearing house or recognised clearing house take precedence over law of insolvency

81C.—(1) The following are not invalid to any extent at law by reason only of inconsistency with any written law or rule of law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and manager or a person in an equivalent capacity over any of the assets of a person:

(*a*) a market contract;

(*b*) a disposition of property pursuant to a market contract;

(*c*) the provision of market collateral;

(*d*) a contract effected by an approved clearing house or a recognised clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;

(*e*) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;

(*f*) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(*g*) a disposition of property for the purpose of enforcing a market charge;

(*h*) a market charge;

(*i*) any default proceedings.

[34/2012]

(2) A relevant office holder, or a court applying the law relating to insolvency in Singapore, must not exercise his, her or its power to prevent, or interfere with —

(*a*) the settlement of a market contract in accordance with the business rules of an approved clearing house or a recognised clearing house, or any proceedings or other action taken under those business rules; or

(*b*) any default proceedings.

[34/2012]

(3) Subsection (2) does not operate to prevent a relevant office holder from recovering an amount under section 81I after the completion of a specified event referred to in section 81I(3).

[34/2012]

(4) Where a participant which is also a bank licensed under the Banking Act 1970 becomes insolvent, the liabilities of the bank accorded priority under sections 61 and 62 of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002 have priority over any unsecured liabilities of the bank arising from and after the settlement of market contracts.

[34/2012]

(4A) Where a participant that is also a merchant bank licensed under the Banking Act 1970 becomes insolvent, the liabilities of the merchant bank accorded priority under section 62B of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002 have priorities over any unsecured liabilities of the merchant bank arising from and after the settlement of market contracts.

[1/2020]

(5) To avoid doubt, subsection (4) does not affect the settlement of market contracts in accordance with the business rules of an approved clearing house or a recognised clearing house.

[34/2012]

Supplementary provisions as to default proceedings

81D.—(1) A court may, on the application of a relevant office holder, make an order to alter, or to release the relevant office holder from complying with, the functions of his or her office that are affected by default proceedings, if default proceedings have been, could be, or could have been, taken.

[34/2012]

(2) The functions of the relevant office holder are to be construed subject to an order made under subsection (1).

[34/2012]

(3) Section 210 of the Companies Act 1967 and sections 71, 129, 130(2), 133(1), 170(1), 187, 276, 325 and 327 of the Insolvency,

Restructuring and Dissolution Act 2018 do not prevent, or interfere with, any default proceedings.

[40/2018]

Duty to report on completion of default proceedings

81E.—(1) An approved clearing house or a recognised clearing house —

(*a*) must, upon the conclusion of any default proceedings commenced by it, make a report on those proceedings stating (as the case may be) in respect of each defaulter who is a subject of those proceedings —

(i) the net sum (if any) certified by it to be payable by or to the defaulter; or

(ii) the fact that no sum is so payable; and

(*b*) may include in that report such other particulars in respect of those proceedings as it thinks fit.

[34/2012]

(2) An approved clearing house, or a recognised clearing house, which has made a report under subsection (1) must supply the report to —

(*a*) the Authority;

(*b*) any relevant office holder acting in relation to —

(i) the defaulter to whom the report relates; or

(ii) the estate of that defaulter; and

(*c*) where there is no relevant office holder referred to in paragraph (*b*), the defaulter to whom the report relates.

[34/2012]

(3) The approved clearing house or recognised clearing house must publish a notice of the fact that a report has been made under subsection (1) in such manner as it thinks appropriate to bring that fact to the attention of the creditors of the defaulter to whom the report relates.

[34/2012]

(4) Where a relevant office holder or defaulter receives under subsection (2) a report made under subsection (1), the relevant office holder or defaulter must, at the request of a creditor of the defaulter to whom the report relates —

(*a*) make the report available for inspection by the creditor; and

(*b*) on payment of such reasonable fee as the relevant office holder or defaulter (as the case may be) determines, supply to the creditor the whole or any part of that report.

[34/2012]

(5) In subsections (2), (3) and (4), "report" includes a copy of a report.

[34/2012]

Net sum payable on completion of default proceedings

81F.—(1) This section applies to any net sum certified under section 81E(1)(*a*)(i) by an approved clearing house or a recognised clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

[34/2012]

(2) Despite sections 218, 219, 345 and 346 of the Insolvency, Restructuring and Dissolution Act 2018, where, on or after 1 August 2013, a receiving order or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 81E(1)(*a*)(i) is —

(*a*) provable in the bankruptcy or winding up or payable to the relevant office holder, as the case may be; and

(*b*) to be taken into account, where appropriate, under section 219 or 346 of the Insolvency, Restructuring and Dissolution Act 2018.

[34/2012; 40/2018]

Disclaimer of onerous property, rescission of contracts, etc.

81G.—(1) Sections 230, 231, 373 and 374 of the Insolvency, Restructuring and Dissolution Act 2018 do not apply to —

(*a*) a market contract;

(*b*) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral;

(*c*) a market charge; or

(*d*) any default proceedings.

[34/2012; 40/2018]

(2) Sections 130(1), 170(1) and 328 of the Insolvency, Restructuring and Dissolution Act 2018 do not apply to any act, matter or thing which has been done under —

(*a*) a market contract;

(*b*) a disposition of property pursuant to a market contract;

(*c*) the provision of market collateral;

(*d*) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;

(*e*) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;

(*f*) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(*g*) a disposition of property for the purpose of enforcing a market charge;

(*h*) a market charge; or

(*i*) any default proceedings.

[34/2012; 40/2018]

Adjustment of prior transactions

81H.—(1) No order may be made, on or after 1 August 2013, in relation to any matter to which this section applies, by a court under any of the following provisions in any proceedings, whether instituted before, on or after 1 August 2013:

section 224, 225, 228, 361, 362, 366 or 438 of the Insolvency, Restructuring and Dissolution Act 2018.

[34/2012; 40/2018]

(2) The matters to which this section applies are as follows:

(*a*) a market contract;

(*b*) a disposition of property pursuant to a market contract;

(*c*) the provision of market collateral;

(*d*) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral;

(*e*) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;

(*f*) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(*g*) a disposition of property for the purpose of enforcing a market charge;

(*h*) a market charge;

(*i*) any default proceedings.

[34/2012]

Right of relevant office holder to recover certain amounts arising from certain transactions

81I.—(1) Where a participant (called in this section the first participant) sells securities, securities-based derivatives contracts or units in a collective investment scheme at an over-value to, or purchases securities, securities-based derivatives contracts or units in a collective investment scheme at an under-value from, another participant (called in this section the second participant) in the circumstances referred to in subsection (3), and thereafter a relevant office holder acts for —

(*a*) the second participant;

(*b*) the principal of the second participant in the sale or purchase; or

(*c*) the estate of the second participant or person referred to in paragraph (*b*),

then, unless a court otherwise orders, the relevant office holder may recover from the first participant, or the principal of the first participant, an amount equal to the specified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

[34/2012; 4/2017]

(2) The amount equal to the specified gain is recoverable even if the sale or purchase may have been discharged according to the business rules of an approved clearing house, or a recognised clearing house, and replaced by a market contract.

[34/2012]

(3) The circumstances referred to in subsection (1) are that —

(*a*) a specified event has occurred in relation to the second participant, or the principal of the second participant, within the period of 6 months immediately following the date on which the sale or purchase was entered into; and

(*b*) at the time the sale or purchase was entered into, the first participant, or the principal of the first participant, knew, or ought reasonably to have known, that a specified event was likely to occur in relation to the second participant, or the principal of the second participant.

[34/2012]

(4) In this section —

"specified event", in relation to the second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means —

(*a*) the making of a bankruptcy order against the second participant or that person, as the case may be;

(*b*) the making of a statutory declaration in respect of the second participant or that person (as the case may be)

under section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018;

(*c*) the summoning of a meeting of creditors in relation to the second participant or that person (as the case may be) under section 166 of the Insolvency, Restructuring and Dissolution Act 2018;

(*d*) the making of an application for the winding up of the second participant or that person (as the case may be) before a court; or

(*e*) the appointment of a judicial manager under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in respect of the second participant or that person, as the case may be;

"specified gain", in relation to a sale or purchase referred to in subsection (1), means the difference, as at the time the sale or purchase was entered into, between —

(*a*) the market value of the securities, securities-based derivatives contracts or units in a collective investment scheme which are the subject of the sale or purchase; and

(*b*) the value of the consideration for the sale or purchase.

[34/2012; 4/2017; 40/2018]

Application of market collateral not affected by certain other interest, etc.

81J.—(1) This section has effect with respect to the application by an approved clearing house, or a recognised clearing house, of property provided as market collateral (called in this section the property).

[34/2012]

(2) The property may be applied in accordance with the business rules or default rules of the approved clearing house or recognised clearing house, so far as it is necessary for it to be so applied, despite —

(*a*) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the approved clearing house or recognised clearing house had actual notice of the interest, right or breach of duty (other than any interest or right arising from the situation referred to in paragraph (*b*)) (as the case may be) at the time the property was provided as market collateral; or

(*b*) that the property is deposited by the approved clearing house or recognised clearing house in a trust account held for the benefit of a participant.

[34/2012]

(3) No right or remedy arising subsequent to the provision of the property as market collateral may be enforced to prevent, or interfere with, the application of the property by the approved clearing house or recognised clearing house in accordance with its business rules or default rules.

[34/2012]

(4) Where an approved clearing house, or a recognised clearing house, has power under this section to apply the property despite an interest, a right or a remedy, a person to whom the approved clearing house or recognised clearing house disposes of the property in accordance with its business rules or default rules takes free from that interest, right or remedy.

[34/2012]

Enforcement of judgments over property subject to market charge, etc.

81K.—(1) Where, whether before, on or after 1 August 2013, any property is subject to a market charge or has been provided as market collateral, no enforcement order or other legal process for the enforcement of any judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in, or security over, the property, except with the consent of the approved clearing house or recognised clearing house in favour of which the market charge was granted.

[34/2012]

[Act 25 of 2021 wef 01/04/2022]

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or an order against any property, any injunction or other remedy granted by any court with a view to facilitating the enforcement of any such judgment or order does not extend to that property.

[34/2012]

Law of insolvency in other jurisdictions

81L.—(1) Despite any other written law or rule of law, a court is not to recognise or give effect to —

(*a*) an order of a court exercising jurisdiction under the law of insolvency in any place outside Singapore; or

(*b*) an act of a person appointed in any place outside Singapore to perform a function under the law of insolvency in that place,

insofar as the making of the order by a court in Singapore, or the doing of the act by a relevant office holder, would be prohibited under this Act.

[34/2012]

(2) In this section, "law of insolvency", in relation to a place outside Singapore, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Singapore.

[34/2012]

Participant to be party to certain transactions as principal

81M.—(1) Where —

(*a*) a participant, in the participant's capacity as such, enters into any transaction (including a market contract) with an approved clearing house or a recognised clearing house; and

(*b*) but for this subsection or any provision in the business rules or default rules of the approved clearing house or recognised clearing house, the participant would be a party to that transaction as agent,

then, despite any other written law or rule of law, as between, and only as between, the approved clearing house or recognised clearing

house and the participant or the person who is the participant's principal in respect of that transaction, the participant is, for all purposes (including any action, claim or demand, whether civil or criminal), deemed to be a party to that transaction as principal, and not as agent.

[34/2012]

(2) Where —

(*a*) 2 or more participants, in their capacities as such, enter into any transaction; and

(*b*) but for this subsection, any of the participants would be a party to that transaction as agent,

then, despite any other written law or rule of law, except as between, and only as between, a participant to whom paragraph (*b*) applies and the person who is the participant's principal in respect of that transaction, the participant is, for all purposes (including any action, claim or demand, whether civil or criminal), deemed to be a party to that transaction as principal, and not as agent.

[34/2012]

Preservation of rights, etc.

81N. Except to the extent that it expressly provides, this Division does not operate to limit, restrict or otherwise affect —

(*a*) any right, title, interest, privilege, obligation or liability of a person; or

(*b*) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

[34/2012]

Immunity from criminal or civil liability

81O.—(1) No criminal or civil liability is incurred by —

(*a*) a person discharging, by virtue of a delegation under the default rules of an approved clearing house or a recognised clearing house, an obligation of the approved clearing house or recognised clearing house in connection with any default proceedings; or

(*b*) any person acting on behalf of a person referred to in paragraph (*a*), including —

(i) any member of the board of directors of the person referred to in paragraph (*a*); and

(ii) any member of any committee established by the person referred to in paragraph (*a*),

for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of that obligation.

[34/2012]

(2) Where a relevant office holder takes action in relation to any property of a defaulter which is liable to be dealt with in accordance with the default rules of an approved clearing house or a recognised clearing house, and the relevant office holder reasonably believes or has reasonable grounds for believing that the relevant office holder is entitled to take that action, the relevant office holder shall not be liable to any person in respect of any loss or damage resulting from any action of the relevant office holder, except insofar as the loss or damage (as the case may be) is caused by the negligence of the relevant office holder.

[34/2012]

Division 5 — General Powers of Authority

Disqualification or removal of director or executive officer

81P.—(1) Despite the provisions of any other written law, an approved clearing house or Singapore recognised clearing house must not, without the prior written consent of the Authority, permit an individual to act as its director or executive officer, if the individual —

(*a*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 48 of the Financial Institutions (Miscellaneous Amendments) Act 2024, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*b*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

(*d*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*e*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order, or an FSMA prohibition order made against him or her that remains in force; or

(*f*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked (without any application by the regulated financial institution for withdrawal, cancellation or revocation) by the Authority or, in the case of a regulated financial institution in a foreign country or jurisdiction, by the regulatory authority in that foreign country or jurisdiction.

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director or executive officer of an approved clearing house or Singapore recognised clearing house is not a fit and proper person to be a director or executive officer (as the case may be) of the approved clearing house or Singapore recognised

clearing house (as the case may be), the Authority may, by notice in writing to the approved clearing house or Singapore recognised clearing house, direct it to remove the director or executive officer from his or her office or employment within such period as may be specified by the Authority in the notice, and the approved clearing house or Singapore recognised clearing house must comply with the notice.

(3) For the purpose of subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

(*a*) the individual has wilfully contravened or wilfully caused the approved clearing house or Singapore recognised clearing house to contravene any provision of this Act or the business rules of the approved clearing house or Singapore recognised clearing house;

(*b*) the individual has, without reasonable excuse, failed to secure the compliance of the approved clearing house or Singapore recognised clearing house with this Act, the Monetary Authority of Singapore Act 1970, any of the written laws set out in the Schedule to that Act, or the business rules of the approved clearing house or Singapore recognised clearing house;

(*c*) the individual has failed to discharge any of the duties of his or her office or employment;

(*d*) the individual's removal is necessary in the public interest or for the protection of investors; or

(*e*) the individual comes within any of the grounds mentioned in subsection (1).

(4) The Authority must, in determining whether an individual has failed to discharge the duties of his or her office or employment for the purposes of subsection (3)(*c*), have regard to such criteria as may be prescribed.

(5) The Authority must not direct an approved clearing house or Singapore recognised clearing house to remove an individual from his or her office or employment under subsection (2) without giving

the approved clearing house or Singapore recognised clearing house and that individual, an opportunity to be heard except in any of the following circumstances:

(*a*) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 101A prohibition order or an FSMA prohibition order against the individual has been made and remains in force;

(*c*) the individual has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 48 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the individual had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) An approved clearing house or Singapore recognised clearing house must, as soon as practicable after receiving a direction under subsection (2), notify the affected director or executive officer of the direction.

(7) Any approved clearing house or Singapore recognised clearing house who receives a direction under subsection (2), or any director or executive officer of an approved clearing house or Singapore recognised clearing house in relation to whom a direction under subsection (2) is given, may, within 30 days after the approved clearing house or Singapore recognised clearing house receives the direction, appeal to the Minister whose decision is final.

(8) Despite the lodging of an appeal under subsection (7), a direction under subsection (2) continues to have effect pending the Minister's decision.

(9) The Minister may, when deciding an appeal under subsection (7), modify the direction under subsection (2), and such

modified action has effect starting on the date of the Minister's decision.

(10) No criminal or civil liability is incurred by an approved clearing house or Singapore recognised clearing house, or any person acting on behalf of an approved clearing house or Singapore recognised clearing house, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any approved clearing house or Singapore recognised clearing house which, without reasonable excuse, contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to make regulations

81Q.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations —

(*a*) relating to the approval of approved clearing houses and the recognition of recognised clearing houses;

(*b*) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating a clearing facility, whether or not the person is approved as an approved clearing house under section 51(1)(*a*) or recognised as a recognised clearing house under section 51(1)(*b*) or (2); and

(*c*) for the purposes of section 59 and, in particular, specifying measures to manage any risks assumed by an approved clearing house.

[34/2012; 4/2017]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for a penalty not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

Power of Authority to issue directions

81R.—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to an approved clearing house or a recognised clearing house, or a class of approved clearing houses or class of recognised clearing houses, if the Authority thinks it necessary or expedient —

(*a*) for ensuring the safe and efficient operation of any clearing facility operated by the approved clearing house or recognised clearing house, or of clearing facilities operated by approved clearing houses or recognised clearing houses of the class or by approved clearing houses or recognised clearing houses, in general;

[Act 12 of 2024 wef 30/08/2024]

(*b*) for ensuring the integrity and stability of the capital markets or the financial system;

(*c*) in the interests of the public or a section of the public or for the protection of investors;

(*d*) for the effective administration of this Act; or

(*e*) for ensuring compliance with any condition or restriction that the Authority may impose under section 51(4) or (5), 58(2), 70(5), (10) or (11), 71(11) or (12), 81AA(4), (9) or (10), 81AC(11) or (12) or 81SB(1) or (2), or such other obligations or requirements under this Act or as the Authority may prescribe.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

[Act 12 of 2024 wef 24/01/2025]

(2) An approved clearing house or a recognised clearing house must comply with every direction issued to it under subsection (1).

[34/2012]

(3) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Emergency powers of Authority

81S.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by written notice an approved clearing house or a recognised clearing house to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

[34/2012]

(2) Without affecting subsection (1), the actions which the Authority may direct an approved clearing house or a recognised clearing house to take include —

(*a*) ordering the liquidation of all positions or any part thereof, or the reduction of such positions;

(*b*) altering the conditions of delivery of transactions cleared or settled, or to be cleared or settled, through the clearing facility;

(*c*) fixing the settlement price at which transactions are to be liquidated;

(*d*) requiring margins or additional margins for transactions cleared or settled, or to be cleared or settled, through the clearing facility; and

(*e*) modifying or suspending any of the business rules of the approved clearing house or recognised clearing house.

[34/2012]

(3) Where an approved clearing house or a recognised clearing house fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

(*a*) set margin levels for transactions cleared or settled, or to be cleared or settled, through the clearing facility to cater for the emergency;

(*b*) set limits that may apply to positions acquired in good faith prior to the date of the notice issued by the Authority; or

(*c*) take such other action as the Authority thinks fit to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

[34/2012]

(4) In this section, "emergency" means any threatened or actual market manipulation or cornering, and includes —

(*a*) any act of any government affecting any commodity or financial instrument;

(*b*) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or

(*c*) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[34/2012; 4/2017]

(5) The Authority may modify any action taken by an approved clearing house or a recognised clearing house under subsection (1), including the setting aside of that action.

[34/2012]

(6) Any person who is aggrieved by any action taken by the Authority, or by an approved clearing house or a recognised clearing house, under this section may, within 30 days after the person is notified of the action, appeal to the Minister, whose decision is final.

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority, or by an approved clearing house or recognised clearing house, under this section continues to have effect pending the Minister's decision.

[34/2012]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he or she considers necessary to any action taken by the Authority, or by an approved clearing house or a recognised clearing house, under this section, and any such modified action has effect from the date of the Minister's decision.

[34/2012]

(9) Any approved clearing house or recognised clearing house which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Interpretation of sections 81SA to 81SAE

81SA. In this section and sections 81SAA to 81SAE, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved clearing house or a recognised clearing house, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved clearing house or recognised clearing house (as the case may be), or acting in an equivalent capacity in relation to the approved clearing house or recognised clearing house (as the case may be);

"relevant business" means any business of an approved clearing house or a recognised clearing house —

(*a*) which the Authority has assumed control of under section 81SAA; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 81SAA;

"statutory adviser" means a statutory adviser appointed under section 81SAA;

"statutory manager" means a statutory manager appointed under section 81SAA.

[10/2013]

Action by Authority if approved clearing house or recognised clearing house unable to meet obligations, etc.

81SAA.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) an approved clearing house or a recognised clearing house informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) an approved clearing house or a recognised clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved clearing house or a recognised clearing house —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 47;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 51(4) or (5); or

(*d*) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved clearing house or recognised clearing house (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved clearing house or recognised clearing house (as the case may be) on the proper management of such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a recognised clearing house which is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised clearing house under subsection (2) is only in relation to —

(*a*) the business or affairs of the recognised clearing house carried on in, or managed in or from, Singapore; or

(*b*) the property of the recognised clearing house located in Singapore, or reflected in the books of the recognised clearing house in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved clearing house or a recognised clearing house, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 56(1)(*da*), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[10/2013]

(7) Any approved clearing house or recognised clearing house that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 81SAA

81SAB.—(1) Upon assuming control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved clearing house or recognised clearing house (as the case may be) in the name of and on behalf of the approved clearing house or recognised clearing house (as the case may be); and

(*b*) is deemed to be an agent of the approved clearing house or recognised clearing house (as the case may be).

[10/2013]

(3) In managing the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 81SAA(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved clearing house or recognised clearing house (as the case may be) (collectively and individually) under this Act, the

Companies Act 1967 and the constitution of the approved clearing house or recognised clearing house (as the case may be), including powers of delegation, in relation to the relevant business of the approved clearing house or recognised clearing house (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved clearing house or recognised clearing house (as the case may be) under the Companies Act 1967 or the constitution of the approved clearing house or recognised clearing house (as the case may be).

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved clearing house or a recognised clearing house by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be), which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved clearing house or recognised clearing house (as the case may be), for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved clearing house or recognised clearing house, as the case may be.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved clearing house or a recognised clearing house, the Authority may at any time, by written notice to the person and the approved clearing house or recognised clearing house (as the case may be), revoke that approval,

and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved clearing house or a recognised clearing house is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved clearing house or a recognised clearing house in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision

to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved clearing house or recognised clearing house, as the case may be,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the approved clearing house or recognised clearing house (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013; 4/2017]

Duration of control

81SAC.—(1) The Authority must cease to be in control of the relevant business of an approved clearing house or a recognised clearing house when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved clearing house or a recognised clearing house on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved clearing house or recognised clearing house, as the case may be.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved clearing house or a recognised clearing house;

(*b*) the cessation of the Authority's control of the relevant business of an approved clearing house or a recognised clearing house;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved clearing house or a recognised clearing house.

[10/2013]

Responsibilities of officers, member, etc., of approved clearing house or recognised clearing house

81SAD.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved clearing house or recognised clearing house (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved clearing house or recognised clearing house (as the case may be), and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved clearing house or recognised clearing house (as the case

may be), within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

81SAE.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved clearing house or a recognised clearing house —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved clearing house or recognised clearing house (as the case may be), whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved clearing house or recognised clearing house (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved clearing house or recognised clearing house (as the case may be) must reimburse the Authority any remuneration and expenses payable by the approved clearing house or recognised

clearing house (as the case may be) to a statutory manager or statutory adviser.

[10/2013]

Power of Authority to exempt approved clearing house or recognised clearing house from provisions of this Part

81SB.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house, recognised clearing house, or class of approved clearing houses or recognised clearing houses from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any approved clearing house or recognised clearing house from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that approved clearing house or recognised clearing house with that provision will not detract from the objectives specified in section 47.

[34/2012]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) An approved clearing house or a recognised clearing house that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(2C) An approved clearing house or a recognised clearing house that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

Division 6 — Voluntary Transfer of Business of Approved Clearing House or Recognised Clearing House

Interpretation of this Division

81SC. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved clearing house or a recognised clearing house, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved clearing house or a recognised clearing house, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means an approved clearing house or a recognised clearing house the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

81SD.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved clearing house or a recognised clearing house) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved clearing house or a recognised clearing house; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved clearing house or a recognised clearing house to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

81SE.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 81SD(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 81SD(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not approved as an approved clearing house or recognised as a recognised clearing house by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved clearing house or recognised as a recognised clearing house by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the

construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a

continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction. *[10/2013]*

PART 3AA

CENTRAL DEPOSITORY SYSTEM

Interpretation of this Part

81SF. In this Part, unless the context otherwise requires —

"account holder" means a person who has an account directly with the Depository and not through a depository agent;

"bare trustee" means a trustee who has no beneficial interest in the subject matter of the trust;

"book-entry securities", in relation to the Depository, means securities —

(*a*) the documents evidencing title to which are deposited by a depositor with the Depository and are registered in the name of the Depository or its nominee; and

(*b*) which are transferable by way of book-entry in the Depository Register and not by way of an instrument of transfer;

"Central Depository System" means the Central Depository System referred to in section 81SH(1);

"constitution" means —

(*a*) the constitution;

(*b*) the memorandum of association, the articles of association, or both; or

(*c*) any other constitutive document,

of a corporation;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"depositor" means an account holder or a depository agent but does not include a sub-account holder;

"Depository" means The Central Depository (Pte) Limited or any other corporation approved by the Authority as a depository company or corporation for the purposes of this Act, which operates the Central Depository System for the holding and transfer of book-entry securities;

"depository agent" means a member of the SGX-ST, a trust company (licensed under the Trust Companies Act 2005), a bank licensed under the Banking Act 1970, any merchant bank licensed under the Banking Act 1970 or any other person or body approved by the Depository who or which —

(*a*) performs services as a depository agent for sub-account holders in accordance with the terms of a depository agent agreement entered into between the Depository and the depository agent;

(*b*) deposits book-entry securities with the Depository on behalf of the sub-account holders; and

(*c*) establishes an account in its name with the Depository;

"Depository Register" means a register maintained by the Depository in respect of book-entry securities;

"depository rules" means the rules made by the Depository in relation to the operation of the Central Depository System and includes the Central Depository Rules and Procedures made by the Depository pursuant to its constitution (as the same may be amended from time to time) and any rule made by the Depository with regard to payment of fees to the Depository;

"derivative instruments", in relation to debentures, stocks and shares, includes warrants, transferable subscription rights, options to subscribe for stocks or shares, convertibles, depository receipts and such other instruments as the Authority may prescribe by regulations for the purposes of the definition;

"documents evidencing title" means —

(*a*) in the case of stocks, shares, debentures or any derivative instruments related thereto of a company or debentures or any derivative instruments related thereto of the Government — the stock certificates, share certificates, debenture certificates or certificates representing the derivative instrument, as the case may be; and

(*b*) in the case of stocks, shares, debentures or any derivative instruments related thereto of a foreign company or debentures or any derivative instruments related thereto of a foreign government or of an international body, or any other securities — such documents or other evidence of title thereto, as the Depository may require;

"instrument" includes a deed or any other instrument in writing;

"international body" means the Asian Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the European Bank for Reconstruction and Development and such other international bodies as the Authority may prescribe by regulations;

"securities" has the meaning given by section 2(1), but includes derivative instruments;

"SGX-ST" means the Singapore Exchange Securities Trading Limited;

"sub-account holder" means a holder of an account maintained with a depository agent.

[36/2014; 40/2019; 1/2020]

Application of this Part

81SG.—(1) This Part applies only to —

(*a*) book-entry securities; and

(*b*) designated securities, as if a reference to book-entry securities includes a reference to designated securities.

[36/2014]

(2) The application of this Part to designated securities under subsection (1)(*b*) is subject to such modifications as the Authority may prescribe by regulations, and different modifications may be prescribed for different classes of designated securities.

[36/2014]

(3) In this section, "designated securities" means such securities as may be accepted or designated by the Depository or its nominee for deposit, custody, clearing or book-entry settlement.

[36/2014]

Central Depository System

81SH.—(1) The Central Depository System established by the repealed section 130C of the Companies Act 1967 on 12 November 1993 continues on or after 3 January 2016 as if it had been established under this section.

[36/2014]

(2) The following must be carried out using the computerised Central Depository System in accordance with the depository rules:

(*a*) the deposit of documents evidencing title in respect of securities (with where applicable, in the case of shares or registered debentures, proper instruments of transfer duly executed) with the Depository and registration of such documents in the name of the Depository or its nominee;

(*b*) maintenance of accounts by the Depository in the names of the depositors so as to reflect the title of the depositors to the book-entry securities;

(*c*) effecting transfers of the book-entry securities electronically, and not by any other means, by the Depository and making an appropriate entry in the Depository Register of the book-entry securities that have been transferred.

[36/2014]

Depository or nominee deemed to be bare trustee

81SI.—(1) The Depository or its nominee is deemed to hold the book-entry securities deposited with it as a bare trustee for the collective benefit of depositors.

[36/2014]

(2) Subject to subsections (3) and (4), a depositor does not have any right to specific book-entry securities deposited with the Depository or its nominee but is entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts in the depositor's name.

[36/2014]

(3) A depository agent is deemed to hold book-entry securities deposited in its name with the Depository or its nominee, on behalf of any sub-account holder, as a bare trustee.

[36/2014]

(4) A sub-account holder does not have any right to specific book-entry securities deposited with the Depository or its nominee but is entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts maintained by the sub-account holder with a depository agent.

[36/2014]

Depository not member of company and depositors deemed to be members

81SJ.—(1) Despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities of the corporation are deposited with the Depository or its nominee —

(*a*) the Depository or its nominee (as the case may be) is deemed not to be a member of the corporation; and

(*b*) the persons named as the depositors in a Depository Register are, for such period as the book-entry securities are entered against their names in the Depository Register, deemed to be —

(i) members of the corporation in respect of the amount of book-entry securities (relating to the stocks or

shares issued by the corporation) entered against their respective names in the Depository Register; or

(ii) holders of the amount of the book-entry securities (relating to the debentures or any derivative instrument) entered against their respective names in the Depository Register.

[36/2014]

(2) Despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities relating to units in any collective investment scheme (whether or not constituted as a corporation) are deposited with the Depository or its nominee —

(*a*) the Depository or its nominee (as the case may be) is deemed not to be a holder of the book-entry securities; and

(*b*) the persons named as the depositors in a Depository Register are, for such period as the book-entry securities are entered against their names in the Depository Register, deemed to be holders of the amount of the book-entry securities entered against their respective names in the Depository Register.

[36/2014]

(3) Nothing in this Part is to be construed as affecting —

(*a*) the obligation of a public company to keep —

(i) a register of its members under section 190 of the Companies Act 1967 and allow inspection of the register under section 192 of the Companies Act 1967; and

(ii) a register of holders of debentures issued by the company under section 93 of the Companies Act 1967 and allow inspection of the register under that section,

except that the company is not obliged to enter in such registers the names and particulars of persons who are deemed members or holders of debentures under subsection (1)(*b*);

(*b*) the right of a depositor to withdraw the depositor's documents evidencing title in respect of securities from the Depository at any time in accordance with the rules of the Depository and to register them in the depositor's or any other name; or

(*c*) the enjoyment of any right, power or privilege conferred by, or the imposition of any liability, duty or obligation under the Companies Act 1967, any rule of law or under any instrument or under the constitution of a corporation upon a depositor, as a member of a corporation or as a holder of debentures or any derivative instruments except to the extent provided for in this Part or prescribed by regulations made thereunder.

[36/2014]

(4) Despite any provision in the Companies Act 1967, a depositor is not regarded as a member of a company entitled to attend any general meeting of the company and to speak and vote thereat unless the depositor's name appears on the Depository Register 72 hours before the general meeting.

[36/2014]

(5) The payment by a corporation to the Depository of any dividend payable to a depositor, to the extent of the payment made, discharges the corporation from any liability in respect of that payment.

[36/2014]

Depository to certify names of depositors to corporation upon request

81SK. The Depository must certify the names of persons on the Depository Register to a corporation in accordance with the rules of the Depository upon a written request being made to it by the corporation.

[36/2014]

Maintenance of accounts

81SL. The Depository must maintain accounts of book-entry securities on behalf of depositors in accordance with the rules of the Depository.

[36/2014]

Transfers effected by Depository under book-entry clearing system

81SM.—(1) Subject to this Part, a transfer of book-entry securities between depositors must be effected, despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in a corporation's constitution to the contrary, by the Depository making an appropriate entry in its Depository Register.

[36/2014]

(2) A transfer of securities by the Depository by way of book-entry to a depositor under this Part is valid and is not to be challenged in any court on the ground that the transfer is not accompanied by a proper instrument of transfer or that otherwise the transfer is not made in writing.

[36/2014; 40/2019]

Depository to be discharged from liability if acting on instructions

81SN.—(1) Subject to the regulations, the Depository, if acting in good faith and without negligence, shall not be liable for conversion or for any breach of trust or duty where the Depository has, in respect of book-entries in accounts maintained by it, made entries regarding the book-entry securities, or transferred or delivered the book-entry securities, according to the instructions of a depositor even though the depositor had no right to dispose of or take any other action in respect of the book-entry securities.

[36/2014]

(2) The Depository or a depository agent, if acting in good faith and without negligence, is fully discharged of its obligations to the account holder or sub-account holder by the transfer or delivery of book-entry securities upon the instructions of the account holder or sub-account holder, as the case may be.

[36/2014]

(3) The Depository, if acting in good faith and without negligence, is fully discharged of its obligations to a depository agent by the transfer or delivery of book-entry securities upon the instructions of the depository agent.

[36/2014]

(4) For the purposes of this section, the Depository or a depository agent is not to be treated as having been negligent by reason only of its failure to concern itself with whether or not the depositor or sub-account holder (as the case may be) has a right to dispose of or take any other action in respect of the book-entry securities or to issue the instructions.

[36/2014]

Confirmation of transaction

81SO. The Depository must, in accordance with the depository rules, issue to each account holder and to each sub-account holder through the sub-account holder's depository agent, following upon any transaction affecting book-entry securities maintained for such account holder by the Depository and maintained for such sub-account holder by the sub-account holder's depository agent under this Part, a confirmation note which must specify the amount and description of the book-entry securities and any other relevant transaction information.

[36/2014]

No rectification of Depository Register

81SP.—(1) Despite anything in the Companies Act 1967 or any written law or rule of law, no order may be made by the Court for rectification of the Depository Register; except that where the Court is satisfied that —

(*a*) a depositor did not consent to a transfer of the book-entry securities; or

(*b*) a depositor should not have been registered in the Depository Register as having title to the book-entry securities,

the Court may award damages to the firstmentioned depositor or to any person who would have been entitled to be registered in the Depository Register as having title to the book-entry securities (as the case may be) on such terms as the Court thinks to be equitable or make such other order as the Court thinks fit including an order for the transfer of book-entry securities to such depositor or person.

[36/2014]

(2) Where provisions exist in the constitution of a corporation that entitle a corporation to refuse registration of a transfer of book-entry securities, the corporation may in relation to any transfer to which it objects, notify the Depository in writing of its refusal before the transfer takes place and provide the Depository with the facts upon which such refusal is considered to be justified.

[36/2014]

(3) Where the Depository has had prior notice of the corporation's refusal under subsection (2) (but not otherwise), the Depository must refuse to effect the transfer and to enter the name of the transferee in the Depository Register and thereupon convey the facts upon which such refusal is considered to be justified to the transferee.

[36/2014]

(4) Section 130AB of the Companies Act 1967 does not apply to any refusal to register a transfer under subsections (2) and (3).

[36/2014]

Trustee, executor or administrator of deceased depositor named as depositor

81SQ.—(1) Any trustee, executor or administrator of the estate of a deceased depositor whose name was entered in the Depository Register as owner or as having an interest in book-entry securities may open an account with the Depository and have his, her or its name entered in the Depository Register so as to reflect the interest of the trustee, executor or administrator in the book-entry securities.

[36/2014]

(2) Subject to this section, no notice of any trust expressed, implied or constructive may be entered in the Depository Register and no liabilities are affected by anything done pursuant to subsection (1) or pursuant to the law of any other place which corresponds to this section and the Depository and the issuer of the book-entry securities are not affected with notice of any trust by anything so done.

[36/2014]

Non-application of certain provisions in bankruptcy and company liquidation law

81SR. Where by virtue of the provisions of any written law in relation to bankruptcy or company liquidation it is provided that —

(*a*) any disposition of the property of a company after commencement of a winding up is void, unless the Court orders otherwise; or

(*b*) any disposition of the property of a person who is adjudged bankruptcy after the making of an application for a bankruptcy order and before vesting of the bankrupt's estate in a trustee is void unless done with the consent or ratification of the Court,

those provisions do not apply to any disposition of book-entry securities; but where a Court is satisfied that a party to the disposition, being a party other than the Depository, had notice that an application has been made for the winding up or bankruptcy of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other order as the Court thinks fit, including an order for the transfer of book-entry securities by that party but not an order for the rectification of the Depository Register.

[36/2014]

Security interest

81SS.—(1) Except as provided in this section or any other written law or any regulations made under section 81SU, no security interest may be created in book-entry securities.

[36/2014]

(2) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any depositor in the following manner:

(*a*) by way of assignment, by an instrument of assignment in the prescribed form executed by the assignor;

(*b*) by way of charge, by an instrument of charge in the prescribed form executed by the chargor,

if no security interest in any book-entry securities subsequent to any assignment or charge thereof may be created by the assignor or the chargor (as the case may be) in favour of any other person and any such assignment or charge is void.

[36/2014]

(3) Upon receipt of the instrument of assignment, the Depository must immediately, by way of an off-market transaction, transfer the book-entry securities to the assignee and thereafter notify the assignor and the assignee of the transfer in the prescribed manner.

[36/2014]

(4) Upon receipt of the instrument of charge, the Depository must immediately register the instrument in a register of charges maintained by the Depository and thereafter notify the chargor and the chargee in the prescribed manner.

[36/2014]

(5) The register of charges is not open to inspection to any person other than the chargor or the chargee or their authorised representatives and except for the purpose of the performance of its duties or the exercise of its functions or when required to do so by any court or under the provisions of any written law, the Depository must not disclose to any unauthorised person any information contained in the register of charges.

[36/2014]

(6) An assignment or a charge made in accordance with the provisions of this section, but not otherwise, has effect upon the Depository transferring the book-entry securities or endorsing the charge in the register of charges except that, where the instrument of assignment or charge specifies the number of book-entry securities to which the assignment or charge relates, the instrument of assignment or charge does not have any effect if on the date of receipt of such instrument, the number of book-entry securities in the account of the assignor or chargor is less than the number of book-entry securities specified in such instrument.

[36/2014; 4/2017]

(7) The provisions of section 81SJ(1), (2) and (3) apply to an assignment of book-entry securities made under this section.

[36/2014]

(8) An assignee or a registered chargee of book-entry securities has the following powers:

(*a*) a power, when the loan or liability has become due and payable, to sell the book-entry securities or any part thereof and in the case of a chargee, the chargee has the power to

sell the book-entry securities or any part thereof in the name of and for and on behalf of the chargor;

(*b*) any other power which may be granted to the assignee or registered chargee in writing by the assignor or chargor in relation to the book-entry securities provided that the Depository is not concerned with or affected by the exercise of any such power.

[36/2014]

(9) Nothing in subsection (8) is to be construed as imposing on the Depository a duty to ascertain whether the power of sale has become exercisable or has been lawfully exercised by the assignee or chargee.

[36/2014]

(10) No book-entry securities assigned by way of security or charged in accordance with the provisions of this section may be —

(*a*) transferred by way of an off-market transaction to the assignor except upon the production of a duly executed re-assignment in the prescribed form; or

(*b*) transferred by the chargor, by way of sale or otherwise, except —

(i) upon the production of a duly executed discharge of charge in the prescribed form; or

(ii) upon the return of such book-entry securities to the chargor's control with the approval in writing of the chargee.

[36/2014; 4/2017]

(10A) A charge on book-entry securities made in accordance with the provisions of this section is treated as discharged if such book-entry securities have been returned to the chargor's control with the approval in writing of the chargee.

[4/2017]

(11) Upon the sale by the assignee or the chargee in exercise of the assignee's or chargee's power of sale of any book-entry securities assigned or charged in accordance with the provisions of this section, the assignee or the chargee must immediately notify the Depository of the sale and the particulars of the book-entry securities sold by the assignee or chargee, and the Depository must —

(*a*) in the case of the sale by the assignee, notify the assignor of the sale; and

(*b*) in the case of the sale by the chargee, effect a transfer of the book-entry securities to the buyer in accordance with section 81SM and notify the chargor of the transfer,

and the provisions of sections 81SO, 81SP and 81SR apply, with the necessary modifications, to a transfer effected pursuant to this section.

[36/2014]

(12) Upon fulfilling the assignor's or the chargor's obligations under an assignment by way of security or a charge, the assignor or the chargor is entitled to obtain from the assignee or chargee a re-assignment or a discharge of charge (as the case may be) of the whole or part of the book-entry securities.

[36/2014]

(13) A re-assignment or discharge of charge is to be effected by the Depository by transferring the book-entry securities to the assignor or cancelling the endorsement of charge in the register of charges and in the chargor's account, as the case may be.

[36/2014]

(14) Book-entry securities may be assigned by way of security by an assignee or charged in the prescribed form by a chargee to secure the payment of any debt or liability of the assignee or the chargee (as the case may be) in accordance with the provisions of this section provided that no book-entry security may be charged by a chargee subsequent to any sub-charge.

[36/2014]

(15) All acts, powers and rights which might previously have been done or exercised by the chargee thereunder in relation to the book-entry securities may thereafter be done or exercised by the sub-chargee, and, except with the consent of the sub-chargee, must not be done or exercised by the chargee thereunder during the currency of the sub-charge.

[36/2014]

(16) Upon the sale by the sub-chargee in exercise of the sub-chargee's power of sale of any book-entry securities in accordance with the provisions of this section, the provisions of

subsection (11), in respect of a sale by a chargee, apply with the necessary modifications to the sale by the sub-chargee.

[36/2014]

(17) Nothing in subsection (14) affects the rights or liabilities of the original assignor or chargor of the book-entry securities under subsections (12) and (13) and the original assignor or chargor is entitled to a re-assignment or discharge of charge from the assignee or chargee free from all subsequent security interests created without the original assignor's or chargor's consent upon satisfying the original assignor's or chargor's indebtedness or liability to the assignee or the chargee.

[36/2014]

(18) The provisions of section 81SN apply to relieve the Depository and its servants or agents of any liability in respect of any act done or omission made under this section as if references to depositor include references to assignee, chargee or sub-chargee, as the case may be.

[36/2014]

(19) Nothing in this section affects the validity and operation of floating charges on book-entry securities created under the common law before or after 12 November 1993, but the Depository is not required to recognise, even when having notice thereof, any equitable interest in any book-entry securities under a floating charge except the power of the chargee, upon the crystallisation of the floating charge, to sell the book-entry securities in the name of the chargor in accordance with the provisions of this section.

[36/2014]

(20) Nothing in subsection (19) is to be construed as imposing on the Depository a duty to ascertain whether the power of sale pursuant to a floating charge has become exercisable or has been lawfully exercised.

[36/2014]

(21) A member of SGX-ST has a lien over the unpaid book-entry securities purchased for the account of its customer which is enforceable by sale in accordance with and subject to the provisions of this section as if the same had been charged to the member under this section, except that the member is not obliged to

notify the Depository of the sale or the particulars of the book-entry securities sold by the member.

[36/2014]

(22) Any security interest on book-entry securities created before 12 November 1993 and subsisting or in force on that date continues to have effect as if the Companies (Amendment) Act 1993 had not been enacted.

[36/2014]

(23) In this section, "off-market transaction" means a transaction effected outside the SGX-ST.

[36/2014]

Depository rules to be regarded as rules of approved exchange that are subject to this Act

81ST.—(1) Depository rules in relation to the operation of the Central Depository System, including any amendments made thereto, are regarded as having the same force and effect as if made by an approved exchange and are likewise subject to the provisions of this Act.

[36/2014; 4/2017]

(2) Without limiting subsection (1), sections 23 and 25 apply to the depository rules under subsection (1) as they apply to rules made by an approved exchange.

[36/2014; 4/2017]

Power of Authority to make regulations

81SU.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

(*a*) rights and obligations of persons in relation to securities dealt with under the Central Depository System;

(*b*) procedures for the deposit and custody of securities and the transfer of title to book-entry securities and the regulation of persons concerned in that operation;

(*c*) matters relating to security interest in book-entry securities;

(*d*) keeping of depositors' accounts by the Depository and sub-accounts by the depository agents;

(*e*) keeping of the Depository Register and of records generally;

(*f*) safeguards for depositors including the maintenance of insurance and the establishment and maintenance of compensation funds by the Depository for the purpose of settling claims by depositors;

(*g*) matters relating to linkages between the Depository and other securities depositories (by whatever name called) established and maintained outside Singapore;

(*h*) any requirement for fees charged by the Depository to be approved by the Authority;

(*i*) the modification or exclusion of any provision of any written law, rule of law, any instrument or constitution;

(*j*) the application, with such modifications as may be required, of the provisions of any written law, instrument or constitution; and

(*k*) such supplementary, incidental, saving or transitional provisions as may be necessary or expedient.

[36/2014]

(2) Regulations made under this section may provide —

(*a*) that the Authority may require the Depository to provide it with such information or documents as the Authority considers necessary for such approval; and

(*b*) that any contravention of any specified provision in the regulations shall be an offence punishable with a fine not exceeding $150,000 and, in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[36/2014]

Power of Authority to issue written directions

81SV.—(1) The Authority may, if it thinks it necessary or expedient in the public interest or for the protection of investors, issue written directions, either of a general or specific nature, to the Depository or the depository agent, to comply with such requirements as the Authority may specify in the written direction.

[36/2014]

(2) Without limiting subsection (1), any written direction may be issued with respect to the discharge of the duties or functions of the Depository or depository agent.

[36/2014]

(3) The Depository and the depository agent must comply with any direction made under subsection (1).

[36/2014]

(4) Before giving directions under subsection (1), the Authority may consult the Depository or the depository agent and afford it an opportunity to make representations.

[36/2014]

(5) It is not necessary to publish any direction given under subsection (1) in the *Gazette*.

[36/2014]

PART 3A

APPROVED HOLDING COMPANIES

Objectives of this Part

81T. The objectives of this Part are —

(*a*) to provide a regulatory framework for the establishment and operation of holding companies of —

(i) approved exchanges;

(i*a*) licensed trade repositories;

(ii) approved clearing houses; and

(iii) corporations that are approved holding companies,

and to ensure that such holding companies are fit and proper to perform their functions; and

(*b*) to reduce systemic risk.

[34/2012]

Division 1 — Establishment of Approved Holding Companies

Requirement for approval

81U.—(1) No corporation may be the holding company of any approved exchange, licensed trade repository, approved clearing house or corporation which is an approved holding company, unless the firstmentioned corporation is an approved holding company.

[34/2012]

(2) Any corporation which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

(3) Without affecting section 337(1), the Authority may, by regulations made under section 81ZK, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(4) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 81T.

[34/2012]

(5) It is not necessary to publish any exemption granted under subsection (4) in the *Gazette*.

[34/2012]

(6) The Authority may, at any time, by written notice —

(*a*) add to the conditions and restrictions referred to in subsection (4); or

(*b*) vary or revoke any condition or restriction referred to in that subsection.

[34/2012]

(7) Every corporation that is granted an exemption under subsection (3) must satisfy every condition or restriction imposed on it under that subsection.

[34/2012]

(8) Every corporation that is granted an exemption under subsection (4) must satisfy every condition or restriction imposed on it under that subsection or subsection (6).

[34/2012]

(9) Any corporation which contravenes subsection (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Application for approval

81V.—(1) A corporation may apply to the Authority to be approved as an approved holding company.

(2) An application made under subsection (1) must be —

(*a*) made in such form and manner as the Authority may prescribe; and

(*b*) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

(3) The Authority may require an applicant to provide it with such information or documents as the Authority considers necessary in relation to the application.

Power of Authority to approve holding companies

81W.—(1) Where an application is made under section 81V(1), the Authority may approve the corporation as an approved holding company subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, if the Authority is satisfied that —

(*a*) it would not be contrary to the interests of the public or contrary to the objectives specified in section 81T to approve the corporation; and

(*b*) the grounds referred to in subsection (5) for refusing such approval do not apply.

(2) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose such further conditions or restrictions as the Authority thinks fit.

(3) An approved holding company must, for the duration of the approval, satisfy all conditions and restrictions that may be imposed on it under subsections (1) and (2).

(4) Subject to subsection (5), the Authority must not refuse to approve a corporation under subsection (1) without giving the corporation an opportunity to be heard.

(5) The Authority may refuse to approve a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(6) The Authority must give notice in the *Gazette* of any corporation approved under subsection (1).

(7) Any applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (1) may, within 30 days after the applicant is notified of the decision, appeal to the Minister whose decision is final.

(8) Any corporation which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

Annual fees payable by approved holding company

81X.—(1) Every approved holding company must pay to the Authority such annual fees as may be prescribed and in such manner as the Authority may specify.

(2) The Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid or payable to it.

Cancellation of approval

81Y.—(1) An approved holding company which intends to cease its activities as an approved holding company may apply to the Authority to cancel its approval.

(2) The Authority may cancel the approval if it is satisfied that the approved holding company referred to in subsection (1) has ceased its activities as an approved holding company.

Power of Authority to revoke approval

81Z.—(1) The Authority may revoke any approval of a corporation as an approved holding company under section 81W(1) if —

(*a*) the corporation ceases to be the holding company of any approved exchange, licensed trade repository, approved clearing house or corporation which is an approved holding company;

(*b*) the corporation is being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*c*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its approval;

(ii) any direction issued to it by the Authority under this Act; or

(iii) any provision in this Act;

(*d*) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public;

(*da*) upon the Authority exercising any power under section 81ZGC(2) or the Minister exercising any power under Division 2, 4, 5 or 6 of Part 8 of the Financial Services and Markets Act 2022 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval;

[Act 18 of 2022 wef 10/05/2024]

(*e*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

(*f*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or

(*g*) any information or document provided by the corporation to the Authority is false or misleading.

[34/2012; 10/2013; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 81W(1) that was granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval under section 81W(1) that was granted to a corporation on any of the following circumstances without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(4) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

(5) Despite the lodging of an appeal under subsection (4), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

(7) The Authority must give notice in the *Gazette* of any revocation of approval referred to in subsection (1).

Division 2 — Regulation of Approved Holding Companies

Obligation to notify Authority of certain matters

81ZA.—(1) An approved holding company must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the approved holding company in its application under section 81V(1);

(*b*) the carrying on of any activity by the approved holding company other than such activity or such class of activities prescribed by regulations made under section 81ZK;

(*c*) the acquisition by the approved holding company of a substantial shareholding in a corporation, which carries on any activity other than such activity or such class of activities prescribed by regulations made under section 81ZK;

(*d*) any other matter that the Authority may prescribe by regulations made under section 81ZK for the purposes of this paragraph or specify by written notice to the approved holding company.

[34/2012; 4/2017]

(2) Without limiting section 81ZL(1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the approved holding company —

(*a*) where the notification relates to a matter referred to in subsection (1)(*b*) —

(i) to cease carrying on the firstmentioned activity referred to in subsection (1)(*b*); or

(ii) to carry on the firstmentioned activity referred to in subsection (1)(*b*) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL(1); or

(*b*) where the notification relates to a matter referred to in subsection (1)(*c*) —

(i) to dispose of the shareholding referred to in subsection (1)(*c*); or

(ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL(1),

and the approved holding company must comply with such directions.

(3) Any approved holding company which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

Obligation to submit periodic reports

81ZB.—(1) An approved holding company must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

Obligation to assist Authority

81ZC.—(1) An approved holding company must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

(*a*) such books and other information relating to the activities of the approved holding company; and

(*b*) such other information,

as the Authority may require for the proper administration of this Act.

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

Obligation to maintain confidentiality

81ZD.—(1) Subject to subsection (2), an approved holding company and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

(*a*) comes to the knowledge of the approved holding company or any of its officers or employees; or

(*b*) is in the possession of the approved holding company or any of its officers or employees.

(2) Subsection (1) does not apply to —

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

(4) To avoid doubt, nothing in this section is to be construed as preventing an approved holding company from entering into a written agreement with a user which obliges the approved holding company to maintain a higher degree of confidentiality than that specified in this section.

Control of substantial shareholding in approved holding companies

81ZE.—(1) A person must not enter into any agreement to acquire shares in an approved holding company by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved holding company without first obtaining the approval of the Authority to enter into the agreement.

(2) A person must not become —

(*a*) a 12% controller; or

(*b*) a 20% controller,

of an approved holding company without first obtaining the approval of the Authority.

(3) In subsection (2) —

"12% controller" means a person, not being a 20% controller, who alone or together with the person's associates —

(*a*) holds not less than 12% of the shares in the approved holding company; or

(*b*) is in a position to control not less than 12% of the votes in the approved holding company;

"20% controller" means a person who, alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the approved holding company; or

(*b*) is in a position to control not less than 20% of the votes in the approved holding company.

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in an approved holding company is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be

cast in a general meeting of the approved holding company; and

(*c*) a person, *A*, is an associate of another person, *B*, if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) [*Deleted by Act 35 of 2014*]

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved holding company.

[35/2014]

(5) The Authority may grant its approval referred to in subsection (1) or (2) subject to such conditions or restrictions as the Authority thinks fit.

(6) Without affecting subsection (11), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved holding company in which a substantial shareholder, 12% controller or 20% controller of the approved holding company has an interest.

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the approved holding company —

(*a*) no voting rights are exercisable in respect of the shares which are the subject of the direction;

(*b*) the approved holding company must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(*c*) except in a liquidation of the approved holding company, the approved holding company must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(8) Any issue of shares by an approved holding company in contravention of subsection (7)(*b*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the approved holding company, upon which the approved holding company must return to the person any payment received from the person in respect of those shares.

(9) Any payment made by an approved holding company in contravention of subsection (7)(*c*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the approved holding company.

(10) The Authority may exempt —

(*a*) any person or class or persons; or

(*b*) any class or description of shares or interests in shares,

from the requirement under subsection (1) or (2), subject to such conditions or restrictions as the Authority may impose.

(11) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

Approval of chairperson, chief executive officer, director and key persons

81ZF.—(1) An approved holding company must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

(2) An approved holding company must not appoint a person as its chairperson, chief executive officer or director unless the approved holding company has obtained the approval of the Authority.

(3) The Authority may, by written notice, require an approved holding company to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved holding company and the approved holding company must comply with the notice.

(4) An application for approval under subsection (2) or (3) must be made in such form and manner as the Authority may prescribe.

(5) Without limiting section 81ZK and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (2) or (3), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

(6) Subject to subsection (7), the Authority must not refuse an application for approval under this section without giving the approved holding company an opportunity to be heard.

(7) The Authority may refuse an application for approval on any of the following grounds without giving the approved holding company an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(8) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(9) An approved holding company must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (3).

(10) The Authority may make regulations under section 81ZK relating to the composition and duties of the board of directors or any committee of an approved holding company.

[34/2012]

(11) In this section, "committee" includes any committee of directors, disciplinary committee, appeals committee or any body responsible for disciplinary action against a member of an approved

exchange or approved clearing house, or a participant of a licensed trade repository, of which an approved holding company is the holding company.

[34/2012]

(12) The Authority may exempt an approved holding company or a class of approved holding companies from the requirement under subsection (1), (2) or (9), subject to such conditions or restrictions as the Authority may impose.

(13) Any approved holding company which contravenes subsection (1), (2), (3) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

Listing of approved holding companies on organised market

81ZG.—(1) The securities or securities-based derivatives contracts of an approved holding company must not be listed for quotation on an organised market that is operated by any of its related corporations, unless the approved holding company and the operator of the organised market have entered into such arrangements as the Authority may require —

(*a*) for dealing with possible conflicts of interest that may arise from such listing; and

(*b*) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved holding company.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved holding company are listed for quotation on an organised market operated by any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

(*a*) the admission of the approved holding company to, or the removal of the approved holding company from, the official list of the organised market; and

(*b*) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved holding company to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved holding company from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

(*a*) modify the listing rules of the organised market for the purpose of their application to the listing of the securities or securities-based derivatives contracts of the approved holding company for quotation or trading; or

(*b*) waive the application of any listing rule of the organised market to the approved holding company.

[4/2017]

(4) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

Information of insolvency, etc.

81ZGA.—(1) Any approved holding company which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a

continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Interpretation of sections 81ZGB to 81ZGG

81ZGB. In this section and sections 81ZGC to 81ZGG, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved holding company, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved holding company, or acting in an equivalent capacity in relation to the approved holding company;

"relevant business" means any business of an approved holding company —

(*a*) which the Authority has assumed control of under section 81ZGC; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 81ZGC;

"statutory adviser" means a statutory adviser appointed under section 81ZGC;

"statutory manager" means a statutory manager appointed under section 81ZGC.

[10/2013]

Action by Authority if approved holding company unable to meet obligations, etc.

81ZGC.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) an approved holding company informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) an approved holding company becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved holding company —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 81T;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 81W(1) or (2); or

(*d*) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved holding company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved holding company on the proper management of such of the business of the approved holding company as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved holding company as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of an approved holding company incorporated outside Singapore, any appointment of a statutory adviser or statutory

manager or any assumption of control by the Authority of any business of the approved holding company under subsection (2) is only in relation to —

(*a*) the business or affairs of the approved holding company carried on in, or managed in or from, Singapore; or

(*b*) the property of the approved holding company located in Singapore, or reflected in the books of the approved holding company in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved holding company, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 81Z(1)(*da*), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or

omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[10/2013]

(7) Any approved holding company that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 81ZGC

81ZGD.—(1) Upon assuming control of the relevant business of an approved holding company, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved holding company in the name of and on behalf of the approved holding company; and

(*b*) is deemed to be an agent of the approved holding company.

[10/2013]

(3) In managing the relevant business of an approved holding company, the Authority or statutory manager —

(*a*) must take into consideration the interests of the public or the section of the public referred to in section 81ZGC(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved holding company (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved holding company, including powers of delegation, in relation to the relevant business of the approved holding company; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved holding company under the Companies Act 1967 or the constitution of the approved holding company.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved holding company by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved holding company, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved holding company, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved holding company.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved holding company, the Authority may at any time, by written notice to the person and the approved holding company, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved holding company is revoked under subsection (4) or (6),

acts or purports to act after the revocation as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved holding company in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved holding company,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the approved holding company in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Duration of control

81ZGE.—(1) The Authority must cease to be in control of the relevant business of an approved holding company when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 81ZGC(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved holding company on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved holding company may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in

section 81ZGC(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved holding company.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved holding company;

(*b*) the cessation of the Authority's control of the relevant business of an approved holding company;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved holding company; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved holding company.

[10/2013]

Responsibilities of officers, member, etc., of approved holding company

81ZGF.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved holding company which is comprised in, forms

part of or relates to the relevant business of the approved holding company, and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved holding company, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

81ZGG.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved holding company —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved holding company, whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved holding company, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved holding company must reimburse the Authority any remuneration and expenses payable by the approved holding company to a statutory manager or statutory adviser.

[10/2013]

Auditors of approved holding companies — appointment and duties

81ZH.—(1) Despite any other provision of this Act or any other written law, every approved holding company must —

(*a*) on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and

(*b*) where, for any reason, the auditor ceases to act for the approved holding company, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.

(2) An auditor must not be approved by the Authority as an auditor for an approved holding company unless the auditor is able to comply with such conditions in relation to the discharge of an auditor's duties as the Authority may determine.

(3) The Authority may appoint an auditor for an approved holding company if —

(*a*) the approved holding company fails to appoint an auditor in accordance with subsection (1); or

(*b*) the Authority considers it desirable that another auditor should act with an auditor for the approved holding company appointed under subsection (1),

and may at any time fix the remuneration to be paid by the approved holding company to that auditor.

(4) The duties of an auditor appointed under subsections (1) and (3) are —

(*a*) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the approved holding company; and

(*b*) to make a report in respect of the latest financial statements of the approved holding company or, where the approved holding company is a parent company for which consolidated financial statements are prepared, the consolidated financial statements, in accordance with section 207 of the Companies Act 1967.

(5) The Authority may, by written notice, impose all or any of the following duties on an auditor in addition to those in subsection (4):

(*a*) a duty to submit to the Authority such additional information in relation to the auditor's audit as the Authority considers necessary;

(*b*) a duty to enlarge or extend the scope of the auditor's audit of the business and affairs of the approved holding company;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit to the Authority a report on any of the matters mentioned in paragraphs (*b*) and (*c*).

(6) An auditor to whom a notice is given under subsection (5) must comply with each direction specified in the notice.

(7) The approved holding company must remunerate the auditor in respect of the discharge by the auditor of the duties mentioned in subsection (5).

(8) Despite any other provision of this Act or the provisions of the Companies Act 1967, the Authority may, if it is not satisfied with the performance of any duty by an auditor of an approved holding company, at any time —

(*a*) direct the approved holding company to remove the auditor; and

(*b*) direct the approved holding company to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the approved holding company must comply with such direction.

(9) If an auditor discloses in good faith to the Authority any information mentioned in subsection (5)(*a*) or report mentioned in subsection (5)(*d*), the disclosure is not to be treated as a breach of any restriction on the disclosure imposed by any law, contract or rules of professional conduct, and the auditor is not liable for any loss arising from the disclosure or any act or omission as a result of the disclosure.

(10) An approved holding company that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(11) An approved holding company that fails to comply with a direction under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

(12) Any auditor who fails to carry out any duty mentioned in subsection (4), or who fails to comply with subsection (6), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Auditors of approved holding companies to report certain matters and irregularities to Authority

81ZHA.—(1) If an auditor of an approved holding company, in the course of performing the auditor's duties mentioned in section 81ZH(4) or (5), becomes aware of any matter or

irregularity mentioned in the following paragraphs, the auditor must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter that, in the auditor's opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;

(*b*) any matter that, in the auditor's opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(*c*) any irregularity that has or may have a material effect upon the accounts of the approved holding company, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

(2) An auditor of an approved holding company is not, in the absence of malice on the auditor's part, liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of an approved holding company may have, apart from this section, as a defendant in an action for defamation.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to appoint auditor to examine and audit books of approved holding company

81ZHB.—(1) Where —

(*a*) an approved holding company is required under section 81ZB(1) to submit to the Authority an auditor's report but fails to do so; or

(*b*) the Authority receives a report under section 81ZHA(1),

the Authority may, without affecting its powers under section 81ZH, if it is satisfied that it is in the interests of the approved holding company, the participants of the approved holding company or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the approved holding company.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the approved holding company, the Authority may, in writing, direct the approved holding company to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where an approved holding company fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

[Act 12 of 2024 wef 24/01/2025]

Restriction on auditor's and employee's right to communicate certain matters

81ZHC. Except as may be necessary for carrying into effect the provisions of this Act or so far as may be required for the purposes of any legal proceedings (whether civil or criminal), an auditor who is carrying out any duty imposed under section 81ZH(5) or who is appointed under section 81ZHB, or any employee of such auditor, must not disclose any information which may come to his or her knowledge or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

(*a*) the Authority;

(*b*) in the case of an employee of such auditor, the auditor; and

(*c*) any other person authorised by the Authority in writing to receive such information.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to exempt approved holding company from provisions of this Part

81ZI.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 81ZK, exempt any approved holding

company or class of approved holding companies from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any approved holding company from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that approved holding company with that provision will not detract from the objectives specified in section 81T.

[34/2012; 4/2017]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) An approved holding company that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(2C) An approved holding company that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

Disqualification or removal of director or executive officer

81ZJ.—(1) Despite the provisions of any other written law, an approved holding company must not, without the prior written consent of the Authority, permit an individual to act as its director or executive officer, if the individual —

(*a*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 53 of the Financial Institutions

(Miscellaneous Amendments) Act 2024, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*b*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

(*d*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*e*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order, or an FSMA prohibition order made against him or her that remains in force; or

(*f*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked (without any application by the regulated financial institution for withdrawal, cancellation or revocation) by the Authority or, in the case of a regulated financial institution in a foreign country or jurisdiction, by the regulatory authority in that foreign country or jurisdiction.

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director or executive officer of an approved holding company is not a fit and proper person to be a

director or executive officer (as the case may be) of the approved holding company, the Authority may, by notice in writing to the approved holding company, direct it to remove the director or executive officer from his or her office or employment within such period as may be specified by the Authority in the notice, and the approved holding company must comply with the notice.

(3) For the purpose of subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

(*a*) the individual has wilfully contravened or wilfully caused the approved holding company to contravene any provision of this Act or the business rules of the approved holding company;

(*b*) the individual has, without reasonable excuse, failed to secure the compliance of the approved holding company with this Act, the Monetary Authority of Singapore Act 1970, any of the written laws set out in the Schedule to that Act, or the business rules of the approved holding company;

(*c*) the individual has failed to discharge any of the duties of his or her office or employment;

(*d*) the individual's removal is necessary in the public interest or for the protection of investors; or

(*e*) the individual comes within any of the grounds mentioned in subsection (1).

(4) The Authority must, in determining whether an individual has failed to discharge the duties of his or her office or employment for the purposes of subsection (3)(*c*), have regard to such criteria as may be prescribed.

(5) The Authority must not direct an approved holding company to remove an individual from his or her office or employment under subsection (2) without giving the approved holding company and that individual, an opportunity to be heard except in any of the following circumstances:

(*a*) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 101A prohibition order or an FSMA prohibition order against the individual has been made and remains in force;

(*c*) the individual has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 53 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the individual had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) An approved holding company must, as soon as practicable after receiving a direction under subsection (2), notify the affected director or executive officer of the direction.

(7) Any approved holding company who receives a direction under subsection (2), or any director or executive officer of an approved holding company in relation to whom a direction under subsection (2) is given, may, within 30 days after the approved holding company receives the direction, appeal to the Minister whose decision is final.

(8) Despite the lodging of an appeal under subsection (7), a direction under subsection (2) continues to have effect pending the Minister's decision.

(9) The Minister may, when deciding an appeal under subsection (7), modify the direction under subsection (2), and such modified action has effect starting on the date of the Minister's decision.

(10) No criminal or civil liability is incurred by an approved holding company, or any person acting on behalf of an approved holding company, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(11) Any approved holding company which, without reasonable excuse, contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

Power of Authority to make regulations

81ZK.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to the approval of, and the requirements applicable to, persons who establish, operate, or assist in establishing or operating approved holding companies.

[34/2012]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for penalties not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

Power of Authority to issue directions

81ZL.—(1) The Authority may, if it thinks it necessary or expedient —

(*a*) for ensuring fair, orderly and transparent markets;

(*aa*) for ensuring safe and efficient trade repositories;

(*b*) for ensuring safe and efficient clearing facilities;

(*c*) for ensuring the integrity and stability of the capital markets or the financial system;

(*d*) in the interests of the public or a section of the public or for the protection of investors;

(*e*) for the effective administration of this Act; or

(*f*) for ensuring compliance with any condition or restriction as the Authority may impose under section 81W(1) or (2), 81ZA(2), 81ZE(5) or (10), 81ZF(12) or 81ZI, or such other obligations or requirements under this Act or as the Authority may prescribe,

issue directions by written notice either of a general or specific nature to an approved holding company or class of approved holding companies, and the approved holding company or each approved holding company of the class must comply with such directions.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

(2) Any approved holding company which, without reasonable excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Division 3 — Voluntary Transfer of Business of Approved Holding Company

Interpretation of this Division

81ZM. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved holding company, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved holding company, to which the whole or any part of a transferor's business is, is to be, or is proposed to be transferred under this Division;

"transferor" means an approved holding company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

81ZN.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved holding company) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved holding company; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved holding company to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under

subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

81ZO.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 81ZN(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective shareholders a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective shareholders affected by the transfer, at least 15 days before the

application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 81ZN(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not approved as an approved holding company by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved holding company by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may

order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

PART 4

HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

Division 1 — Capital Markets Services Licence

[2/2009]

Need for capital markets services licence

82.—(1) Subject to subsection (2) and section 99, no person may, whether as principal or agent, carry on business in any regulated activity or hold out that the person is carrying on such business unless the person is the holder of a capital markets services licence for that regulated activity.

(2) Subsection (1) does not apply to any person specified in the Third Schedule.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

83. [*Repealed by Act 2 of 2009*]

Application for grant of capital markets services licence

84.—(1) An application for the grant of a capital markets services licence must be made to the Authority in such form and manner as the Authority may specify.

[2/2009; 4/2017]

(2) The Authority may require an applicant to provide it with such information or documents as the Authority considers necessary in relation to the application.

(3) An application for the grant of a capital markets services licence must be accompanied by a non-refundable prescribed application fee which must be paid in the manner specified by the Authority.

[2/2009]

Licence fee

85.—(1) The holder of a capital markets services licence must on a yearly basis on or before such date and in such manner as the Authority may specify pay such licence fee for each regulated activity to which the licence relates as the Authority may prescribe.

[2/2009]

[Act 12 of 2024 wef 24/01/2025]

(2) Any licence fee paid to the Authority in respect of any regulated activity must not be refunded if —

(*a*) the licence is revoked or suspended, or lapses during the period to which the licence fee relates;

(*b*) [*Deleted by Act 2 of 2009*]

(*c*) the holder of a capital markets services licence ceases to carry on business in that regulated activity during the period to which the licence fee relates; or

(*d*) a section 101A prohibition order or an FSMA prohibition order has been made against the holder of a capital markets services licence.

[2/2009]

[Act 18 of 2022 wef 31/07/2024]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund the whole or part of any licence fee paid to it.

(4) Where the holder of a capital markets services licence fails to pay the licence fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

Grant of capital markets services licence

86.—(1) A corporation may make an application for a capital markets services licence to carry on business in one or more regulated activities.

(2) In granting a capital markets services licence, the Authority must specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate.

(3) A capital markets services licence may only be granted if the applicant meets such minimum financial and other requirements as the Authority may prescribe, either generally or specifically, or as are provided in the business rules of an approved exchange or recognised market operator.

[4/2017]

(4) Subject to regulations made under this Act, where an application is made for the grant of a capital markets services licence, the Authority may refuse the application if —

(*a*) the applicant has not provided the Authority with such information or documents relating to it or any person

employed by or associated with it for the purposes of its business, and to any circumstances likely to affect its manner of conducting business, as the Authority may require;

(*aa*) any information or document that is provided by the applicant to the Authority is false or misleading;

(*b*) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*c*) an enforcement order against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*d*) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;

(*e*) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(*f*) the applicant or its substantial shareholder, or any officer of the applicant —

(i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he or she had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act;

(*g*) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;

(*h*) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*i*) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;

(*j*) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's business is to be conducted;

(*k*) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;

(*l*) there are other circumstances which are likely to —

(i) lead to the improper conduct of business by the applicant, any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;

(*m*) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly;

(*n*) the Authority is of the opinion that it would be contrary to the interests of the public to grant the licence; or

(*o*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the applicant.

[2/2009]

[Act 18 of 2022 wef 31/07/2024]

(5) Subject to subsection (6), the Authority must not refuse an application for a grant of a capital markets services licence without giving the applicant an opportunity to be heard.

[2/2009]

(6) The Authority may refuse an application for the grant of a capital markets services licence on any of the following grounds without giving the applicant an opportunity to be heard:

(*a*) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;

(*c*) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

(*d*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the applicant.

[2/2009]

[Act 18 of 2022 wef 31/07/2024]

87. [*Repealed by Act 2 of 2009*]

87A. [*Repealed by Act 2 of 2009*]

Power of Authority to impose conditions or restrictions

88.—(1) The Authority may grant a capital markets services licence subject to such conditions or restrictions as it thinks fit.

[2/2009]

(1A) Without limiting subsection (1), where the Authority grants a capital markets services licence to carry on a business of dealing in capital markets products, the Authority may impose conditions or restrictions under subsection (1) restricting the holder of the capital markets services licence to one or more types of capital markets products in respect of which the holder may carry on a business of dealing in capital markets products.

[4/2017]

(2) The Authority may, at any time, by written notice to a holder of a capital markets services licence, vary or revoke any condition or restriction or impose such further condition or restriction as it thinks fit.

[2/2009]

[Act 12 of 2024 wef 30/08/2024]

(3) Any person who contravenes any condition or restriction in its licence shall be guilty of an offence.

[2/2009]

89. [*Repealed by Act 2 of 2009*]

Variation of capital markets services licence

90.—(1) The Authority may, on the application of the holder of a capital markets services licence, vary its licence by adding a regulated activity to those already specified in the licence.

[2/2009]

(1A) The Authority may require an applicant to supply the Authority with such information or documents as it considers necessary in relation to the application.

(2) An application under subsection (1) must be accompanied by a non-refundable prescribed application fee which must be paid in the manner specified by the Authority.

[2/2009]

(3) The Authority may —

(*a*) approve the application subject to such conditions or restrictions as the Authority thinks fit; or

(*b*) refuse the application on any of the grounds set out in section 86(4).

[2/2009]

(4) The Authority must not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

Deposit to be lodged in respect of capital markets services licence

91.—(1) The Authority may, in granting or varying a capital markets services licence, require the applicant to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount as the Authority may prescribe by regulations made under section 100 in respect of that licence and in such form as the Authority may specify.

[2/2009; 4/2017]

(2) The Authority may prescribe the circumstances and purposes for the use of the deposit.

False statements in relation to application for grant or variation of capital markets services licence

92. Any person who, in connection with an application for the grant or variation of a capital markets services licence —

(*a*) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[2/2009]

Notification of change of particulars

93.—(1) Where —

(*a*) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates; or

(*b*) a change occurs in any matter records of which are required by section 94 to be kept in relation to the holder,

the holder must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the prescribed form and manner.

[2/2009]

(2) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

[Act 12 of 2024 wef 24/01/2025]

Records of holders of capital markets services licence

94.—(1) The Authority must keep in such form as it thinks fit records of holders of a capital markets services licence setting out the following information of each holder:

(*a*) its name;

(*b*) the address of the principal place of business at which it carries on the business in respect of which the licence is held;

(*c*) the regulated activity or activities and the type or types of capital markets products to which its licence relates;

(*d*) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on;

(*e*) such other information as may be prescribed.

[2/2009; 4/2017]

(2) The Authority may publish the information referred to in subsection (1) or any part of it in such manner as it considers appropriate.

[2/2009]

Lapsing, revocation and suspension of capital markets services licence

95.—(1) A capital markets services licence lapses —

(*a*) if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere; or

(*b*) in the event of such other occurrence or in such other circumstances as may be prescribed.

[2/2009]

(2) The Authority may revoke a capital markets services licence if —

(*a*) there exists a ground on which the Authority may refuse an application under section 86;

(*b*) the holder of the capital markets services licence fails or ceases to carry on business in all the regulated activities for which it was licensed;

(*ba*) the Authority has reason to believe that the holder has not acted in the best interests of the holder's subscribers or customers;

(*c*) the Authority has reason to believe that the holder, or any of its officers or employees, has not performed its or his or her duties efficiently, honestly or fairly;

(*d*) the holder has contravened any condition or restriction applicable in respect of its licence, any written direction issued to it by the Authority under this Act, or any provision in this Act;

(*da*) it appears to the Authority that the holder has failed to satisfy any of its obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*e*) the Authority has reason to believe that the holder is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public;

(*ea*) upon the Authority exercising any power under section 97E(2) or the Minister exercising any power under Division 2, 4, 5 or 6 of Part 8 of the Financial Services and Markets Act 2022 in relation to the holder, the Authority considers that it is in the public interest to revoke the licence;

[Act 18 of 2022 wef 10/05/2024]

(*f*) the holder has provided any information or document to the Authority that is false or misleading;

(*g*) the holder fails to pay the licence fee referred to in section 85; or

(*h*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the holder.

[2/2009; 34/2012; 10/2013; 31/2017]

[Act 18 of 2022 wef 31/07/2024]

(3) The Authority may, if it considers it desirable to do so —

(*a*) suspend a capital markets services licence for a specific period instead of revoking it under subsection (2); and

(*b*) at any time extend or revoke the suspension.

[2/2009]

(4) Subject to subsection (5), the Authority must not revoke or suspend a capital markets services licence under subsection (2) or (3) without giving the holder of the licence an opportunity to be heard.

[2/2009]

(5) The Authority may revoke or suspend a capital markets services licence without giving the holder of the licence an opportunity to be heard, on any of the following grounds:

(*a*) the holder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the holder;

(*c*) the holder has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

(*d*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the holder.

[2/2009]

[Act 18 of 2022 wef 31/07/2024]

(6) Where the Authority has revoked or suspended a capital markets services licence, the holder of that licence must —

(*a*) in the case of a revocation of its licence, immediately inform all its representatives by written notice of such revocation, and the representatives who are so informed must cease to act as representatives of that holder; or

(*b*) in the case of a suspension of its licence, immediately inform all its representatives by written notice of such suspension, and the representatives who are so informed must cease to act as representatives of that holder during the period of the suspension.

[2/2009]

(7) Any holder of a capital markets services licence who —

(*a*) performs a regulated activity while its licence has lapsed or has been revoked or suspended; or

(*b*) contravenes subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(8) A lapsing, revocation or suspension of a capital markets services licence does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the holder of the licence, whether the agreement, transaction or arrangement was entered into before, on or after the revocation, suspension or lapsing of the licence, as the case may be; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

Approval of chief executive officer and director of holder of capital markets services licence

96.—(1) Subject to subsection (1B), a holder of a capital markets services licence must not —

(*a*) appoint a person as its chief executive officer or director; or

(*b*) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has obtained the approval of the Authority.

[2/2009]

(1A) Where a holder of a capital markets services licence has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(*a*), the person may be re-appointed as chief executive officer or director (as the case may be) of the holder immediately upon the expiry of the earlier term without the approval of the Authority.

[2/2009]

(1B) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

(*a*) does not reside in Singapore; and

(*b*) is not directly responsible for its business in Singapore or any part thereof.

[2/2009]

(2) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority must not refuse an application for approval under subsection (1) without giving the holder of the capital markets services licence an opportunity to be heard.

(4) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the holder of a capital markets services licence an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*aa*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

[Act 18 of 2022 wef 31/07/2024]

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[2/2009]

(5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(6) Without affecting the Authority's power to impose conditions or restrictions under section 88, the Authority may, at any time by written notice to the holder of a capital markets services licence, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[2/2009]

(7) Any person who contravenes any condition imposed under subsection (6) shall be guilty of an offence.

[2/2009]

Disqualification or removal of director or executive officer

97.—(1) Despite the provisions of any other written law —

(*a*) a holder of a capital markets services licence must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) a holder of a capital markets services licence which is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 18 April 2013, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order or an FSMA prohibition order made against him or her that remains in force; or

[Act 12 of 2024 wef 24/01/2025]

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked (without any application by the regulated financial institution for withdrawal, cancellation or revocation) by the Authority or, in the case of a regulated financial institution in a foreign country or jurisdiction, by the regulatory authority in that foreign country or jurisdiction.

[10/2013; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(1A) Despite the provisions of any other written law, where the Authority is satisfied that a director of a holder of a capital markets services licence which is incorporated in Singapore, or an executive officer of a holder of a capital markets services licence, is not a fit and proper person to be a director or executive officer (as the case may be) of the holder, the Authority may, by notice in writing to the holder, direct it to remove the director or executive officer from his or her office or employment within such period as the Authority may specify in the notice, and the holder must comply with the notice.

[Act 12 of 2024 wef 24/01/2025]

(2) For the purpose of subsection (1A), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

(*a*) the individual has wilfully contravened or wilfully caused the holder to contravene any provision of this Act;

(*b*) the individual has, without reasonable excuse, failed to secure the compliance of the holder with this Act, the Monetary Authority of Singapore Act 1970, or any of the written laws set out in the Schedule to that Act;

(*c*) the individual has failed to discharge any of the duties of his or her office or employment;

(*d*) the individual's removal is necessary in the public interest or for the protection of investors; or

(*e*) the individual comes within any of the grounds mentioned in subsection (1).

[Act 12 of 2024 wef 24/01/2025]

(3) The Authority must, in determining whether an individual has failed to discharge the duties of his or her office or employment for the purposes of subsection (2)(*c*), have regard to such criteria as may be prescribed.

[Act 12 of 2024 wef 24/01/2025]

(4) The Authority must not direct a holder of a capital markets services licence to remove an individual from his or her office or employment under subsection (1A) without giving the holder and that individual an opportunity to be heard, except in any of the following circumstances:

(*a*) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 101A prohibition order or an FSMA prohibition order against the individual has been made that remains in force;

(*c*) the individual has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 58(*d*) of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the individual had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[Act 12 of 2024 wef 24/01/2025]

(5) A holder of a capital markets services licence must, as soon as practicable after receiving a direction under subsection (1A), notify the affected director or executive officer of the direction.

[Act 12 of 2024 wef 24/01/2025]

(5A) A holder of a capital markets services licence who receives a direction under subsection (1A), or any director or executive officer of a holder of a capital markets services licence in relation to whom a direction under subsection (1A) is given, may, within 30 days after the holder receives the direction, appeal to the Minister whose decision is final.

[Act 12 of 2024 wef 24/01/2025]

(5B) Despite the lodging of an appeal under subsection (5A), any direction under subsection (1A) continues to have effect pending the Minister's decision.

[Act 12 of 2024 wef 24/01/2025]

(5C) The Minister may, when deciding an appeal under subsection (5A), modify the direction under subsection (1A), and such modified action has effect starting on the date of the Minister's decision.

[Act 12 of 2024 wef 24/01/2025]

(6) No criminal or civil liability is incurred by —

(*a*) a holder of a capital markets services licence; or

(*b*) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[10/2013]

[Act 12 of 2024 wef 24/01/2025]

(6A) A holder of a capital markets services licence who, without reasonable excuse, contravenes subsection (1) or fails to comply with a notice issued under subsection (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[Act 12 of 2024 wef 24/01/2025]

(7) [*Deleted by Act 12 of 2024 wef 24/01/2025*]

[Act 12 of 2024 wef 24/01/2025]

Control of take-over of holder of capital markets services licence

97A.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to

all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[2/2009]

(2) A person must not obtain effective control of the holder of a capital markets services licence that is a company, unless the person has obtained the prior approval of the Authority.

[Act 12 of 2024 wef 24/01/2025]

(3) An application for the Authority's approval under subsection (2) must be made in writing, and the Authority may approve the application if the Authority is satisfied that —

(*a*) the applicant is a fit and proper person to have effective control of the holder of the capital markets services licence;

(*b*) having regard to the applicant's likely influence, the holder of a capital markets services licence is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and

(*c*) the applicant satisfies such other criteria as may be prescribed.

[2/2009]

[Act 12 of 2024 wef 24/01/2025]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

(*a*) restricting the applicant's disposal or further acquisition of shares or voting power in the holder of a capital markets services licence; or

(*b*) restricting the applicant's exercise of voting power in the holder of a capital markets services licence,

and the applicant must comply with such conditions.

[2/2009]

(4A) The Authority may at any time add to or vary any condition imposed under subsection (4) and the applicant must comply with the condition so added to or varied.

[Act 12 of 2024 wef 24/01/2025]

(4B) The Authority may at any time revoke any condition imposed under subsection (4) (including a condition that has been added to or varied under subsection (4A)).

[Act 12 of 2024 wef 24/01/2025]

(5) Any condition imposed under subsection (4) (including a condition that has been added to or varied under subsection (4A)) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the holder of a capital markets services licence.

[2/2009; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(6) For the purposes of this section and section 97B —

(*a*) a person has effective control of the holder of a capital markets services licence —

(i) if the person, alone or acting together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the holder;

(ii) if the person, alone or acting together with any connected person, controls, directly or indirectly, 20% or more of the voting power in the holder;

(iii) if the holder or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether conveyed by the person alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder); or

(iv) if the person (whether alone or acting together with any other person, and whether with or without holding shares or controlling voting power in the holder) is able to determine the policy of the holder; and

[Act 12 of 2024 wef 24/01/2025]

(*b*) [*Deleted by Act 12 of 2024 wef 24/01/2025*]

(*c*) a reference to the voting power in the holder of a capital markets services licence is a reference to the total number of votes that may be cast in a general meeting of the holder.

[2/2009]

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[2/2009]

(8) Any person who fails to comply with a condition imposed under subsection (4) (including a condition added to or varied under subsection (4A)) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[Act 12 of 2024 wef 24/01/2025]

Objection to control of holder of capital markets services licence

97B.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 97A; or

(*b*) any person who has effective control of the holder of a capital markets services licence,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 97A(4) (including a condition that has been added to or varied under section 97A(4A)) has not been complied with;

[Act 12 of 2024 wef 24/01/2025]

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the holder of the capital markets services licence;

(*e*) having regard to the likely influence of the person, the holder of a capital markets services licence is not able to or is no longer likely to conduct its business prudently or to

comply with the provisions of this Act or any direction made thereunder;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 97A; or

(*h*) the Authority would not have granted its approval under section 97A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

[2/2009]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

[Act 12 of 2024 wef 24/01/2025]

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[2/2009]

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

(*a*) take such steps as are necessary to ensure that the person ceases to have effective control of the holder of a capital markets services licence; or

[Act 12 of 2024 wef 24/01/2025]

(*b*) comply with such other requirements as the Authority may specify in the written notice of objection.

[2/2009]

(4) Any person served with a notice of objection under this section must comply with the notice.

[2/2009]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[2/2009]

Information of insolvency, etc.

97C.—(1) Any holder of a capital markets services licence which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any holder of a capital markets services licence which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Interpretation of sections 97D to 97I

97D. In this section and sections 97E to 97I, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to a holder of a capital markets services licence, means any person acting as the liquidator,

the provisional liquidator, the receiver or the receiver and manager of the holder, or acting in an equivalent capacity in relation to the holder;

"relevant business" means any business of a holder of a capital markets services licence —

(*a*) which the Authority has assumed control of under section 97E; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 97E;

"statutory adviser" means a statutory adviser appointed under section 97E;

"statutory manager" means a statutory manager appointed under section 97E.

[10/2013]

Action by Authority if holder of capital markets services licence unable to meet obligations, etc.

97E.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) a holder of a capital markets services licence informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) a holder of a capital markets services licence becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that a holder of a capital markets services licence —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction in its licence (being a condition or restriction imposed under section 88(1) or (2)); or

(*d*) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the holder of a capital markets services licence immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the holder of a capital markets services licence on the proper management of such of the business of the holder as the Authority may determine; or

(*c*) assume control of and manage such of the business of the holder of a capital markets services licence as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a holder of a capital markets services licence incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the holder under subsection (2) is only in relation to —

(*a*) the business or affairs of the holder carried on in, or managed in or from, Singapore; or

(*b*) the property of the holder located in Singapore, or reflected in the books of the holder in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of a holder of a capital markets services licence, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 95(2)(*ea*), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[10/2013]

(7) Any holder of a capital markets services licence that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 97E

97F.—(1) Upon assuming control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

(*a*) must manage the relevant business of the holder in the name of and on behalf of the holder; and

(*b*) is deemed to be an agent of the holder.

[10/2013]

(3) In managing the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 97E(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the holder (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the holder, including powers of delegation, in relation to the relevant business of the holder; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the holder

under the Companies Act 1967 or the constitution of the holder.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of a holder of a capital markets services licence by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the holder, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the holder, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the holder.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of a holder of a capital markets services licence, the Authority may at any time, by written notice to the person and the holder, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a holder of a capital markets services licence is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a holder of a capital markets services licence in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the holder,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the holder in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000

for every day or part of a day during which the offence continues after conviction.

[10/2013]

Duration of control

97G.—(1) The Authority must cease to be in control of the relevant business of a holder of a capital markets services licence when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of a holder of a capital markets services licence on the date of the statutory manager's appointment as a statutory manager.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the holder.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of a holder of a capital markets services licence;

(*b*) the cessation of the Authority's control of the relevant business of a holder of a capital markets services licence;

(*c*) the appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of a holder of a capital markets services licence.

[10/2013]

Responsibilities of officers, member, etc., of holder of capital markets services licence

97H.—(1) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the holder which is comprised in, forms part of or relates to the relevant business of the holder, and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder must give to the Authority or

statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the holder, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

97I.—(1) The Authority may at any time fix the remuneration and expenses to be paid by a holder of a capital markets services licence —

(*a*) to a statutory manager or statutory adviser appointed in relation to the holder, whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the holder, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The holder of a capital markets services licence must reimburse the Authority any remuneration and expenses payable by the holder to a statutory manager or statutory adviser.

[10/2013]

Appeals

98.—(1) Subject to subsection (2), any person who is aggrieved by —

(*a*) the refusal of the Authority to grant or vary a capital markets services licence;

(*b*) the revocation or suspension of a capital markets services licence by the Authority; or

[Act 12 of 2024 wef 24/01/2025]

(*c*) [*Deleted by Act 2 of 2009*]

(*d*) the refusal of the Authority to grant an approval to a holder of a capital markets services licence to appoint a person as its chief executive officer or director,

[Act 12 of 2024 wef 24/01/2025]

(*e*) [*Deleted by Act 12 of 2024 wef 24/01/2025*]

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[2/2009]

(2) An appeal under subsection (1)(*d*) may only be made by the holder of a capital markets services licence.

[Act 12 of 2024 wef 24/01/2025]

Exemptions from requirement to hold capital markets services licence

99.—(1) The following persons are exempted in respect of the following regulated activities from the requirement to hold a capital markets services licence to carry on business in such regulated activities:

(*a*) any bank licensed under the Banking Act 1970 in respect of any regulated activity;

(*b*) any merchant bank licensed under the Banking Act 1970 in respect of any regulated activity;

(*c*) any finance company licensed under the Finance Companies Act 1967 in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25(2) of that Act has been granted;

(*d*) any company or co-operative society licensed under the Insurance Act 1966 in respect of fund management for the purpose of carrying out insurance business;

(*e*) [*Deleted by Act 1 of 2005*]

(*f*) any approved exchange, recognised market operator or approved holding company in respect of any regulated activity that is solely incidental to its operation of an organised market or to its performance as an approved holding company, as the case may be;

(*g*) any approved clearing house or recognised clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility;

(*h*) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

[34/2012; 11/2013; 4/2017; 1/2020]

(2) [*Deleted by Act 1 of 2005*]

(3) [*Deleted by Act 1 of 2005*]

(4) The Authority may by regulations or by written notice impose such conditions or restrictions on an exempt person or its representative in relation to the conduct of the regulated activity or any related matter as the Authority thinks fit and the exempt person or its representative (as the case may be) must comply with such conditions or restrictions.

(4A) The Authority may by regulations or by written notice vary or revoke any condition or restriction imposed under subsection (4).

[Act 12 of 2024 wef 30/08/2024]

(5) Any exempt person or representative of an exempt person, who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a

further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(6) The Authority may withdraw an exemption granted to any person under this section —

(*a*) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);

(*aa*) if it fails to pay the annual fee referred to in section 99A;

(*b*) if it contravenes any direction issued to it under section 101(1); or

(*c*) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

[2/2009]

(7) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(8) A withdrawal under subsection (6) of an exemption granted to any person does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(9) A person that is aggrieved by a decision of the Authority made under subsection (6) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

Annual fees payable by exempt person and certain representatives

99A.—(1) Every exempt person and every representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) must pay to the Authority such annual fee in respect of each regulated activity as may be prescribed and in such manner and on such date as may be specified by the Authority.

[2/2009]

(2) Any annual fee paid by an exempt person or a representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) to the Authority in respect of any regulated activity must not be refunded or remitted if —

(*a*) in the case of the exempt person —

(i) its exemption is withdrawn;

(ii) it fails or ceases to carry on business in that regulated activity; or

(iii) a section 101A prohibition order or an FSMA prohibition order has been made against it,

during the period to which the annual fee relates; and

[Act 18 of 2022 wef 31/07/2024]

(*b*) in the case of a representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) —

(i) the exemption of the exempt person is withdrawn;

(i*a*) a section 101A prohibition order or an FSMA prohibition order has been made against the representative; or

[Act 18 of 2022 wef 31/07/2024]

(ii) the representative fails or ceases to act as a representative in respect of that regulated activity,

during the period to which the annual fee relates.

[2/2009]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid or payable to it.

(4) Where an exempt person or a representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) fails to pay the fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

Division 1A — Voluntary Transfer of Business of Holder of Capital Markets Services Licence

Interpretation of this Division

99AA. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means a holder of a capital markets services licence, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of a holder of a capital markets services licence, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means a holder of a capital markets services licence the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

99AB.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a holder of a capital markets services licence) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of a holder of a capital markets services licence; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of a holder of a capital markets services licence to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the

discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

99AC.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 99AB(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 99AB(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not granted a capital markets services licence by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being granted a capital markets services licence by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection,

shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Division 2 — Representatives

Acting as representative

99B.—(1) No person may act as a representative in respect of any type of regulated activity or hold himself or herself out as doing so, unless the person is —

(*a*) an appointed representative in respect of that type of regulated activity;

(*b*) a provisional representative in respect of that type of regulated activity;

(*c*) a temporary representative in respect of that type of regulated activity; or

(*d*) a representative of an exempt person under section 99(1)(*f*), (*g*) or (*h*), in so far as —

(i) the type and scope of the regulated activity carried out by the firstmentioned person are within the type and scope of, or are the same as, that carried out by the exempt person (in the exempt person's capacity as such); and

(ii) the manner in which the firstmentioned person carries out that type of regulated activity is the same as the manner in which the exempt person (in the exempt person's capacity as such) carries out that type of regulated activity.

[2/2009]

(2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as the Authority may impose.

[2/2009]

(3) A principal must not permit any individual to carry on business in any type of regulated activity on its behalf unless —

(*a*) the individual is an appointed representative, provisional representative or temporary representative in respect of that type of regulated activity; or

(*b*) the principal is an exempt person under section 99(1)(*f*), (*g*) or (*h*) and —

(i) the type and scope of the regulated activity carried out by the individual are within the type and scope of, or are the same as, that carried out by the exempt person (in the exempt person's capacity as such); and

(ii) the manner in which the individual carries out that type of regulated activity is the same as the manner in which the exempt person (in the exempt person's capacity as such) carries out that type of regulated activity.

[2/2009]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Records and public register of representatives

99C.—(1) The Authority must keep in such form as it thinks fit records of the following information of each appointed representative, provisional representative and temporary representative:

(*a*) his or her name;

(*b*) the name of his or her current principal and every past principal, if any;

(*c*) the current and past types of regulated activities performed by him or her, the types of capital markets products in respect of which he or she performed each regulated activity and the date of commencement and cessation (if any) of his or her performance of such activities;

(*d*) where the business of the principal for which he or she acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;

(*e*) disciplinary proceedings or other action taken by the Authority against him or her and published under section 322;

(*f*) such other information as may be prescribed.

[2/2009; 4/2017]

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

[2/2009]

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which must be published in such manner as it considers appropriate.

[2/2009]

Appointed representative

99D.—(1) For the purposes of this Act, an appointed representative in respect of a type of regulated activity is an individual —

(*a*) who satisfies such entry and examination requirements as the Authority may specify for that type of regulated activity, the fact of which has been notified to the Authority either in the document lodged under section 99H(1), or (if applicable) under section 99E(5) within the time prescribed under that provision;

(*b*) whose name is entered in the public register of representatives as an appointed representative;

(*c*) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;

(*d*) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so; and

(*e*) whose principal —

(i) is licensed to carry on business in that type of regulated activity; or

(ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*).

[2/2009]

(2) For the purpose of subsection (1)(*a*), the Authority must, by direction published in such manner as may be prescribed, specify the examination requirements for each type of regulated activity.

[2/2009]

(3) The Authority may require the principal or individual to provide it with such information or documents as the Authority considers necessary in relation to the proposed appointment of the individual as an appointed representative, and the principal or individual (as the case may be) must comply with such a request.

[2/2009]

(4) An individual ceases to be an appointed representative in respect of any type of regulated activity on the date —

(*a*) he or she ceases to be the principal's representative or to carry out that type of regulated activity for that principal, the fact of which has been notified to the Authority under subsection (8);

(*b*) his or her principal ceases to carry on business in that type of regulated activity;

(*c*) the licence of his or her principal is revoked or lapses, or a section 101A prohibition order or an FSMA prohibition order is made against his or her principal prohibiting it from carrying out that type of regulated activity;

[Act 18 of 2022 wef 31/07/2024]

(*d*) the individual dies; or

(*e*) of the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(5) An individual is not treated as an appointed representative during the period in which the licence of his or her principal is suspended.

[2/2009]

(6) Nothing in subsection (4) or (5) prevents the individual from being treated as an appointed representative in respect of that type of regulated activity if he or she becomes a representative of a new principal in respect of that type of regulated activity and subsection (1) is complied with.

[2/2009]

(7) Subsections (4) and (5) do not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement relating to that type of regulated activity entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

(8) A principal must, no later than the next business day after the day —

(*a*) an individual ceases to be the principal's representative; or

(*b*) an individual who is the principal's representative ceases to carry on business in any type of regulated activity which the individual is appointed to carry on business in,

provide particulars of such cessation to the Authority, in the prescribed form and manner.

[2/2009]

Provisional representative

99E.—(1) For the purposes of this Act, a provisional representative in respect of a type of regulated activity is an individual —

(*a*) who satisfies such entry requirements as the Authority may specify for that type of regulated activity;

(*b*) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 99D(2) for that type of regulated activity, the fact of which has been notified to the Authority in the document lodged under section 99H(1);

(*c*) whose name is entered in the public register of representatives as a provisional representative;

(*d*) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;

(*e*) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so;

(*f*) whose principal —

(i) is licensed to carry on business in that type of regulated activity; or

(ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*);

(*g*) who has not previously been appointed as a provisional representative by the Authority; and

(*h*) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

[2/2009]

(2) An individual may only be a provisional representative in respect of any type of regulated activity for such period of time as the Authority may specify against his or her name in the public register of representatives.

[2/2009]

(3) A provisional representative in respect of any type of regulated activity immediately ceases to be one —

(*a*) upon the expiry of the period of time specified by the Authority under subsection (2);

(*b*) if he or she fails to comply with any condition or restriction imposed on him or her under section 99N;

(*c*) upon his or her principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of regulated activity under subsection (5); or

(*d*) on the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(4) Section 99D(3) to (8) (other than section 99D(4)(*e*)) applies to a provisional representative —

(*a*) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and

(*b*) with such other modifications and adaptations as the differences between provisional representatives and appointed representatives require.

[2/2009]

(5) Where a provisional representative in respect of a type of regulated activity has satisfied the examination requirements specified for that type of regulated activity, his or her principal

must inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

[2/2009]

Temporary representative

99F.—(1) For the purposes of this Act, a temporary representative in respect of a type of regulated activity is an individual —

(*a*) who satisfies such entry requirements as the Authority may specify for that type of regulated activity;

(*b*) whose name is entered in the public register of representatives as a temporary representative;

(*c*) whose status as a temporary representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;

(*d*) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so;

(*e*) whose principal —

(i) is licensed to carry on business in that type of regulated activity; or

(ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*); and

(*f*) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a temporary representative.

[2/2009]

(2) An individual may only be a temporary representative in respect of any type of regulated activity for such period of time as the Authority may specify against his or her name in the public register of representatives.

[2/2009]

(3) A temporary representative in respect of any type of regulated activity immediately ceases to be one —

(*a*) upon the expiry of the period of time specified by the Authority under subsection (2);

(*b*) if he or she fails to comply with any condition or restriction imposed on him or her under section 99N; or

(*c*) on the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(4) Section 99D(3) to (8) (other than section 99D(4)(*e*)) applies to a temporary representative —

(*a*) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and

(*b*) with such other modifications and adaptations as the differences between temporary representatives and appointed representatives require.

[2/2009]

Offences

99G.—(1) Any person who contravenes section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[2/2009]

(2) Any person who contravenes section 99D(8), 99E(4) (in relation to the application of section 99D(8) to a provisional representative), 99F(4) (in relation to the application of section 99D(8) to a temporary representative) or 99H(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Lodgment of documents

99H.—(1) A principal who desires to appoint an individual as an appointed, provisional or temporary representative in respect of any type of regulated activity must lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

(*a*) a notice of intent by the principal to appoint the individual as an appointed, provisional or temporary representative in respect of that type of regulated activity;

(*b*) a certificate by the principal that the individual is a fit and proper person to be an appointed, provisional or temporary representative in respect of that type of regulated activity;

(*c*) in the case of a provisional or temporary representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

[2/2009]

(1A) Subsection (1) does not apply to a principal who desires to appoint, as an appointed representative in respect of any type of regulated activity, an individual who is a provisional representative in respect of that type of regulated activity, if —

(*a*) that individual has satisfied the examination requirements specified for that type of regulated activity; and

(*b*) the principal has informed the Authority of that fact in the prescribed form and manner under section 99E(5).

[34/2012]

(2) Subject to section 99M, the Authority must, upon receipt of the documents lodged in accordance with subsection (1), enter in the public register of representatives the name of the representative, whether he or she is an appointed, provisional or temporary representative, the type of regulated activity which he or she may carry on business in, and such other particulars as the Authority considers appropriate.

[2/2009]

(3) The Authority may refuse to enter in the public register of representatives the particulars referred to in subsection (2) of the representative if the fee referred to in section 99K(1) or (4) (if applicable) is not paid.

[2/2009]

(4) A principal who submits a certificate under subsection (1)(*b*) must keep, in such form and manner and for such period as the Authority may prescribe, copies of all information and documents which the principal relied on in giving the certificate.

[2/2009]

(5) Where a change occurs in any particulars of the appointed, provisional or temporary representative in any document required to be provided to the Authority under subsection (1), the principal must, no later than 14 days after the occurrence of such change, provide particulars of such change to the Authority, in the prescribed form and manner.

[2/2009]

Exemption

99I.—(1) The Authority may exempt any person or class of persons from any of the requirements of sections 99D to 99H.

[2/2009]

(2) Such exemption is subject to such conditions or restrictions as the Authority may impose.

[2/2009]

Representative to act for only one principal

99J.—(1) Unless otherwise approved by the Authority in writing, no appointed representative, temporary representative or provisional representative may at any one time be a representative of more than one principal.

[2/2009]

(2) Despite subsection (1), an appointed representative may be a representative of more than one principal if the principals are related corporations.

[2/2009]

(3) The Authority may require an applicant for approval under subsection (1) to provide it with such information or documents as the Authority considers necessary in relation to the application.

[2/2009]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Lodgment and fees

99K.—(1) An individual must, on or before the date specified by the Authority, pay to the Authority such fee as the Authority may prescribe for the lodgment of documents under section 99H by his or her principal in relation to his or her appointment as an appointed, provisional or temporary representative.

[2/2009]

[Act 12 of 2024 wef 24/01/2025]

(2) An individual who is an appointed or provisional representative in respect of any type of regulated activity must, on or before the date specified by the Authority each year, pay such annual fee as the Authority may prescribe in relation to the retention of his or her name, in the public register of representatives, as an appointed or provisional representative in respect of that type of regulated activity.

[34/2012]

[Act 12 of 2024 wef 24/01/2025]

(3) An individual who is a temporary representative must, on or before the date specified by the Authority, pay such fee as the Authority may prescribe in relation to the retention of his or her name in the public register of representatives as a temporary representative.

[2/2009]

[Act 12 of 2024 wef 24/01/2025]

(4) A representative must pay such fee as the Authority may prescribe for any resubmission of a form or change in the particulars of a form lodged with the Authority in relation to his or her

appointment as an appointed, provisional or temporary representative.

[2/2009]

(5) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section is not to be refunded.

[2/2009]

(6) Where the representative fails to pay the fee referred to in subsection (1), (2) or (3) by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

(7) The fees referred to in this section must be paid in the manner specified by the Authority.

[2/2009]

Additional regulated activity

99L.—(1) The principal of an appointed representative may at any time lodge a notice with the Authority of its intention to appoint the representative as an appointed representative in respect of a type of regulated activity in addition to that indicated against the representative's name in the public register of representatives.

[2/2009]

(2) The notification must be lodged in such form and manner as may be prescribed and must be accompanied by a certificate by the principal that the representative is a fit and proper person to be a representative in respect of the additional type of regulated activity.

[2/2009]

(3) Subject to section 99M, the Authority must, upon receipt of the notification, enter in the public register of representatives the additional type of regulated activity as one which the representative may carry on business in as a representative.

[2/2009]

(4) The Authority may, before entering in the public register of representatives the matter set out in subsection (3), require the principal or representative to provide it with such information or documents as the Authority considers necessary.

[2/2009]

(5) A notification under subsection (1) must be accompanied by a non-refundable prescribed fee which must be paid in the manner specified by the Authority.

[2/2009]

Power of Authority to refuse entry or revoke or suspend status of appointed, provisional or temporary representative

99M.—(1) Subject to regulations made under this Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives, refuse to enter an additional type of regulated activity for an appointed representative in that register, or revoke the status of an individual as an appointed, provisional or temporary representative if —

(*a*) being an appointed, provisional or temporary representative, he or she fails or ceases to act as a representative in respect of all of the types of regulated activities that were notified to the Authority as activities which he or she is appointed to carry on business in as a representative;

(*b*) he or she or his or her principal has not provided the Authority with such information or documents as the Authority may require;

(*c*) he or she is an undischarged bankrupt, whether in Singapore or elsewhere;

(*d*) an enforcement order against him or her in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) he or she has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*f*) he or she —

(i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a

finding that he or she had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act;

(*g*) in the case of the proposed appointment of an appointed, provisional or temporary representative in respect of a type of regulated activity, or of an application to enter an additional type of regulated activity for an appointed representative in the register —

(i) the Authority is not satisfied as to his or her educational or other qualification or experience having regard to the nature of the duties he or she is to perform in relation to that type of regulated activity;

(ii) he or she or his or her principal fails to satisfy the Authority that he or she is a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in that type of regulated activity;

(iii) the Authority is not satisfied as to his or her record of past performance or expertise having regard to the nature of the duties which he or she is to perform in relation to that type of regulated activity;

(iv) the Authority has reason to believe that he or she will not carry on business in that type of regulated activity efficiently, honestly or fairly;

(*h*) in the case of the revocation of the status of an individual as an appointed, provisional or temporary representative —

(i) he or she or his or her principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition for him or her to be an appointed, provisional or temporary representative, under section 99N or by regulations (as the case may be), that he or she remains a fit and proper person to be an appointed, provisional or temporary

representative or to carry on business in the type of regulated activity for which he or she is appointed;

(ii) the Authority is not satisfied with —

(A) his or her educational or other qualification or experience (being qualification or experience not known to the Authority at the time his or her name and particulars are entered in the public register of representatives); or

(B) his or her record of past performance or expertise,

having regard to the nature of his or her duties as an appointed, provisional or temporary representative;

(iii) the Authority has reason to believe that he or she will not carry, or has not carried, on business in the type of regulated activity for which he or she is appointed efficiently, honestly or fairly; or

(iv) the Authority has reason to believe that he or she has not acted in the best interests of the subscribers or customers of his or her principal;

(*i*) the Authority has reason to believe that he or she may not be able to act in the best interests of the subscribers or customers of his or her principal, having regard to his or her reputation, character, financial integrity and reliability;

(*j*) the Authority is not satisfied as to his or her financial standing;

(*k*) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him or her for the purpose of his or her business;

(*l*) the individual is in arrears of the payment of such contributions on his or her own behalf to the Central Provident Fund as are required under the Central Provident Fund Act 1953;

(*m*) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him or her to continue carrying on business as an appointed, provisional or temporary representative or to carry on business in that additional type of regulated activity, as the case may be;

(*n*) the Authority has reason to believe that any information or document that is provided by him or her or his or her principal to the Authority is false or misleading;

(*o*) he or she has contravened any provision of this Act applicable to him or her, any condition or restriction imposed on him under this Act or any direction issued to him or her by the Authority under this Act;

(*oa*) it appears to the Authority that he or she has failed to satisfy any of his or her obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*p*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against him or her;

[Act 18 of 2022 wef 31/07/2024]

(*q*) the licence of his or her principal is revoked;

(*r*) the individual fails to pay any fee referred to in section 99K;

(*s*) in the case of the proposed appointment of a temporary representative in respect of a type of regulated activity —

(i) he or she is not licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction;

(ii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the

individual is so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act; or

(iii) the period of his or her proposed appointment, together with the period of any past appointment (or part thereof) that falls within a prescribed period before the date of expiry of his or her proposed appointment, exceeds the permitted period prescribed by the Authority; or

(*t*) in the case of the proposed appointment of a provisional representative in respect of a type of regulated activity —

(i) he or she is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction for such minimum period as may be prescribed for this sub-paragraph;

(ii) he or she was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his or her ceasing to be so licensed, authorised or regulated and the date of his or her proposed appointment as a provisional representative exceeds such period as may be prescribed for this sub-paragraph; or

(iii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is or was so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act.

[2/2009; 34/2012]

(2) The Authority may, if it considers it desirable to do so —

(*a*) instead of revoking the status of an individual as an appointed, provisional or temporary representative, suspend that status for such period as the Authority may determine; and

(*b*) at any time —

(i) extend the period of suspension; or

(ii) revoke the suspension.

[2/2009]

(3) An individual whose status as an appointed, provisional or temporary representative has been revoked is deemed not to be an appointed, provisional or temporary representative, as the case may be.

[2/2009]

(4) Where the status of an individual as an appointed, provisional or temporary representative has been suspended, he or she is deemed not to be an appointed, provisional or temporary representative (as the case may be) during the period of suspension.

[2/2009]

(5) Where the Authority has revoked the status of an individual as an appointed, provisional or temporary representative, the Authority must —

(*a*) indicate against his or her name in the public register of representatives that fact, which indication must remain in the register for such period as the Authority considers appropriate; or

(*b*) remove his or her name from the register.

[2/2009]

(6) Where the Authority has suspended the status of an individual as an appointed, provisional or temporary representative, the Authority must indicate against his or her name in the public register of representatives that fact and the period of the suspension.

[2/2009]

(7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed, provisional or temporary representative, it must indicate against his or her name in the public register of representatives the new expiry date of the suspension, or indicate that he or she is no longer suspended, as the case may be.

[2/2009]

(8) The Authority must not take any action under subsection (1) or (2)(*a*) on the ground referred to in subsection (1)(*n*), if —

(*a*) in a case where the information or document was furnished by the individual to the Authority, the individual proves that he or she had —

(i) made all inquiries (if any) that were reasonable in the circumstances; and

(ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

(*b*) in a case where the information or document was provided by the principal to the Authority and —

(i) such information or document was provided to the principal by the individual, the individual proves that he or she had —

(A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

(ii) such information or document was not provided to the principal by the individual, the principal proves that the principal had —

(A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

[2/2009]

(9) Subject to subsection (10), the Authority must not take any action under subsection (1) or (2)(*a*) or (*b*)(i) without giving the individual an opportunity to be heard.

[2/2009]

(10) The Authority may take action under subsection (1) or (2)(*a*) or (*b*)(i) on any of the following grounds without giving the individual an opportunity to be heard:

(*a*) he or she is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) he or she has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more;

(*c*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the individual;

[Act 18 of 2022 wef 31/07/2024]

(*d*) the ground referred to in subsection (1)(*s*)(i) or (iii) or (*t*)(i) or (ii).

[2/2009]

(11) Any revocation or suspension by the Authority does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement relating to any regulated activity entered into by such individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

Power of Authority to impose conditions or restrictions

99N.—(1) The Authority may, by written notice to an appointed, provisional or temporary representative, impose such conditions or restrictions as it thinks fit on him or her.

[2/2009]

(2) Without limiting subsection (1), the Authority may, in entering the appointed, provisional or temporary representative's name in the public register of representatives, impose conditions or restrictions

with respect to the type of regulated activity which he or she may or may not carry on business in.

[2/2009]

(3) The Authority may, at any time by written notice to the appointed, provisional or temporary representative, vary any condition or restriction or impose such further condition or restriction as it thinks fit.

[2/2009]

(4) Any person who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

False statements in relation to notification of appointed, provisional or temporary representative

99O.—(1) Any principal who, in connection with the lodgment of any document under section 99H —

(*a*) makes a statement which is false or misleading in a material particular; or

(*b*) omits to state any matter or thing without which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[2/2009]

(2) Any individual who, in connection with the lodgment by his or her principal of any document under section 99H —

(*a*) makes a statement to his or her principal which is false or misleading in a material particular, being a statement subsequently lodged with the Authority; or

(*b*) omits to state any matter or thing to his or her principal as a result of which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[2/2009]

(3) Any person who, when required to provide any document or information to the Authority under section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) —

(*a*) makes a statement to the Authority which is false or misleading in a material particular; or

(*b*) omits to state any matter or thing to the Authority without which the document or information is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[2/2009]

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if the person proves that the person —

(*a*) made all inquiries (if any) that were reasonable in the circumstances; and

(*b*) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing (as the case may be) was not false or misleading.

[2/2009]

Appeals

99P. Any person who is aggrieved by —

(*a*) the refusal of the Authority under section 99M(1) to enter his or her name and other particulars in the public register of representatives, or to enter an additional type of regulated activity for him or her in that register; or

(*b*) the revocation or suspension of his or her status as an appointed, provisional or temporary representative under section 99M(1) or (2)(*a*),

may, within 30 days after he or she is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[2/2009]

Division 3 — General

Power of Authority to make regulations

100.—(1) Without affecting section 341, the Authority may make regulations relating to the grant of a capital markets services licence, the proposed appointment of an individual as an appointed, provisional or temporary representative, the entering of his or her name or an additional type of regulated activity in the public register of representatives, and the revocation or suspension of his or her status as an appointed, provisional or temporary representative, and requirements applicable to the holder of a capital markets services licence, an exempt person, a representative or a class of such persons.

[2/2009]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for penalties not exceeding a fine of $100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

Power of Authority to issue written directions

101.—(1) The Authority may, if it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue written directions, either of a general or specific nature, to any holder of a capital markets services licence, exempt person, representative, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

[2/2009; 34/2012]

(2) Without limiting subsection (1), any written direction may be issued with respect to —

(*a*) the standards to be maintained by the person concerned in the conduct of and in respect of the risk management of the person's business;

(*b*) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

(*c*) the qualifications, experience and training of representatives,

and the person to whom such direction is issued must comply with the direction.

[4/2017]

(2A) The Authority may, if it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue written directions, either of a general or specific nature, in relation to the conduct of any additional business by any holder of a capital markets services licence, or class of such licence holders, to any of the following:

(*a*) a holder of a capital markets services licence or a class of such licence holders;

(*b*) an additional business representative of a holder of a capital markets services licence or a class of such additional business representatives.

[Act 12 of 2024 wef 30/08/2024]

(2B) In issuing any direction under subsection (2A), the Authority must have regard to the need to avoid or reduce any risk (including any credit risk, asset risk, liquidity risk, market risk, operational risk, technology risk, market conduct risk, legal risk, reputational risk or regulatory risk) —

(*a*) that has arisen or may arise from the conduct of the additional business by the licence holder or class of licence holders; and

(*b*) that may affect the business in a regulated activity of the licence holder or class of licence holders.

[Act 12 of 2024 wef 30/08/2024]

(2C) Without limiting subsection (2A), any written direction may be issued with respect to —

(*a*) the standards to be maintained by a holder of a capital markets services licence in the conduct of, and in respect of the risk management of, any additional business;

(*b*) the manner, method and place of soliciting any additional business by a holder of a capital markets services licence and its additional business representatives, and the conduct of such solicitation;

(*c*) the manner in which a holder of a capital markets services licence and its additional business representatives makes recommendations to customers in respect of any additional business and the duties of the holder and its representatives when making such recommendations;

(*d*) the manner in which a holder of a capital markets services licence deals with its customers in respect of any additional business of the holder, and any conflicts of interests between the holder and its customers in respect of any additional business of the holder;

(*e*) the type and frequency of submission of financial returns and other information to the Authority in respect of any additional business carried on by a holder of a capital markets services licence;

(*f*) the qualifications, experience and training of additional business representatives of a holder of a capital markets services licence in respect of any additional business; and

(*g*) the maximum amount of capital or financial resources that may be maintained by a holder of a capital markets services licence in respect of any additional business (expressed as an absolute amount or as a percentage of an amount (determined by the Authority) required to address risks arising from the activities of the holder), and the manner in which such amount is to be determined.

[Act 12 of 2024 wef 30/08/2024]

(2D) In this section —

"additional business" means a business in —

(*a*) dealing in additional financial products; or

(*b*) providing custodial services in relation to additional financial products;

"additional business representative", in relation to a holder of a capital markets services licence —

(*a*) means a person, by whatever name called, in the direct employment of, or acting for or by arrangement with the holder, who carries out for the holder any additional business (other than work ordinarily performed by accountants, clerks or cashiers), whether or not the person is remunerated, and whether the person's remuneration (if any) is by way of salary, wages, commission or otherwise; and

(*b*) includes, where the holder is a corporation, any officer of the holder who performs for the holder any additional business, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise;

"additional financial product" means —

(*a*) any contract or arrangement that is not traded on an organised market that is established or operated by an approved exchange, under which —

(i) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and

(ii) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:

(A) the value or amount of one or more payment tokens;

(B) fluctuations in the values or amounts of one or more payment tokens;

(*b*) any spot foreign exchange contract for a purpose other than leveraged foreign exchange trading; or

(*c*) any other product prescribed by the Authority;

"dealing in additional financial products" means doing any of the following (whether as principal or agent):

(*a*) making with any person, or offering to make with any person, any agreement for or with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting those additional financial products;

(*b*) inducing any person, or attempting to induce any person, to enter into such agreement;

(*c*) inducing any person, or attempting to induce any person, to offer to enter into such agreement;

"payment token" means any digital representation of value —

(*a*) that is expressed as a unit;

(*b*) the value of which is determined in any way, other than being permanently fixed by the issuer of the digital representation of value at the time when the digital representation of value is issued to either a single currency or 2 or more currencies;

(*c*) that is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt; and

(*d*) that can be transferred, stored or traded electronically;

"providing custodial services", in relation to additional financial products, means providing or agreeing to provide a service to

a person of taking possession or control of those products under an arrangement to carry out any of the following functions for the person:

(*a*) settlement of transactions relating to the additional financial products;

(*b*) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the additional financial products;

(*c*) paying tax or other costs associated with the additional financial products;

(*d*) exercising rights, including without limitation voting rights, attached to or derived from the additional financial products;

(*e*) any other function necessary or incidental to the safeguarding or administration of the additional financial products,

but does not include —

(*f*) the provision of services to a related corporation or connected person of the service provider, except where the additional financial products in respect of which such services are provided are —

(i) held on trust for another person by the related corporation or connected person;

(ii) held as a result of any custodial services provided by the related corporation or connected person to another person; or

(iii) beneficially owned by any person other than the related corporation or connected person; and

(*g*) any other conduct that the Authority may, by order, prescribe.

[Act 12 of 2024 wef 30/08/2024]

(3) Any person who contravenes any of the directions issued under subsection (1) or (2A) shall be guilty of an offence and shall be liable

on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine of $5,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 30/08/2024]

(4) It is not necessary to publish any direction issued under subsection (1) or (2A) in the *Gazette*.

[34/2012]

[Act 12 of 2024 wef 30/08/2024]

101A. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

101B. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

101C. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

101D. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

PART 5

BOOKS, CUSTOMER ASSETS AND AUDIT

Division 1 — Books

Keeping of books and providing of returns

102.—(1) A holder of a capital markets services licence must —

(*a*) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(*b*) keep, or cause to be kept, such books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the books of a holder of a capital markets services licence required to be kept in accordance with this section is deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital markets services licence must retain such books as may be required to be kept under this Act for a period of not less than 5 years.

[2/2007]

(4) A holder of a capital markets services licence must —

(*a*) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Authority in writing; and

(*b*) provide such information relating to its business as the Authority may require.

(5) The Authority may, without affecting section 341, make regulations in respect of all or any of the matters in this Division, including the keeping of such books, by a holder of a capital markets services licence, in such form and manner as the Authority may prescribe.

Penalties under this Division

103. A holder of a capital markets services licence which, without reasonable excuse, contravenes section 102(1), (3) or (4) or any regulation made under section 102(5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Division 2 — Customer Assets

Interpretation of this Division

103A. In this Division, unless the context otherwise requires, "money or other assets" means money received or retained by, or any other asset deposited with, a holder of a capital markets services licence in the course of its business for which it is liable to account to its customer, and any money or other assets accruing therefrom.

Handling of customer assets

104.—(1) A holder of a capital markets services licence must, to the extent that it receives money or other assets from or on account of a customer —

(*a*) do so, except in such circumstances as the Authority may prescribe, on the basis that the money or other assets must

be applied solely for such purpose as may be agreed to by the customer, when or before it receives the money or other assets;

(*b*) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and

(*c*) record and maintain a separate book entry for each customer in accordance with the provisions of this Act in relation to that customer's money or other assets.

[34/2012]

(2) The Authority may, without affecting section 341, make regulations in respect of all or any of the matters in this Division, including the handling of money or other assets by a holder of a capital markets services licence.

Non-availability of customer money and other assets for payment of debt

104A. Except as otherwise provided in this Part or the regulations made thereunder, all money or other assets received from or on account of customers or deposited in the manner prescribed under section 104(1)(*b*) —

(*a*) are not available for payment of the debts of the holder of a capital markets services licence; and

(*b*) are not liable to be paid or taken under or pursuant to an enforcement order or a process of any court.

[Act 25 of 2021 wef 01/04/2022]

Penalties under this Division

105. Any holder of a capital markets services licence which, without reasonable excuse, contravenes section 104(1) or any regulation made under section 104(2), shall be guilty of an offence and shall be liable on conviction —

(*a*) where it is found to have committed the offence with intent to defraud, to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction; or

(*b*) in any other case, to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Division 3 — Audit

Appointment of auditors

106. A holder of a capital markets services licence must appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such holder, the holder must, as soon as practicable thereafter, appoint another auditor.

Lodgment of annual accounts, etc.

107.—(1) A holder of a capital markets services licence must, in respect of each financial year —

(*a*) prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year; and

(*b*) lodge that account and balance sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the account and balance sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a holder of a capital markets services licence to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority thinks fit to impose.

(3) Any holder of a capital markets services licence which contravenes subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $500 for every day or part of a day that the lodgment is late, subject to a maximum fine of $50,000.

(4) Any holder of a capital markets services licence which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(5) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a holder of a capital markets services licence —

(*a*) at any time direct the holder to remove the auditor; and

(*b*) direct the holder, as soon as practicable thereafter, to appoint another auditor,

and the holder must comply with such direction.

Reports by auditor to Authority in certain cases

108. Where, in the performance of his or her duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware of —

(*a*) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the holder to a material extent;

(*b*) any matter which, in his or her opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or

(*c*) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the moneys or other assets of any customer of the holder,

the auditor must immediately thereafter send —

(*d*) a report in writing of the matter or irregularity to the Authority; and

(*e*) where the holder is a member of an approved exchange, a copy of the report to the approved exchange.

[4/2017]

Power of Authority to appoint auditor

109.—(1) Where —

(*a*) a holder of a capital markets services licence fails to lodge an auditor's report under section 107; or

(*b*) the Authority receives a report under section 108,

the Authority may, without affecting its powers under section 115, if it is satisfied that it is in the interests of the holder, the customers of the holder or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the holder.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the holder of a capital markets services licence, the Authority may, in writing, direct the holder to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a holder of a capital markets services licence fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

Power of auditors appointed by Authority

110.—(1) An auditor appointed by the Authority under section 109 may, for the purpose of carrying out an examination and audit of the books of a holder of a capital markets services licence —

(*a*) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;

(*b*) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;

(*c*) require any approved exchange, licensed trade repository, approved clearing house or recognised clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;

(*d*) employ such persons as he or she considers necessary to assist him or her in carrying out the examination and audit; and

(*e*) authorise in writing any person employed by him or her to do, in relation to the examination and audit, any act or thing that he or she could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

[34/2012; 4/2017]

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to the person, or fails to comply with any request made to the person, by an auditor appointed under section 109 or a person authorised under subsection (1)(*e*), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both.

Offence to destroy, conceal, alter, etc., books

111.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Division —

(*a*) destroys, conceals or alters any book relating to the business of a holder of a capital markets services licence; or

(*b*) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging

to, in the possession of or under the control of a holder of a capital markets services licence,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

(*a*) destroyed, concealed or altered any book referred to in subsection (1)(*a*); or

(*b*) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1)(*b*),

the onus of proving that, in so doing, the person did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Division lies on that person.

Safeguarding of books

112.—(1) A holder of a capital markets services licence must take reasonable precautions —

(*a*) to prevent falsification of the books required to be kept by it under this Act; and

(*b*) to facilitate the discovery of any falsification of any such book.

(2) Any holder of a capital markets services licence who contravenes this section shall be guilty of an offence under this Act.

Restriction on auditor's and employee's right to communicate certain matters

113. Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 109 or carrying out any duty imposed under section 115, and any employee of such an auditor, must not disclose any information which may come to his or her knowledge

or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

(*a*) the Authority; and

(*b*) in the case of an employee of such auditor, the auditor.

Exchanges, etc., may impose additional obligations on members

114. Nothing in this Division prevents any approved exchange, licensed trade repository, approved clearing house or recognised clearing house from imposing on its members any additional obligation or requirement which it thinks is necessary with respect to —

(*a*) the audit of accounts;

(*b*) the information to be given in reports by auditors; or

(*c*) the keeping of books.

[34/2012; 4/2017]

Additional powers of Authority in respect of auditors

115.—(1) The Authority may impose all or any of the following duties on an auditor of a holder of a capital markets services licence:

(*a*) a duty to submit to the Authority such additional information in relation to his or her audit as the Authority considers necessary;

(*b*) a duty to enlarge or extend the scope of his or her audit of the business and affairs of the holder;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (*b*) and (*c*),

and the auditor must carry out such additional duty or duties.

(2) A holder of a capital markets services licence must remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

Defamation

116.—(1) No auditor or employee of such auditor shall, in the absence of malice on his or her part, be liable to any action for defamation at the suit of any person in respect of —

(*a*) any statement made orally or in writing in the discharge of his or her duties under this Part; or

(*b*) the submission of any report to the Authority under section 108, 109(4) or 115(1)(*d*).

(2) Subsection (1) does not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his or her employee has as a defendant in an action for defamation.

PART 6

CONDUCT OF BUSINESS

Division 1 — General

117. [*Repealed by Act 2 of 2009*]

118. [*Repealed by Act 2 of 2009*]

119. [*Repealed by Act 1 of 2005*]

120. [*Repealed by Act 2 of 2009*]

121. [*Repealed by Act 1 of 2005*]

122. [*Repealed by Act 2 of 2009*]

Power of Authority to make regulations

123.—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

(2) Without limiting subsection (1), regulations made under this section may —

(*a*) specify requirements applicable to the holder of a capital markets services licence in relation to product financing;

(*aa*) specify, in the context of the granting of an unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence —

(i) what constitutes any such unsecured advance, unsecured loan or unsecured credit facility; and

(ii) the requirements and restrictions relating to any such grant;

(*b*) prohibit the making of direct or indirect representations, expressly or by implication, relating to specified matters, or the use of misleading or deceptive advertisements by or on behalf of the holder, and impose conditions or restrictions for the use of advertisements by or on behalf of the holder;

(*ba*) require contract notes to be issued by or on behalf of the holder of a capital markets services licence, and specify the information to be provided in the contract notes;

(*c*) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;

(*d*) specify information that the holder of a capital markets services licence is to provide to its customer on entering into a customer contract with the customer, and thereafter on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;

(*e*) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to the customer's identity and the customer's financial situation, investment experience and investment

objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose;

(*f*) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;

(*g*) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;

(*ga*) require the holder of a capital markets services licence, and a representative of such a holder to take specified steps to ensure that a customer or prospective customer of the holder is apprised of the financial risks in relation to trades carried out by means of any trading account, before opening such account for the customer or prospective customer or soliciting or entering into an agreement with the customer or prospective customer to manage or guide such account;

(*h*) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative (as the case may be) receives or is to receive from a third party in connection with any capital markets products which the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;

(*i*) specify the circumstances in which, and the conditions and restrictions under which, the holder of a capital markets services licence, and a representative of such a holder, may enter into or effect a transaction, and provide for matters

relating thereto including the right of the other party to the contract in question to rescind it where a regulation made under this paragraph is contravened;

(*ia*) require the holder of a capital markets services licence to comply with prescribed requirements concerning the sale of, or the making of recommendations with respect to, capital markets products which the holder has subscribed for or purchased, or may be required to subscribe for or purchase, under an underwriting or sub-underwriting agreement;

(*j*) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;

(*k*) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and specify the steps to be taken in the event of a potential or actual case of conflict;

(*l*) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;

(*m*) specify the circumstances in which, and the conditions and restrictions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for the representative's own account in capital markets products;

(*n*) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activity; and

(*o*) provide that, subject to such conditions or restrictions as may be prescribed, all or specified provisions of this Part do not apply to a specified class of holders of a capital markets services licences or their representatives, or to a specified class of capital markets products.

[2/2009; 34/2012; 4/2017]

(3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets services licence with its customer otherwise than in compliance with any specified regulation is, despite anything in the contract, unenforceable at the option of the customer.

(4) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision thereof shall be an offence; and

(*b*) for penalties not exceeding a fine of $100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

(5) In this section, "customer contract" means any contract or arrangement between the holder of a capital markets services licence and a customer of the holder which contains terms on which the holder is to provide services to, or effect transactions for, the customer.

PART 6AA

FINANCIAL BENCHMARKS

Objectives of this Part

123A. The objectives of this Part are —

(*a*) to promote fair and transparent determination of financial benchmarks; and

(*b*) to reduce systemic risks.

[4/2017]

Division 1 — Designation of Financial Benchmarks

Power of Authority to designate financial benchmarks

123B. The Authority may, by order in the *Gazette*, designate a financial benchmark as a designated benchmark for the purposes of this Part if the Authority is satisfied that —

(*a*) the financial benchmark has systemic importance in the financial system of Singapore;

(*b*) a disruption in the determination of the financial benchmark could affect public confidence in the financial benchmark or the financial system of Singapore;

(*c*) the determination of the financial benchmark could be susceptible to manipulation; or

(*d*) it is otherwise in the interests of the public to do so.

[4/2017]

Withdrawal of designation of financial benchmark

123C. The Authority may, by order in the *Gazette*, withdraw the designation of any designated benchmark if the Authority is of the opinion that the considerations in section 123B are no longer valid or satisfied.

[4/2017]

Division 2 — Benchmark Administrators of Designated Benchmarks

Subdivision (1) — Authorised benchmark administrator

Requirement for authorisation

123D.—(1) No person may carry on, or hold out that the person is carrying on, a business of administering a designated benchmark, unless the person is an authorised benchmark administrator.

[4/2017]

(2) No person may hold out that the person is an authorised benchmark administrator, unless the person is an authorised benchmark administrator.

[4/2017]

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Application for authorisation

123E.—(1) A corporation may apply to the Authority to be authorised as an authorised benchmark administrator.

[4/2017]

(2) An application made under subsection (1) must be —

(*a*) made in such form and manner as the Authority may specify; and

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 123ZZA, which must be paid in the manner specified by the Authority.

[4/2017]

(3) The Authority may require an applicant to provide it with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

Power of Authority to authorise benchmark administrators

123F.—(1) Where a corporation mentioned in section 123E(1) makes an application under that provision, the Authority may authorise the corporation as an authorised benchmark administrator.

[4/2017]

(2) The Authority may authorise a corporation as an authorised benchmark administrator under subsection (1) subject to such conditions or restrictions as the Authority may impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

(*a*) the process for the determination of the designated benchmark; or

(*b*) any other activities that the corporation may undertake.

[4/2017]

(3) The Authority may, at any time, by written notice to the authorised benchmark administrator, vary any condition or restriction or impose any further condition or restriction.

[4/2017]

(4) An authorised benchmark administrator must, for the duration of the authorisation, satisfy every condition or restriction that may be imposed on it under subsections (2) and (3).

[4/2017]

(5) The Authority must not authorise a corporation as an authorised benchmark administrator, unless the corporation meets such requirements as the Authority may prescribe by regulations made under section 123ZZA, either generally or specifically.

[4/2017]

(6) The Authority may refuse to authorise a corporation as an authorised benchmark administrator, if —

(*a*) the corporation has not provided the Authority with such information, as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; and

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) a receiver, a receiver and manager, judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or substantial shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of

the corporation, having regard to the nature of the duties they are to perform in connection with the activity of administering a designated benchmark;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of a class, or the classes, of users of the designated benchmark, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted, in relation to administering a designated benchmark;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with administering a designated benchmark;

(*m*) there are other circumstances which are likely to —

(i) lead to improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*n*) the Authority has reason to believe that the corporation, or any of its officers or employees, will not perform the

activity of administering a designated benchmark, efficiently, honestly or fairly;

(*o*) the Authority is of the opinion that it would be contrary to the interests of the public to authorise the corporation as an authorised benchmark administrator; or

(*p*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(7) Subject to subsection (8), the Authority must not refuse to authorise a corporation as an authorised benchmark administrator under subsection (6) without giving the corporation an opportunity to be heard.

[4/2017]

(8) The Authority may refuse to authorise a corporation as an authorised benchmark administrator on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;

(*d*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(9) The Authority must give notice in the *Gazette* of any authorisation under subsection (1).

[4/2017]

(10) Any corporation that is aggrieved by a refusal of the Authority to grant an authorisation under subsection (1) may, within 30 days after the corporation is notified of the refusal, appeal to the Minister, whose decision is final.

[4/2017]

(11) Any authorised benchmark administrator who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Deposit to be lodged by corporation or authorised benchmark administrator

123G.—(1) The Authority may require the corporation mentioned in section 123E(1) that has made an application under that provision to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount as the Authority may prescribe by regulations made under section 123ZZA in respect of that authorisation and in such form as the Authority may specify.

[4/2017]

(2) The Authority may prescribe by regulations made under section 123ZZA the circumstances and purposes for the use of the deposit.

[4/2017]

False statements in relation to application for authorisation

123H. Any person who, in connection with an application for authorisation as an authorised benchmark administrator —

(*a*) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

Annual fees payable by authorised benchmark administrator

123I.—(1) Every authorised benchmark administrator must pay to the Authority such annual fee as may be prescribed by regulations made under section 123ZZA, in such manner as the Authority may specify.

[4/2017]

(2) Subject to subsection (3), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid to it.

[4/2017]

(3) The Authority need not refund any annual fee paid if —

(*a*) the authorisation is revoked, suspended or withdrawn during the period to which the annual fee relates;

(*b*) the authorised benchmark administrator ceases to carry on a business of administering a designated benchmark during the period to which the annual fee relates; or

(*c*) a section 123ZZC prohibition order or an FSMA prohibition order has been made against the authorised benchmark administrator.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(4) Where an authorised benchmark administrator fails to pay the annual fee by the date on which such fee is due, the Authority may impose a late payment fee of an amount prescribed by regulations made under section 123ZZA for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[4/2017]

Revocation, suspension or withdrawal of authorisation

123J.—(1) The Authority may revoke the authorisation of a corporation as an authorised benchmark administrator under section 123F(1) if —

(*a*) there exists a ground on which the Authority must refuse an application under section 123F(5) or may refuse an application under section 123F(6);

(*b*) the corporation does not commence carrying out the activity of administering a designated benchmark within 12 months starting on the date on which it was granted the authorisation under section 123F(1);

(*c*) the corporation ceases to carry on a business of administering a designated benchmark in respect of a particular designated benchmark, or where it administers more than one designated benchmark, in respect of all of its designated benchmarks;

(*d*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) the Authority has reason to believe that the corporation has not acted in the best interests of the users of the designated benchmark or any class of users of the designated benchmark;

(*f*) the Authority has reason to believe that the corporation, or any of its officers or employees, has not performed its or their duties efficiently, honestly or fairly;

(*g*) the corporation has contravened any condition or restriction applicable in respect of its authorisation, any written direction issued to it by the Authority under this Act, or any provision of this Act;

(*h*) it appears to the Authority that the corporation has failed to satisfy any of its obligations in compliance with, under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*i*) the Authority has reason to believe that the corporation is carrying out the activity of administering a designated benchmark in a manner that is contrary to the interests of the public;

(*j*) the corporation has provided any information or document to the Authority that is false or misleading;

(*k*) the corporation fails to pay the annual fee mentioned in section 123I in the manner specified by the Authority; or

(*l*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(2) The Authority may —

(*a*) suspend the authorisation granted to an authorised benchmark administrator for a specific period instead of revoking it under subsection (1); and

(*b*) at any time extend or revoke the suspension.

[4/2017]

(3) Subject to subsection (4), the Authority may, upon a written application made to it by an authorised benchmark administrator, in such form and manner as the Authority may specify, withdraw the authorisation of the authorised benchmark administrator.

[4/2017]

(4) The Authority may refuse to withdraw the authorisation of an authorised benchmark administrator under subsection (3) where the Authority is of the opinion that —

(*a*) there is any matter concerning the corporation which should be investigated before the authorisation is withdrawn; or

(*b*) the withdrawal of the authorisation would not be in the public interest.

[4/2017]

(5) Subject to subsection (6), the Authority must not —

(*a*) revoke the authorisation granted to an authorised benchmark administrator under subsection (1);

(*b*) suspend the authorisation granted to an authorised benchmark administrator under subsection (2); or

(*c*) refuse the withdrawal of the authorisation granted to an authorised benchmark administrator under subsection (4),

without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(6) The Authority may revoke or suspend the authorisation of a corporation as an authorised benchmark administrator without giving the corporation an opportunity to be heard on any of the following grounds:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;

(*d*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn

the designation of that designated benchmark under section 123C;

(*e*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(7) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1), (2) or (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(10) Any revocation, suspension or withdrawal of the authorisation of a corporation as an authorised benchmark administrator does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation, suspension or withdrawal of the authorisation; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

(11) The Authority must give notice in the *Gazette* of any revocation of authorisation under subsection (1), suspension of authorisation under subsection (2)(*a*), extension or revocation of

suspension of authorisation under subsection (2)(*b*) or withdrawal of authorisation under subsection (3).

[4/2017]

Subdivision (2) — Exempt benchmark administrator

Power of Authority to exempt corporations from authorisation

123K.—(1) The Authority may —

(*a*) despite section 337(1), by regulations made under section 123ZZA exempt any corporation or class of corporations; or

(*b*) on the application of any corporation, by written notice, exempt the corporation,

from the requirement under section 123D(1) to be an authorised benchmark administrator.

[4/2017]

(2) The Authority may require a corporation to provide it with such information or documents as the Authority considers necessary in relation to an application made under subsection (1)(*b*).

[4/2017]

(3) The Authority may by regulations, or by written notice, impose any conditions or restrictions on an exempt benchmark administrator in relation to its carrying out the activity of administering a designated benchmark or any related matter, including conditions or restrictions relating to —

(*a*) the process for the determination of the designated benchmark; or

(*b*) any other activities that the corporation may undertake.

[4/2017]

(4) The Authority may, at any time, by written notice to an exempt benchmark administrator under subsection (1)(*b*), vary any condition or restriction mentioned in subsection (3) or impose any further condition or restriction relating to the exemption.

[4/2017]

(5) The Authority must give notice in the *Gazette* of any exemption under subsection (1)(*b*).

[4/2017]

(6) An exempt benchmark administrator must comply with such conditions or restrictions imposed on it under subsection (3) or (4).

[4/2017]

(7) Any exempt benchmark administrator who contravenes any condition or restriction imposed under subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

False statements in relation to application for exemption

123L. Any person who, in connection with an application for exemption under section 123K(1)(*b*) —

(*a*) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

Annual fees payable by exempt benchmark administrator

123M.—(1) Every exempt benchmark administrator must pay to the Authority such annual fee as may be prescribed by regulations made under section 123ZZA, in such manner as the Authority may specify.

[4/2017]

(2) Subject to subsection (3), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid to it.

[4/2017]

(3) The Authority need not refund any annual fee paid if —

(*a*) the exemption is revoked during the period in which the annual fee relates;

(*b*) the exempt benchmark administrator ceases to carry on a business of administering a designated benchmark during the period to which the annual fee relates; or

(*c*) a section 123ZZC prohibition order or an FSMA prohibition order has been made against the exempt benchmark administrator.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(4) Where an exempt benchmark administrator fails to pay the annual fee by the date on which such fee is due, the Authority may impose a late payment fee of an amount prescribed by regulations made under section 123ZZA for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[4/2017]

Power to revoke exemption

123N.—(1) The Authority may revoke any exemption granted to a corporation under section 123K(1) if —

(*a*) the corporation does not commence carrying on a business of administering a designated benchmark in respect of a particular designated benchmark or, where it administers more than one designated benchmark, all of its designated benchmarks, within 12 months starting on the date on which it was granted the exemption;

(*b*) the corporation ceases to carry on a business of administering a designated benchmark or, where it administers more than one designated benchmark, all of its designated benchmarks;

(*c*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn

the designation of that designated benchmark under section 123C;

(*d*) the corporation contravenes any condition or restriction relating to the exemption, any direction issued to it by the Authority under this Act, or any provision of this Act;

(*e*) the Authority is of the opinion that the corporation has carried out the activity of administering a designated benchmark in a manner that is contrary to the interests of a class, or classes, of users of a designated benchmark, or the interests of the public;

(*f*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*g*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(*h*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence, involving fraud or dishonesty, or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;

(*i*) the corporation has provided any information or document to the Authority that is false or misleading;

(*j*) the corporation fails to pay the annual fee mentioned in section 123M; or

(*k*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(2) Subject to subsection (3), the Authority must not revoke any exemption granted to a corporation under subsection (1) without giving the corporation an opportunity to be heard.

[4/2017]

(3) The Authority may revoke an exemption granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect, of any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;

(*d*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(4) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(5) Despite the lodging of an appeal under subsection (4), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he or she considers necessary to any action taken by the Authority under this section, and

such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(7) Any revocation of an exemption granted to any corporation does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the exemption; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

(8) The Authority must give notice in the *Gazette* of any revocation of an exemption mentioned in subsection (1).

[4/2017]

Subdivision (3) — Code on designated benchmark

Code on designated benchmark

123O.—(1) For the effective administration and control of designated benchmarks, every authorised benchmark administrator and exempt benchmark administrator must —

(*a*) prepare and issue (in the manner specified by the Authority) a code in respect of each designated benchmark in respect of which it carries on a business of administering a designated benchmark (called in this Act a code on designated benchmark) that —

(i) sets out the standards to be maintained by every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter, in relation to that designated benchmark; and

(ii) complies with subsection (2); and

(*b*) obtain the Authority's written approval for the code on designated benchmark before that code on designated benchmark is issued.

[4/2017]

(2) A code on designated benchmark must deal with such matters as may be prescribed by regulations made under section 123ZZA or as may be specified by written notice to the authorised benchmark administrator or exempt benchmark administrator.

[4/2017]

(3) Every authorised benchmark administrator and exempt benchmark administrator must not amend a code on designated benchmark unless the authorised benchmark administrator and exempt benchmark administrator (as the case may be) —

(*a*) complies with such requirements as may be prescribed by regulations made under section 123ZZA;

(*b*) complies with such conditions or restrictions which the Authority may by written notice impose; and

(*c*) obtains the Authority's written approval to do so.

[4/2017]

(4) In this section, the reference to an amendment to a code on designated benchmark is to be construed as a reference to a change to any of the following:

(*a*) the scope of the code on designated benchmark;

(*b*) any requirement, obligation or restriction under the code on designated benchmark,

whether the change is made by an alteration to the text of the code on designated benchmark, or by any other notice issued by or on behalf of the authorised benchmark administrator or exempt benchmark administrator (as the case may be) modifying the meaning or interpretation of the code on designated benchmark.

[4/2017]

(5) Every authorised benchmark administrator and exempt benchmark administrator must, in respect of each code on designated benchmark that it issues —

(*a*) ensure that the code on designated benchmark takes into account the practices and developments in the market; and

(*b*) enforce compliance with the code on designated benchmark.

[4/2017]

(6) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, in respect of its business or activity of providing information in relation to a designated benchmark, comply with the code on designated benchmark issued by the authorised benchmark administrator or exempt benchmark administrator, as the case may be.

[4/2017]

(7) Without affecting section 123ZL, every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must have systems and controls in place to ensure compliance with each code on designated benchmark that it is required to comply with under subsection (6).

[4/2017]

(8) Any authorised benchmark administrator or exempt benchmark administrator which contravenes subsection (1), (2), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) Any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter which contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(10) Despite subsection (6), a failure of any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter to comply with a code on designated benchmark does not of itself render that authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) liable to criminal proceedings but any such failure may be relied upon by any party in any proceedings (whether civil or criminal) as tending to establish or negate any liability which is in question in those proceedings.

[4/2017]

Subdivision (4) — Obligations of authorised benchmark administrators and exempt benchmark administrators

General obligations

123P.—(1) Every authorised benchmark administrator and exempt benchmark administrator must, for every designated benchmark in respect of which it carries on a business of administering a designated benchmark —

(*a*) manage any risks associated with its business and operations prudently;

(*b*) ensure that the systems and controls concerning its performing the activity of administering a designated benchmark are adequate and appropriate for the scale and nature of its operations;

(*c*) have sufficient financial, human and system resources —

(i) to carry on a business of administering a designated benchmark; and

(ii) to meet contingencies or disasters;

(*d*) maintain governance arrangements that are adequate for the designated benchmark to be determined in a fair and efficient manner; and

(*e*) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(*c*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[4/2017]

Obligation to notify Authority of certain matters

123Q.—(1) Every authorised benchmark administrator and exempt benchmark administrator must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the authorised benchmark administrator or the exempt benchmark administrator, in its application under section 123E(1) or 123K(1)(*b*) respectively;

(*b*) the carrying on of any business (called in this section a proscribed business) by the authorised benchmark administrator or exempt benchmark administrator (as the case may be) other than such business or such class of businesses as the Authority may prescribe by regulations made under section 123ZZA;

(*c*) the acquisition by the authorised benchmark administrator or exempt benchmark administrator (as the case may be) of a substantial shareholding in a corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses as the Authority may prescribe by regulations made under section 123ZZA;

(*d*) any failure of an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter (as the case may be) to comply with the code on designated benchmark of the authorised benchmark administrator or exempt benchmark administrator;

(*e*) any other matter that the Authority may —

(i) prescribe by regulations made under section 123ZZA for the purposes of this paragraph; or

(ii) specify by written notice, to the authorised benchmark administrator or exempt benchmark administrator, as the case may be.

[4/2017]

(2) Without limiting section 123ZZB(1), the Authority may, at any time after receiving a notification mentioned in subsection (1), issue directions to the authorised benchmark administrator or exempt benchmark administrator (as the case may be) —

(*a*) where the notice relates to a matter mentioned in subsection (1)(*b*) —

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose; or

(*b*) where the notice relates to a matter mentioned in subsection (1)(*c*) —

(i) to dispose all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

(ii) to exercise or not to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that such exercise or non-exercise of rights is in the interests of a class, or classes, of users of a designated benchmark, or in the interests of the public or a section of the public.

[4/2017]

(3) An authorised benchmark administrator or an exempt benchmark administrator must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An authorised benchmark administrator or an exempt benchmark administrator must notify the Authority of any matter that the Authority may prescribe by regulations made under section 123ZZA for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An authorised benchmark administrator or an exempt benchmark administrator must notify the Authority of any matter that the Authority may specify by written notice to the authorised benchmark administrator or an exempt benchmark administrator (as the case may be) no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to maintain proper records

123R.—(1) Every authorised benchmark administrator and exempt benchmark administrator must maintain a record of the following in respect of a designated benchmark administered by it:

(*a*) all information or expressions of opinion used for the purposes of determining the designated benchmark;

(*b*) the manner in which the formula or other methods of calculation is applied to the information or expressions of opinion mentioned in paragraph (*a*) in determining the designated benchmark;

(*c*) such other matters as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

(2) The record mentioned in subsection (1) must be kept for such period, and in such form and manner, as may be prescribed by regulations made under section 123ZZA.

[4/2017]

Obligation to submit periodic reports

123S. Every authorised benchmark administrator and exempt benchmark administrator must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

Notification of change of particulars

123T. Where —

(*a*) an authorised benchmark administrator or exempt benchmark administrator ceases to carry on a business of administering a designated benchmark; or

(*b*) a change occurs in any matter records of which are required by section 123U(1) to be kept in relation to the authorised benchmark administrator or exempt benchmark administrator,

the authorised benchmark administrator or exempt benchmark administrator (as the case may be) must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the form and manner prescribed by regulations made under section 123ZZA.

[4/2017]

Records of authorised benchmark administrators and exempt benchmark administrators

123U.—(1) The Authority must keep records of every authorised benchmark administrator and exempt benchmark administrator, setting out the following information of each authorised benchmark administrator and exempt benchmark administrator:

(*a*) the name of the authorised benchmark administrator or exempt benchmark administrator;

(*b*) the address of the principal place at which the authorised benchmark administrator or exempt benchmark administrator carries on a business of administering a designated benchmark;

(*c*) where the business is carried on under a name or style other than the name of the authorised benchmark administrator or exempt benchmark administrator (as the case may be) the name or style under which the business is carried on;

(*d*) such other information as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(2) The Authority may publish the information mentioned in subsection (1) or any part of that information in any form and manner.

[4/2017]

Obligation to assist Authority

123V. Every authorised benchmark administrator and exempt benchmark administrator must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the submission of returns; and

(*b*) the provision of books and information —

(i) relating to the business of the authorised benchmark administrator or exempt benchmark administrator, as the case may be; or

(ii) in respect of a designated benchmark administered by it.

[4/2017]

Penalties under this Subdivision

123W. Any authorised benchmark administrator or exempt benchmark administrator which contravenes section 123P, 123Q, 123R, 123S, 123T or 123V shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Subdivision (5) — Matters requiring approval of Authority

Approval of chief executive officer and director of authorised benchmark administrator

123X.—(1) Subject to subsection (3), an authorised benchmark administrator must not —

(*a*) appoint a person as its chief executive officer or director; or

(*b*) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless the authorised benchmark administrator has obtained the approval of the Authority.

[4/2017]

(2) Where an authorised benchmark administrator has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(*a*), the person may be re-appointed as chief executive officer or director (as the case may

be) of the authorised benchmark administrator immediately upon the expiry of the earlier term without the approval of the Authority.

[4/2017]

(3) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

(*a*) does not reside in Singapore; and

(*b*) is not directly responsible for its carrying out the activity of administering a designated benchmark or any part of the activity of administering a designated benchmark.

[4/2017]

(4) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark administrator.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under subsection (1) without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the authorised benchmark administrator an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

[Act 18 of 2022 wef 31/07/2024]

(*c*) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) Without affecting the Authority's power to impose conditions or restrictions under section 123F(2), the Authority may, at any time by written notice to the authorised benchmark administrator, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[4/2017]

(9) Any authorised benchmark administrator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(10) Any authorised benchmark administrator which contravenes any condition imposed under subsection (8) shall be guilty of an offence.

[4/2017]

Removal of officer of authorised benchmark administrator

123Y.—(1) Despite the provisions of any other written law —

(*a*) an authorised benchmark administrator must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) an authorised benchmark administrator that is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order or an FSMA prohibition order made against him or her that remains in force; or

[Act 18 of 2022 wef 31/07/2024]

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an authorised benchmark administrator that is incorporated in Singapore, or an executive officer of an authorised benchmark administrator —

(*a*) has wilfully contravened or wilfully caused the authorised benchmark administrator to contravene any provision of this Act;

(*b*) has, without reasonable excuse, failed to secure the compliance of the authorised benchmark administrator with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(*c*) has failed to discharge any of the duties of his or her office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, or a class or classes of users of a designated benchmark, by written notice to the authorised benchmark administrator, direct the authorised benchmark administrator to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the authorised benchmark administrator must comply with the notice.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, when determining whether a director or an executive officer of an authorised benchmark administrator has failed to discharge the duties of his or her office for the purposes of subsection (2)(*c*), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark administrator.

[4/2017]

(4) The Authority must not direct an authorised benchmark administrator to remove a person from the person's office under subsection (2) without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(5) Where the Authority directs an authorised benchmark administrator to remove a person from the person's office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

[4/2017]

(6) No criminal or civil liability is incurred by —

(*a*) an authorised benchmark administrator; or

(*b*) any person acting on behalf of an authorised benchmark administrator,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(7) Any authorised benchmark administrator which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(8) [*Deleted by Act 12 of 2024 wef 30/08/2024*]

Control of take-over of authorised benchmark administrator

123Z.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[4/2017]

(2) A person must not enter into any arrangement in relation to shares in an authorised benchmark administrator that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the authorised benchmark administrator, unless the person has obtained the prior approval of the Authority to the person's entering into the arrangement.

[4/2017]

(3) An application for the Authority's approval under subsection (2) must be made in writing, and the Authority may approve the application if the Authority is satisfied that —

(*a*) the applicant is a fit and proper person to have effective control of the authorised benchmark administrator;

(*b*) having regard to the applicant's likely influence, the authorised benchmark administrator is likely to continue to carry on a business of administering a designated benchmark prudently and comply with the provisions of this Act and directions made thereunder; and

(*c*) the applicant satisfies such other criteria as may be prescribed by regulations made under section 123ZZA or as the Authority may specify in written directions.

[4/2017]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

(*a*) restricting the applicant's disposal or further acquisition of shares or voting power in the authorised benchmark administrator; or

(*b*) restricting the applicant's exercise of voting power in the authorised benchmark administrator,

and the applicant must comply with such conditions.

[4/2017]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the authorised benchmark administrator.

[4/2017]

(6) For the purposes of this section and section 123ZA —

(*a*) a reference to a person entering into an arrangement in relation to shares includes —

(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;

(ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;

(iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and

(iv) becoming a trustee of a trust in respect of those shares;

(*b*) a person is regarded as obtaining effective control of the authorised benchmark administrator by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —

(i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark administrator; or

(ii) control, directly or indirectly, 20% or more of the voting power in the authorised benchmark administrator; and

(*c*) a reference to the voting power in the authorised benchmark administrator is a reference to the total number of votes that may be cast in a general meeting of the authorised benchmark administrator.

[4/2017]

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Objection to control of authorised benchmark administrator

123ZA.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 123Z; or

(*b*) any person who, whether before, on or after 8 October 2018, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark administrator or controls, directly or indirectly, 20% or more of the voting power in the authorised benchmark administrator,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 123Z(4) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the authorised benchmark administrator;

(*e*) having regard to the likely influence of the person, the authorised benchmark administrator is not able to or is no longer likely to conduct the activity of administering a designated benchmark prudently or to comply with the provisions of this Act or any direction made thereunder;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed by regulations made under section 123ZZA;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 123Z; or

(*h*) the Authority would not have granted its approval under section 123Z had it been aware, at that time, of circumstances relevant to the person's application for such approval.

[4/2017]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

[Act 18 of 2022 wef 31/07/2024]

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[4/2017]

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

(*a*) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 123Z(2), ceases to hold 20% or more of the issued share capital of the authorised benchmark administrator in the manner described in subsection (1)(*b*), or ceases to control 20% or more of the voting power in the authorised benchmark administrator in the manner described in subsection (1)(*b*); or

(*b*) comply with such other requirements as the Authority may specify in written directions.

[4/2017]

(4) Any person served with a notice of objection under this section must comply with the notice.

[4/2017]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Appeals

123ZB. Any authorised benchmark administrator who is aggrieved by —

(*a*) the refusal of the Authority to grant an approval to the authorised benchmark administrator to appoint a person as its chief executive officer or director; or

(*b*) the direction of the Authority to the authorised benchmark administrator to remove an officer from office or employment,

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

Division 3 — Benchmark Submitters of Designated Benchmarks

Subdivision (1) — Authorised benchmark submitter

Requirement for authorisation

123ZC.—(1) Subject to section 123ZH(1), no person may, as principal or agent, carry on a business or activity of providing information in relation to a designated benchmark unless the person is —

(*a*) an authorised benchmark submitter; or

(*b*) a designated benchmark submitter.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Application for authorisation

123ZD.—(1) A corporation may apply to the Authority to be authorised as an authorised benchmark submitter.

[4/2017]

(2) An application made under subsection (1) must be —

(*a*) made in such form and manner as the Authority may specify; and

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 123ZZA, which must be paid in the manner specified by the Authority.

[4/2017]

(3) The Authority may require an applicant to provide it with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

Power of Authority to authorise benchmark submitters

123ZE.—(1) Where a corporation mentioned in section 123ZD(1) has made an application under that provision, the Authority may authorise the corporation as an authorised benchmark submitter.

[4/2017]

(2) The Authority may authorise a corporation as an authorised benchmark submitter under subsection (1) subject to such conditions or restrictions as the Authority may impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to the activities that the corporation may undertake.

[4/2017]

(3) The Authority may, at any time, by written notice to the authorised benchmark submitter, vary any condition or restriction or impose any further condition or restriction.

[4/2017]

(4) An authorised benchmark submitter must, for the duration of the authorisation, satisfy every condition or restriction that may be imposed on it under subsections (2) and (3).

[4/2017]

(5) Subject to regulations made under this Act, the Authority may refuse to authorise a corporation as an authorised benchmark submitter if —

(*a*) the corporation has not provided the Authority with such information, as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) a receiver, a receiver and manager, judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or substantial shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;

(*h*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*i*) the Authority has reason to believe that the corporation may not be able to act in the best interests of a class or classes of users of the designated benchmark having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*j*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted, in relation to the activity of providing information in relation to a designated benchmark;

(*k*) the Authority is not satisfied as to the record of past performance or expertise of the corporation in providing information in relation to a designated benchmark, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with providing information in relation to a designated benchmark;

(*l*) there are other circumstances which are likely to —

(i) lead to improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*m*) the Authority has reason to believe that the corporation will not carry on a business or activity of providing information in relation to a designated benchmark efficiently, honestly or fairly, or that any of the officers or employees of the corporation will not act efficiently, honestly or fairly in relation to such business;

(*n*) the Authority is of the opinion that it would be contrary to the interests of the public to authorise the corporation as an authorised benchmark submitter; or

(*o*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(6) Subject to subsection (7), the Authority must not refuse to authorise a corporation as an authorised benchmark submitter without giving the corporation an opportunity to be heard.

[4/2017]

(7) The Authority may refuse to authorise a corporation as an authorised benchmark submitter on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

(*d*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(8) Any corporation that is aggrieved by a refusal of the Authority to grant an authorisation under subsection (1) may, within 30 days after the corporation is notified of the refusal, appeal to the Minister whose decision is final.

[4/2017]

(9) Any authorised benchmark submitter that contravenes subsection (4) shall be guilty of an offence.

[4/2017]

False statements in relation to application for authorisation

123ZF. Any person who, in connection with an application for authorisation as an authorised benchmark submitter —

(*a*) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

Revocation, suspension or withdrawal of authorisation

123ZG.—(1) The Authority may revoke the authorisation of a corporation as an authorised benchmark submitter under section 123ZE(1) if —

(*a*) there exists a ground on which the Authority may refuse an application under section 123ZE(5);

(*b*) the corporation does not commence providing information in relation to a designated benchmark within 12 months starting on the date on which it was granted the authorisation under section 123ZE(1);

(*c*) the corporation ceases to carry on a business or activity of providing information in relation to a designated benchmark;

(*d*) where the corporation carries on a business or activity of providing information in relation to a designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) where the corporation carries on a business or activity of providing information in relation to a designated benchmark in respect of more than one designated benchmark, the Authority has withdrawn the designation of all of those designated benchmarks under section 123C;

(*f*) the Authority has reason to believe that the corporation, or any of its officers or employees, has not performed its or their duties efficiently, honestly or fairly;

(*g*) the corporation has contravened any condition or restriction applicable in respect of its authorisation, any written direction issued to it by the Authority under this Act, or any provision of this Act, or has failed to comply with any principle or rule under the code on designated benchmark of the authorised benchmark administrator or exempt benchmark administrator to which it provides information;

(*h*) it appears to the Authority that the corporation has failed to satisfy any of its obligations in compliance with, under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*i*) the Authority has reason to believe that the corporation is carrying on a business or activity of providing information in relation to a designated benchmark in a manner that is contrary to the interests of the public or a section of the public;

(*j*) the corporation has provided any information or document to the Authority that is false or misleading; or

(*k*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(2) The Authority may —

(*a*) suspend the authorisation granted to an authorised benchmark submitter for a specific period instead of revoking it under subsection (1); and

(*b*) at any time extend or revoke the suspension.

[4/2017]

(3) Subject to subsection (4), the Authority, may upon a written application made to it by an authorised benchmark submitter, in such form and manner as the Authority may specify, withdraw the authorisation of the authorised benchmark submitter.

[4/2017]

(4) The Authority may refuse to withdraw the authorisation of an authorised benchmark submitter under subsection (3) where the Authority is of the opinion that —

(*a*) there is any matter concerning the corporation which should be investigated before the authorisation is withdrawn; or

(*b*) the withdrawal of the authorisation would not be in the public interest.

[4/2017]

(5) Subject to subsection (6), the Authority must not —

(*a*) revoke the authorisation granted to an authorised benchmark submitter under subsection (1);

(*b*) suspend the authorisation granted to an authorised benchmark submitter under subsection (2); or

(*c*) refuse the withdrawal of the authorisation granted to an authorised benchmark submitter under subsection (4),

without giving the authorised benchmark submitter an opportunity to be heard.

[4/2017]

(6) The Authority may revoke or suspend the authorisation of a corporation as an authorised benchmark submitter without giving the corporation an opportunity to be heard on any of the following grounds:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

(*d*) the Authority has withdrawn the designation of the designated benchmark under section 123C;

(*e*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the corporation.

[4/2017]

[Act 18 of 2022 wef 31/07/2024]

(7) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1), (2) or (4)

may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

Subdivision (2) — Exempt benchmark submitter

Exemptions from requirement to be authorised as authorised benchmark submitter

123ZH.—(1) The following persons are exempt from section 123ZC(1):

(*a*) any bank licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970;

(*c*) any finance company licensed under the Finance Companies Act 1967;

(*d*) any company or co-operative society licensed under the Insurance Act 1966;

(*e*) any approved exchange, recognised market operator or approved holding company;

(*f*) any approved clearing house or recognised clearing house;

(*g*) any holder of a capital markets services licence;

(*h*) any authorised benchmark administrator;

(*i*) any financial adviser licensed under the Financial Advisers Act 2001;

(*j*) such other person or class of persons as the Authority may exempt by regulations made under section 337.

[4/2017; 1/2020]

(2) The Authority may by regulations made under section 123ZZA or by written notice impose conditions or restrictions on an exempt person in relation to the business or activity of providing information in relation to a designated benchmark or any related matter and the exempt person must comply with such conditions or restrictions.

[4/2017]

(3) Any exempt person who contravenes any condition or restriction imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) The Authority may revoke an exemption granted to any person under this section —

(*a*) if the person contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (2);

(*b*) if the person contravenes any direction issued to it under section 123ZZB;

(*c*) if the person has failed to comply with any principle or rule under the code on designated benchmark;

(*d*) where the person carries on a business or activity of providing information in relation to a particular designated benchmark, if the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) where the person carries on a business or activity of providing information in relation to a designated benchmark in respect of more than one designated benchmark, the Authority has withdrawn the designation of all of those designated benchmarks under section 123C; or

(*f*) if the Authority considers that the person is carrying on a business or activity of providing information in relation to a designated benchmark in a manner that is, in the opinion of the Authority, contrary to the interests of a class, or classes, of users of a designated benchmark, or the interests of the public.

[4/2017]

(5) Where the Authority revokes an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

[4/2017]

(6) A person who is aggrieved by a decision of the Authority made under subsection (4) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

Subdivision (3) — Designated benchmark submitter

Power of Authority to designate benchmark submitters

123ZI.—(1) The Authority may, by order in the *Gazette*, designate any of the following persons as a designated benchmark submitter in relation to a designated benchmark:

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a recognised market operator;

(*c*) a holder of a capital markets services licence;

(*d*) an exempt person;

(*e*) a person who belongs to such class of persons which is prescribed by regulations made under section 123ZZA, being a class of persons that the Authority believes on reasonable grounds is capable of providing information in relation to a designated benchmark.

[4/2017]

(2) For the purposes of subsection (1), in deciding whether to designate a person as a designated benchmark submitter in respect of a designated benchmark, the Authority must have regard to —

(*a*) the robustness of the designated benchmark;

(*b*) the extent to which the information or expressions of opinion which the person is able to provide in relation to the designated benchmark is or is likely to be necessary for the functionality of the market or markets in which the designated benchmark is used for reference;

(*c*) the size and extent of the person's actual and potential participation in the market that the designated benchmark seeks to measure, and the extent to which such actual or potential participation is or is likely to be material to the determination of the designated benchmark;

(*d*) the quality of the information or expressions of opinion which the person is able to provide to enable an authorised benchmark administrator or exempt benchmark administrator to determine the designated benchmark;

(*e*) the selection criteria of the authorised benchmark administrator or exempt benchmark administrator, in relation to the benchmark submitters of a designated benchmark; and

(*f*) such other factors as the Authority considers relevant.

[4/2017]

(3) The Authority must not exercise its powers under subsection (1) without giving the person concerned an opportunity to be heard.

[4/2017]

(4) A person who is aggrieved by the exercise of the Authority's powers under subsection (1) may, within 30 days after the date the order under subsection (1) is published, appeal to the Minister whose decision is final.

[4/2017]

(5) Despite the lodging of an appeal under subsection (4), a person designated by the Authority under subsection (1) is treated as a designated benchmark submitter pending the Minister's decision.

[4/2017]

(6) A designated benchmark submitter is not obliged to disclose any information to an authorised benchmark administrator or exempt

benchmark administrator if the designated benchmark submitter is prohibited by any written law from disclosing such information.

[4/2017]

(7) The Authority may, by order in the *Gazette*, withdraw the designation of any designated benchmark submitter at any time if the Authority is of the opinion that the considerations in subsection (2) are no longer valid or satisfied.

[4/2017]

Obligation to provide information for purposes of determining designated benchmark

123ZJ.—(1) Every designated benchmark submitter must provide to the authorised benchmark administrator or exempt benchmark administrator in respect of a designated benchmark such information or expression of opinion for the purposes of determining the designated benchmark, as the Authority may specify by written notice to the designated benchmark submitter, at such time and in such form or manner as the Authority may specify by written notice.

[4/2017]

(2) Any designated benchmark submitter which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to impose requirements or restrictions

123ZK.—(1) The Authority may, by written notice, impose requirements or restrictions on a designated benchmark submitter.

[4/2017]

(2) The Authority may, at any time, by written notice to a designated benchmark submitter, vary any requirement or restriction imposed on the designated benchmark submitter.

[4/2017]

(3) Any designated benchmark submitter which fails to comply with any requirement or restriction imposed under subsection (1) or (2) shall be guilty of an offence.

[4/2017]

Subdivision (4) — Obligations of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters

General obligations

123ZL.—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, in relation to the designated benchmark in respect of which it provides information —

(*a*) manage any risks associated with its business and operations prudently;

(*b*) ensure that the systems and controls concerning its performing the activity of providing information in relation to a designated benchmark are adequate and appropriate for the scale and nature of its operations;

(*c*) have sufficient financial, human and system resources —

(i) to carry on a business or activity of providing information in relation to a designated benchmark; and

(ii) to meet contingencies or disasters; and

(*d*) in the case of an authorised benchmark submitter or a designated benchmark submitter, ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(*c*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[4/2017]

Obligation to notify Authority of certain matters

123ZM.—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) in the case of an authorised benchmark submitter, any material change to the information provided by the authorised benchmark submitter in its application under section 123ZD(1);

(*b*) any change to the type or number of designated benchmarks in relation to which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) is carrying on a business or activity of providing information in relation to a designated benchmark;

(*c*) the carrying on of any business (called in this section a proscribed business) by the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) other than such business or such class of businesses prescribed by regulations made under section 123ZZA;

(*d*) the acquisition by the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) of a substantial shareholding in a corporation (called in this section a proscribed corporation), which carries on any business other than such business or such class of businesses prescribed by regulations made under section 123ZZA;

(*e*) any other matter that the Authority may —

(i) prescribe by regulations made under section 123ZZA for the purposes of this paragraph; or

(ii) specify by written notice to the authorised benchmark submitter, exempt benchmark submitter

or designated benchmark submitter, as the case may be.

[4/2017]

(2) Without limiting section 123ZZB(1), the Authority may, at any time after receiving a notice mentioned in subsection (1), issue directions to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter —

(*a*) where the notice relates to a matter mentioned in subsection (1)(*c*) —

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose; or

(*b*) where the notice relates to a matter mentioned in subsection (1)(*d*) —

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose.

[4/2017]

(3) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must notify the Authority of any matter that the Authority may prescribe by regulations made under section 123ZZA for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must notify the Authority of any matter that the Authority may specify by written notice to the authorised benchmark submitter, exempt benchmark submitter, or designated benchmark submitter (as the case may be) no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to maintain proper records

123ZN.—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must maintain a record of the following in respect of a designated benchmark:

(*a*) all information or expressions of opinion which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) provides to any authorised benchmark administrator or exempt benchmark administrator;

(*b*) the basis of the information or the rationale of the expressions of opinion referred to in paragraph (*a*);

(*c*) such other matters as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

(2) The records mentioned in subsection (1) must be kept for such period, and in such form and manner, as may be prescribed by regulations made under section 123ZZA.

[4/2017]

Obligation to submit periodic reports

123ZO. Every authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

Notification of change of particulars

123ZP. Where —

(*a*) an authorised benchmark submitter or exempt benchmark submitter ceases to carry on a business or activity of providing information in relation to a designated benchmark; or

(*b*) a change occurs in any matter records of which are required by section 123ZQ(1) to be kept in relation to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter,

the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the form and manner prescribed by regulations made under section 123ZZA.

[4/2017]

Records of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters

123ZQ.—(1) The Authority must keep records of every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter, setting out the following information of each authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter:

(*a*) the name of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be;

(*b*) the address of the principal place at which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) carries on the business or activity of providing information in relation to a designated benchmark;

(*c*) where the business or activity of providing information in relation to a designated benchmark is carried on under a name or style other than the name of the authorised

benchmark submitter, exempt benchmark submitter or designated benchmark submitter, the name or style under which the business is carried on;

(*d*) such other information as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(2) The Authority may publish the information mentioned in subsection (1) or any part of that information in any manner.

[4/2017]

Obligation to assist Authority

123ZR. Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must provide such assistance to the Authority as the Authority may require for the proper administration of this Act, including —

(*a*) the furnishing of returns; and

(*b*) the provision of books and information relating to the business of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

Penalties under this Subdivision

123ZS. Any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter which contravenes section 123ZL, 123ZM, 123ZN, 123ZO, 123ZP or 123ZR shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Subdivision (5) — Matters requiring approval of Authority

Approval of chief executive officer and director of authorised benchmark submitter or designated benchmark submitter

123ZT.—(1) Subject to subsection (3), an authorised benchmark submitter or designated benchmark submitter must not —

(*a*) appoint a person as its chief executive officer or director; or

(*b*) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has the approval of the Authority to do so.

[4/2017]

(2) Where an authorised benchmark submitter or a designated benchmark submitter has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(*a*), the person may be re-appointed as a chief executive officer or director (as the case may be) of the authorised benchmark submitter or designated benchmark submitter (as the case may be) immediately upon the expiry of the earlier term without the approval of the Authority.

[4/2017]

(3) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

(*a*) does not reside in Singapore; and

(*b*) is not directly responsible for its carrying out of the activity of providing information in relation to a designated benchmark or any part of the activity of providing information in relation to a designated benchmark.

[4/2017]

(4) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified

to the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under subsection (1) without giving the authorised benchmark submitter or designated benchmark submitter an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the authorised benchmark submitter or designated benchmark submitter an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

[Act 18 of 2022 wef 31/07/2024]

(*c*) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) Without affecting the Authority's power to impose conditions or restrictions under section 123ZE(2) or (3), or requirements or restrictions under section 123ZK, the Authority may, at any time by written notice to the authorised benchmark submitter or designated benchmark submitter, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such

as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[4/2017]

(9) This section does not apply to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) a holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(10) Any authorised benchmark submitter or designated benchmark submitter which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Any authorised benchmark submitter or designated benchmark submitter which contravenes any condition imposed on it under subsection (8) shall be guilty of an offence.

[4/2017]

Removal of officer of authorised benchmark submitter or designated benchmark submitter

123ZU.—(1) Despite the provisions of any other written law —

(*a*) an authorised benchmark submitter or a designated benchmark submitter must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) an authorised benchmark submitter or a designated benchmark submitter, that is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order or an FSMA prohibition order made against him or her that remains in force; or

[Act 18 of 2022 wef 31/07/2024]

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an authorised benchmark submitter or a designated benchmark submitter, that is incorporated in Singapore, or an executive officer of an authorised benchmark submitter or a designated benchmark submitter —

(*a*) has wilfully contravened or wilfully caused the authorised benchmark submitter or designated benchmark submitter (as the case may be) to contravene any provision of this Act;

(*b*) has, without reasonable excuse, failed to secure the compliance of the authorised benchmark submitter or designated benchmark submitter (as the case may be) with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(*c*) has failed to discharge any of the duties of his or her office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, or a class or classes of users of a designated benchmark, by written notice to the authorised benchmark submitter or designated benchmark submitter (as the case may be) direct the authorised benchmark submitter or designated benchmark submitter to remove the director or executive officer (as the case may be) from the director's or executive officer's office or employment within such period as the Authority may specify in the notice, and the authorised

benchmark submitter or designated benchmark submitter (as the case may be) must comply with the notice.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, when determining whether a director or an executive officer of an authorised benchmark submitter or designated benchmark submitter (as the case may be) has failed to discharge the duties of the director's or executive officer's office for the purposes of subsection (2)(*c*), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified in writing to the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(4) The Authority must not direct an authorised benchmark submitter or designated benchmark submitter to remove a person from the person's office under subsection (2) without giving the authorised benchmark submitter or designated benchmark submitter (as the case may be) an opportunity to be heard.

[4/2017]

(5) Where the Authority directs an authorised benchmark submitter or a designated benchmark submitter to remove a person from the person's office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

[4/2017]

(6) No criminal or civil liability is incurred by —

(*a*) an authorised benchmark submitter;

(*b*) a designated benchmark submitter; or

(*c*) any person acting on behalf of the authorised benchmark submitter or designated benchmark submitter,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(7) This section does not apply to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(8) Any authorised benchmark submitter or designated benchmark submitter which contravenes subsection (1), or any direction issued by the Authority under subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) [*Deleted by Act 12 of 2024 wef 30/08/2024*]

Control of take-over of authorised benchmark submitter or designated benchmark submitter

123ZV.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[4/2017]

(2) A person must not enter into any arrangement in relation to shares in an authorised benchmark submitter or designated benchmark submitter that is a company by virtue of which the

person would, if the arrangement is carried out, obtain effective control of the authorised benchmark submitter or designated benchmark submitter, unless the person has obtained the prior approval of the Authority to the person's entering into the arrangement.

[4/2017]

(3) An application for the Authority's approval under subsection (2) must be made in writing, and the Authority may authorise the application if the Authority is satisfied that —

(*a*) the applicant is a fit and proper person to have effective control of the authorised benchmark submitter or designated benchmark submitter, as the case may be;

(*b*) having regard to the applicant's likely influence, the authorised benchmark submitter or designated benchmark submitter (as the case may be) is likely to continue to carry on a business or activity of providing information in relation to a designated benchmark prudently and comply with the provisions of this Act and directions made thereunder; and

(*c*) the applicant satisfies such other criteria as may be prescribed by regulations made under section 123ZZA or as the Authority may specify in written directions.

[4/2017]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

(*a*) restricting the applicant's disposal or further acquisition of shares or voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be; or

(*b*) restricting the applicant's exercise of voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be,

and the applicant must comply with such conditions.

[4/2017]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the authorised benchmark submitter or designated benchmark submitter.

[4/2017]

(6) For the purposes of this section and section 123ZW —

(*a*) a reference to a person entering into an arrangement in relation to shares of an authorised benchmark submitter or a designated benchmark submitter (as the case may be) includes —

(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;

(ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;

(iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and

(iv) becoming a trustee of a trust in respect of those shares;

(*b*) a person is regarded as obtaining effective control of the authorised benchmark submitter or designated benchmark submitter (as the case may be) by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —

(i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter, as the case may be; or

(ii) control, directly or indirectly, 20% or more of the voting power in the authorised benchmark submitter

or designated benchmark submitter, as the case may be; and

(*c*) a reference to the voting power in the authorised benchmark submitter or designated benchmark submitter (as the case may be) is a reference to the total number of votes that may be cast in a general meeting of the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(7) This section does not apply in relation to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(8) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Objection to control of authorised benchmark submitter or designated benchmark submitter

123ZW.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 123ZV; or

(*b*) any person who, whether before, on or after 8 October 2018, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter (as the case may be) or controls, directly or indirectly, 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 123ZV(4) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the authorised benchmark submitter or designated benchmark submitter, as the case may be;

(*e*) having regard to the likely influence of the person, the authorised benchmark submitter or designated benchmark submitter (as the case may be) is not able to or is no longer likely to carry on a business or activity of providing information in relation to a designated benchmark prudently and comply with the provisions of this Act and any direction made under this Act;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed by regulations made under section 123ZZA;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 123ZV; or

(*h*) the Authority would not have granted its approval under section 123ZV had the Authority been aware, at that time, of circumstances relevant to the person's application for such approval.

[4/2017]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a section 123ZZC prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

[Act 18 of 2022 wef 31/07/2024]

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[4/2017]

(3) Any person served with the written notice of objection must, within the period specified in the notice —

(*a*) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 123ZV(2), ceases to hold 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter (as the case may be) in the manner described in subsection (1)(*b*), or ceases to control 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter (as the case may be) in the manner described in subsection (1)(*b*); and

(*b*) comply with such other requirements as the Authority may specify in the notice.

[4/2017]

(4) This section does not apply in relation to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Appeals

123ZX. Any authorised benchmark submitter or designated benchmark submitter that is aggrieved by —

(*a*) the refusal of the Authority to grant an approval to the authorised benchmark submitter or the designated benchmark submitter to appoint a person as its chief executive officer or director; or

(*b*) the direction of the Authority to the authorised benchmark submitter or the designated benchmark submitter to remove an officer from office or employment,

may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

Division 4 — Information Gathering Powers over Financial Benchmarks, Disclosure of Information and Record Keeping

Provision of information to Authority

123ZY.—(1) The Authority may, by regulations made under section 123ZZA, require a person or a class of persons whom the Authority believes on reasonable grounds is capable of giving information on or concerning any financial benchmark or any market which a financial benchmark seeks to measure to disclose to the Authority the information that the person has under the person's control or possession, in such form and manner, and within such period or periods, as may be prescribed in those regulations.

[4/2017]

(2) The Authority may, by written notice to any person whom the Authority believes on reasonable grounds is capable of giving information on or concerning any financial benchmark or any market which a financial benchmark seeks to measure, require such person to disclose to the Authority the information that the person has under the person's control or possession, in such form and manner, and within such period or periods, as may be specified in the notice.

[4/2017]

(3) Subject to subsection (5), any person to whom a notice is issued under subsection (2) must comply with the notice.

[4/2017]

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) A person referred to in subsection (1) or a person to whom a notice is issued under subsection (2) is not obliged to disclose any information where the person is prohibited by any written law from disclosing such information.

[4/2017]

(6) Where a person claims, before providing the Authority with any information that the person is required to furnish under subsection (1) or (2), that the information might tend to incriminate the person, the information —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (4) or in relation to a contravention of subsection (1); but

(*b*) is admissible in evidence for civil proceedings under Part 12.

[4/2017]

Power to require maintenance of records and submit periodic reports

123ZZ.—(1) The Authority may, by regulations made under section 123ZZA or by written notice, require any financial institution or class of financial institutions to —

(*a*) maintain a record of —

(i) all transactions undertaken by the financial institution in relation to one or more underlying things that are the subject of a designated benchmark; and

(ii) all transactions undertaken by the financial institution in relation to financial instruments that use a designated benchmark for reference to determine the price, value, interest payable, sums due or performance of the financial instrument,

in such form and manner as the Authority may prescribe in those regulations or specify by written notice, including —

(iii) the extent to which the record includes details of each transaction or exposure; and

(iv) the period of time that the record is to be maintained; and

(*b*) submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe in those regulations or specify by written notice.

[4/2017]

(2) In this section, "financial institution" means —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank that is licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence under this Act;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a company or co-operative society licensed under the Insurance Act 1966 as a direct insurer carrying on life business;

(*g*) an insurance intermediary licensed under any written law relating to insurance intermediaries if the intermediary arranges contracts of insurance in respect of life business; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(3) Any person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Division 5 — General Powers

Power of Authority to make regulations

123ZZA.—(1) Without affecting section 341, the Authority may make regulations prescribing matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

[4/2017]

(2) The regulations made under subsection (1) may, in particular —

(*a*) prescribe the requirements that an authorised benchmark administrator or an exempt benchmark administrator or a class of any of the foregoing persons must comply with; and

(*b*) prescribe the requirements that an authorised benchmark submitter, an exempt benchmark submitter, a designated benchmark submitter or a class of any of the foregoing persons must comply with.

[4/2017]

(3) The regulations made under this section may provide —

(*a*) that a contravention of any specified provision of those regulations shall be an offence; and

(*b*) for a penalty not exceeding a fine of $100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to issue written directions

123ZZB.—(1) The Authority may, if it thinks it necessary or expedient, in the interests of a class, or classes, of users of a designated benchmark, or in the interests of the public or a section of the public, issue written directions, either of a general or specific nature, to any of the following persons or class of persons, requiring

such person or class of persons to comply with such requirements as the Authority may specify in the written directions:

(*a*) an authorised benchmark administrator;

(*b*) an exempt benchmark administrator;

(*c*) an authorised benchmark submitter;

(*d*) an exempt benchmark submitter;

(*e*) a designated benchmark submitter;

(*f*) a representative of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter;

(*g*) a class of any of the persons mentioned in paragraphs (*a*) to (*f*).

[4/2017]

(2) Without limiting subsection (1), any written direction may be issued with respect to —

(*a*) the standards to be maintained by the person concerned in carrying out the activity of administering a designated benchmark, or the activity of providing information in relation to a designated benchmark;

(*b*) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

(*c*) the qualifications, experience and training of representatives,

and the person to whom such direction is issued must comply with the direction.

[4/2017]

(3) Any person who contravenes any of the directions issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine of $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

123ZZC. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

123ZZD. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

123ZZE. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

123ZZF. [*Repealed by Act 18 of 2022 wef 31/07/2024*]

PART 6A

REPORTING OF DERIVATIVES CONTRACTS

[34/2012]

Interpretation of this Part

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

"market contract" means —

(*a*) a contract subject to the business rules of an approved clearing house, or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or

(*b*) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (*a*) is to take place;

"specified derivatives contract" means any derivatives contract that is, or that belongs to a class of derivatives contracts that

is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition;

"specified person" means —

(*a*) any bank that is licensed under the Banking Act 1970;

(*b*) any subsidiary of a bank incorporated in Singapore;

(*c*) any merchant bank licensed under the Banking Act 1970;

(*d*) any finance company licensed under the Finance Companies Act 1967;

(*e*) any insurer licensed under the Insurance Act 1966;

(*f*) [*Deleted by Act 4 of 2017*]

(*g*) any holder of a capital markets services licence; or

(*h*) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

[34/2012; 10/2013; 4/2017; 1/2020]

Reporting of specified derivatives contracts

125.—(1) Every specified person who is a party to a specified derivatives contract must, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

(*a*) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and

(*b*) any amendment, modification, variation or change to the information referred to in paragraph (*a*).

[34/2012]

(2) Without affecting subsection (1), where the circumstances referred to in subsection (3) apply, a specified person who executes or causes to be executed a specified derivatives contract as an agent of a party to the specified derivatives contract must, at such time or times

and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

(*a*) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and

(*b*) any amendment, modification, variation or change to the information referred to in paragraph (*a*).

[34/2012; 4/2017]

(3) For the purposes of subsection (2), the circumstances are that the party to the specified derivatives contract —

(*a*) is not a specified person; or

(*b*) is a specified person, but is exempted under section 129A from subsection (1).

[34/2012; 4/2017]

(4) A specified person who is required to comply with subsection (1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) is treated to have reported that information to a licensed trade repository or licensed foreign trade repository, if —

(*a*) any other person has, with the consent or authority of the specified person, reported that information, in such form or manner prescribed by regulations made under section 129, to that licensed trade repository or licensed foreign trade repository; and

(*b*) that information is true and correct and has been received by that licensed trade repository or licensed foreign trade repository.

[4/2017]

(5) A specified person who is treated under subsection (4) to have reported any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) to a licensed trade repository or licensed foreign trade repository, is treated to have so reported that information at the

time that information is received by that licensed trade repository or licensed foreign trade repository.

[4/2017]

(6) A specified person who —

(*a*) complies with subsection (1) or (2);

(*b*) consents to or authorises the reporting of any information in connection with subsection (4); or

(*c*) discloses any information in compliance with the foreign reporting obligations of such jurisdiction as may be prescribed by regulations made under section 129,

is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(7) Any specified person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(8) A specified person who is required under subsection (1) or (2) to report any information to a licensed trade repository or licensed foreign trade repository must use due care to ensure that the information reported is not false in any material particular.

[34/2012]

(9) Any specified person who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[34/2012]

(10) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract is not, by reason only of a contravention of subsection (1), (2) or (8) in relation to the specified derivatives contract, voidable or void.

[34/2012]

(11) For the purposes of subsections (1)(*a*) and (2)(*a*), the information on a specified derivatives contract that the Authority may prescribe by regulations made under section 129 includes, but is not limited to —

(*a*) the identities of the parties to the specified derivatives contract; and

(*b*) the characteristics of the specified derivatives contract, including, but not limited to, operational data (such as clearing and settlement details), event data (such as execution time), underlying information and information on transaction economics (such as effective date and maturity date).

[34/2012]

(12) For the purposes of this section, where any right or obligation under a specified derivatives contract is transferred to any market contract, a reference to the specified derivatives contract includes a reference to that market contract.

[34/2012]

Power of Authority to obtain information

126.—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

(*a*) whether any derivatives contract or class of derivatives contract should be prescribed for the purposes of the definition of "specified derivatives contract" in section 124;

(*b*) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (*h*) of the definition of "specified person" in section 124; or

(*c*) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 125(1) or (2).

[34/2012]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[34/2012]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[34/2012]

(6) Where a person claims, before providing the Authority with any information or documents that the person is required to provide under subsection (1)(*c*), that the information or documents might tend to incriminate the person, the information or documents —

(*a*) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(*b*) are admissible in evidence for civil proceedings under Part 12.

[34/2012]

Directions on alternative reporting arrangements

127.—(1) Where the Authority is of the opinion that any licensed trade repository or licensed foreign trade repository is not available for the reporting of, or is incapable of receiving, any information on any specified derivatives contract (including any amendment, modification, variation or change to that information) under section 125(1) or (2), the Authority may issue directions, whether

of a general or specific nature, by written notice, to any specified person referred to in section 125(1) or (2) or class of such persons, requiring the specified person or class of such persons to do one or more of the following:

(*a*) to maintain records of that information in such form or manner as the Authority may prescribe by regulations made under section 129;

(*b*) to report that information, or submit records of that information, in such form or manner as the Authority may specify in that notice, at such frequency and over such period as the Authority may specify in that notice, to such person as the Authority may specify in that notice;

(*c*) to give the Authority, or such person as the Authority may specify in that notice, access to that information, or to records of that information, in such manner as the Authority may specify in that notice.

[34/2012]

(2) A specified person referred to in subsection (1) must comply with every direction issued to the specified person under that subsection.

[34/2012]

(3) A specified person is treated to have complied with section 125(1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) if, while a direction issued to the specified person under subsection (1) remains in force, the specified person complies with that direction in relation to that information.

[34/2012; 4/2017]

(4) The Authority may cancel a direction issued under subsection (1) in relation to any licensed trade repository or licensed foreign trade repository, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[34/2012]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(7) For the purposes of this section, a reference to any information on a specified derivatives contract includes a reference to any such information which has previously been reported to a licensed trade repository or licensed foreign trade repository under section 125.

[34/2012]

Compliance with laws and practices of relevant reporting jurisdiction

128.—(1) Subject to subsection (3), a specified person who is a party to a specified derivatives contract is treated to have complied with section 125(1) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

(*a*) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and

(*b*) the specified person, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

[34/2012; 4/2017]

(2) Subject to subsection (3), a specified person who executes or causes to be executed a specified derivatives contract as an agent of a party to the specified derivatives contract (called in this subsection the principal party) is treated to have complied with section 125(2) in relation to any information on the specified derivatives contract

(including any amendment, modification, variation or change to that information), if —

(*a*) the principal party, or any other party to the specified derivatives contract, is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and

(*b*) the principal party, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

[34/2012; 4/2017]

(3) Subsections (1) and (2) do not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129 for the purposes of this subsection.

[34/2012]

(4) In this section —

"place of business", in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

"relevant reporting jurisdiction" means any foreign jurisdiction that is prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

[34/2012]

Power of Authority to make regulations

129.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[34/2012]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of "specified derivatives contract" in section 124, the Authority may have regard to —

(*a*) the significance of that derivatives contract or class of derivatives contracts in Singapore;

(*b*) international developments in the reporting of derivatives contracts; and

(*c*) any other matters that the Authority deems to be relevant.

[34/2012]

Exemption from section 125

129A.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 129, exempt any specified person or class of specified persons from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) The Authority may, by written notice, exempt any specified person from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012; 4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

(4) Every specified person that is granted an exemption under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[34/2012]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

PART 6B

CLEARING OF DERIVATIVES CONTRACTS

[34/2012]

Interpretation of this Part

129B. In this Part, unless the context otherwise requires —

"clearing" means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

"specified derivatives contract" means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition;

"specified person" means —

(*a*) any bank that is licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970;

(*c*) any finance company licensed under the Finance Companies Act 1967;

(*d*) any insurer licensed under the Insurance Act 1966;

(*e*) [*Deleted by Act 4 of 2017*]

(*f*) any holder of a capital markets services licence; or

(*g*) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

[34/2012; 10/2013; 4/2017; 1/2020]

Clearing of specified derivatives contracts

129C.—(1) Every specified person who is a party to a specified derivatives contract must, within such time as the Authority may prescribe by regulations made under section 129G, cause the specified derivatives contract to undergo clearing, by a clearing facility operated by an approved clearing house or a recognised clearing house, in accordance with the business rules of the approved clearing house or recognised clearing house, as the case may be.

[34/2012]

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(3) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract is not, by reason only of a contravention of subsection (1) in relation to the specified derivatives contract, voidable or void.

[34/2012]

Power of Authority to obtain information

129D.—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

(*a*) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of "specified derivatives contract" in section 129B;

(*b*) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (*g*) of the definition of "specified person" in section 129B; or

(*c*) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any

requirement that is, or that would otherwise have been, imposed under section 129C(1).

[34/2012]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[34/2012]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[34/2012]

(6) Where a person claims, before providing the Authority with any information or documents that the person is required to provide under subsection (1)(*c*), that the information or documents might tend to incriminate the person, the information or documents —

(*a*) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(*b*) are admissible in evidence for civil proceedings under Part 12.

[34/2012]

Directions on alternative clearing arrangements

129E.—(1) Where the Authority is of the opinion that any clearing facility operated by any approved clearing house or recognised clearing house is not available for the clearing of, or is incapable of

clearing, any specified derivatives contract or any class of specified derivatives contracts under section 129C(1), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person who is a party to that specified derivatives contract, or any class of specified persons who are parties to that class of specified derivatives contracts, requiring the specified person or class of specified persons to cause that specified derivatives contract or that class of specified derivatives contracts to undergo clearing in the manner and within the time specified by the Authority in that notice.

[4/2017]

(2) A specified person referred to in subsection (1) must comply with every direction issued to the specified person under that subsection.

[34/2012]

(3) A specified person is treated to have complied with section 129C(1) in relation to a specified derivatives contract if, while a direction issued to the specified person under subsection (1) remains in force, the specified person complies with that direction in relation to that specified derivatives contract.

[34/2012; 4/2017]

(4) The Authority may cancel a direction issued under subsection (1) in relation to any clearing facility operated by any approved clearing house or recognised clearing house, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[34/2012]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Compliance with laws and practices of relevant clearing jurisdiction

129F.—(1) Subject to subsection (2), a specified person who is a party to a specified derivatives contract is treated to have complied with section 129C(1) in relation to the specified derivatives contract, if —

(*a*) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant clearing jurisdiction; and

(*b*) every party to the specified derivatives contract is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the clearing of specified derivatives contracts under the laws and practices of the relevant clearing jurisdiction.

[34/2012; 4/2017]

(2) Subsection (1) does not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this subsection.

[34/2012]

(3) In this section —

"place of business", in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

"relevant clearing jurisdiction" means a foreign jurisdiction that is prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

[34/2012]

Power of Authority to make regulations

129G.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[34/2012]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of "specified derivatives contract" in section 129B, the Authority may have regard to —

(*a*) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;

(*b*) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;

(*c*) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;

(*d*) the availability of fair, reliable and generally accepted pricing sources for that derivatives contract or class of derivatives contracts;

(*e*) the international regulatory approach towards that derivatives contract or class of derivatives contracts;

(*f*) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts;

(*g*) the availability of approved clearing houses or recognised clearing houses that operate clearing facilities for the clearing of that derivatives contract or class of derivatives contracts; and

(*h*) any other matters that the Authority deems to be relevant.

[34/2012]

Exemption from section 129C

129H.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 129G, exempt any specified person or class of specified persons from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) The Authority may, by written notice, exempt any specified person from all or any of the provisions of section 129C, subject to

such conditions or restrictions as the Authority may specify by written notice.

[34/2012; 4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

(4) Every specified person that is granted an exemption under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[34/2012]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

PART 6C

TRADING OF DERIVATIVES CONTRACTS

[4/2017]

Interpretation of this Part

129I. In this Part, unless the context otherwise requires —

"specified derivatives contract" means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 129N for the purposes of this definition;

"specified person" means —

(*a*) any bank that is licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970;

(*c*) any finance company licensed under the Finance Companies Act 1967;

(*d*) any insurer licensed under the Insurance Act 1966;

(*e*) any holder of a capital markets services licence; or

(*f*) any other person who is, or who belongs to a class of persons which is, prescribed by regulations made under section 129N.

[4/2017; 1/2020]

Trading of specified derivatives contracts

129J.—(1) Every specified person who executes a specified derivatives contract must do so —

(*a*) on an organised market operated by an approved exchange or a recognised market operator, or on or through any other facility prescribed by regulations made under section 129N; and

(*b*) in the form and manner prescribed by regulations made under that section.

[4/2017]

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(3) A failure to comply with subsection (1) does not of itself render the specified derivatives contract that is executed voidable or void.

[4/2017]

Power of Authority to obtain information

129K.—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

(*a*) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of "specified derivatives contract" in section 129I;

(*b*) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (*f*) of the definition of "specified person" in section 129I; or

(*c*) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 129J(1).

[4/2017]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[4/2017]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[4/2017]

(6) Where a person claims, before furnishing the Authority with any information or documents that the person is required to provide under subsection (1)(*c*), that the information or documents might tend to incriminate the person, the information or documents —

(*a*) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(*b*) are admissible in evidence for civil proceedings under Part 12.

[4/2017]

Directions on alternative trading arrangements

129L.—(1) Where the Authority is of the opinion that any organised market operated by any approved exchange or recognised market operator or any other facility prescribed for the purposes of section 129J(1) is not available for the execution of, or is incapable of executing, any specified derivatives contract under section 129J(1), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person or to any class of such persons, requiring the specified person or class of such persons to, when executing any such specified derivatives contract, comply with the requirements specified in the notice relating to the form and manner in which the contract must be executed, and the time within which the contract must be executed.

[4/2017]

(2) A specified person mentioned in subsection (1) must comply with every direction issued to the specified person under that subsection.

[4/2017]

(3) A specified person is treated to have complied with section 129J(1) in relation to a specified derivatives contract if, while a direction issued to the specified person under subsection (1) remains in force, the specified person executes that specified derivatives contract in the form and manner and within the time specified by the Authority in that direction.

[4/2017]

(4) The Authority may cancel a direction issued under subsection (1) if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[4/2017]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

Compliance with laws and practices of relevant trading jurisdiction

129M.—(1) Subject to subsection (2), a specified person is treated as having complied with section 129J(1) in relation to the specified derivatives contract if the specified person is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the execution of specified derivatives contracts under the laws and practices of the relevant trading jurisdiction.

[4/2017]

(2) Subsection (1) does not apply to any specified derivatives contract or any class of specified derivatives contracts prescribed by regulations made under section 129N.

[4/2017]

(3) In this section, "relevant trading jurisdiction" means a foreign jurisdiction that is prescribed by regulations made under section 129N.

[4/2017]

Power of Authority to make regulations

129N.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part.

[4/2017]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of "specified derivatives contract" in section 129I, the Authority may have regard to —

(*a*) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;

(*b*) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;

(*c*) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;

(*d*) the international regulatory approach towards that derivatives contract or class of derivatives contracts;

(*e*) the types of persons that transact in that derivatives contract or class of derivatives contracts, and the purposes of transacting in that derivatives contract or class of derivatives contracts;

(*f*) the availability of approved exchanges or recognised market operators that operate organised markets, and the availability of facilities prescribed pursuant to section 129J(1), for the trading of that derivatives contract or class of derivatives contracts;

(*g*) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts; and

(*h*) any other matter that the Authority considers to be relevant.

[4/2017]

Exemption from section 129J

129O.—(1) Despite section 337(1), the Authority may, by regulations made under section 129N, exempt any specified person or class of specified persons from section 129J, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(2) The Authority may, by written notice, exempt any specified person from section 129J, subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

(4) Every specified person that is exempted under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[4/2017]

(5) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(6) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

PART 7

DISCLOSURE OF INTERESTS

Division 1 — Disclosure of Interest in Corporation

Application and interpretation of this Division

130.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) A reference to a corporation is a reference —

(*a*) to a company any or all of the shares in which are listed for quotation on the official list of an approved exchange; or

(*b*) to a corporation (not being a company, or a collective investment scheme constituted as a corporation) any or all of the shares in which are listed for quotation on the official list of an approved exchange, such listing being a primary listing.

[2/2009; 4/2017]

(3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock is deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to that stock.

[2/2009]

(4) A reference to a member —

(*a*) in relation to a company, means a person who is a member of the company under section 19(6) of the Companies Act 1967; and

(*b*) in relation to a corporation (other than a company), means any person equivalent to a member of a company.

[2/2009]

(5) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities or securities-based derivatives contracts under this Division.

[35/2014; 4/2017]

(6) For the purposes of sections 133(3)(*b*)(i), 135(2)(*b*), 136(1), 137(1) and 137E(6), a person is conclusively presumed to have been aware of a fact or occurrence at a particular time —

(*a*) of which he or she would, if he had acted with reasonable diligence in the conduct of his or her affairs, have been aware at that time;

(*b*) where the person is a body corporate or unincorporated association (other than a partnership), of which its officer would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time;

(*c*) where the person is a limited liability partnership, of which its partner or manager would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time; or

(*d*) where the person is a partnership, of which its partner would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time.

[2/2009]

(7) In this section —

"officer" —

(*a*) in relation to a body corporate, means a director, member of the committee of management, chief executive officer, manager, secretary or other similar

officer of the body, and includes a person purporting to act in any such capacity; or

(*b*) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association, or a person holding a position analogous to that of president, secretary or member of the committee, and includes a person purporting to act in such capacity;

"partner" includes a person purporting to act as a partner.

[2/2009]

Persons obliged to comply with this Division and power of Authority to grant exemption or extension

131.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding

$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

Authority may extend scope of Division in certain circumstances

132. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(*a*) to any person or class of persons, other than the persons to which this Division applies;

(*aa*) to any securities or securities-based derivatives contracts, or class of securities or securities-based derivatives contracts, other than the securities or securities-based derivatives contracts to which this Division applies;

(*ab*) to any interests in securities or securities-based derivatives contracts, or class of interests in securities or securities-based derivatives contracts, other than the interests in securities or securities-based derivatives contracts to which this Division applies; or

(*b*) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

and the provisions of this Division apply accordingly.

[2/2009; 4/2017]

Subdivision (1) — Disclosure by directors and chief executive officer of corporation

Duty of director or chief executive officer to notify corporation of his or her interests

133.—(1) Every director and chief executive officer of a corporation must give written notice to the corporation of particulars of —

(*a*) shares in —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he or she holds, or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures of —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he or she holds, or in which he or she has an interest and the nature and extent of that interest;

(*c*) his or her rights or options, or rights or options of his or hers and another person or other persons, in respect of the acquisition or disposal of shares in or debentures of —

(i) the corporation; or

(ii) a related corporation of the corporation;

(*d*) contracts to which he or she is a party, or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in —

(i) the corporation; or

(ii) a related corporation of the corporation;

(*e*) participatory interests made available by —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he or she holds, or in which he or she has an interest and the nature and extent of that interest;

(*f*) such other securities or securities-based derivatives contracts as the Authority may prescribe, which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and

(*g*) any change in respect of the particulars of any matter referred to in paragraphs (*a*) to (*f*).

[2/2009; 4/2017]

(2) Paragraphs (*a*)(ii), (*b*)(ii), (*c*)(ii), (*d*)(ii), (*e*) and (*g*) (in respect of a change in the particulars of any matter referred to in paragraphs (*a*)(ii), (*b*)(ii), (*c*)(ii), (*d*)(ii) and (*e*)) of subsection (1) only apply to a director of a corporation which is a company.

[2/2009]

(3) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe; and

(*b*) must be given —

(i) in the case of a notice under subsection (1)(*g*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the shares, debentures, rights, options, contracts, participatory interests, other securities or securities-based derivatives contracts referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(4) For the purposes of this section —

(*a*) a director or chief executive officer of a corporation is deemed to have an interest in securities or securities-based derivatives contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the corporation) (as the case may be) holds or has an interest in those securities or securities-based derivatives contracts; and

(*b*) any contract entered into by, any assignment or right of subscription made or exercised by, or any grant made to, a family member of a director or chief executive officer of a corporation (not being himself or herself a director or chief executive officer of the corporation) is deemed to have been entered into by, made or exercised by or made to the director or chief executive officer.

[2/2009; 4/2017]

(5) In this section —

(*a*) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and

(*b*) a reference to a person who holds or acquires participatory interests, other securities or securities-based derivatives contracts referred to in subsection (1), or an interest in shares, debentures, participatory interests, other securities or securities-based derivatives contracts referred to in that subsection, includes a reference to a person who under an option holds or acquires a right to acquire or dispose of the participatory interests, securities or securities-based derivatives contracts, or the interest in shares, debentures, participatory interests, securities or securities-based derivatives contracts.

[2/2009; 4/2017]

(6) In this section, "family member" means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years.

[2/2009]

Penalties under this Subdivision

134.—(1) Any director or chief executive officer of a corporation who —

(*a*) intentionally or recklessly contravenes section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) or (*f*), or section 133(1)(*g*) in respect of a change in the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*);

(*b*) intentionally or recklessly contravenes section 133(3) in respect of a notice of the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*) or of a change in any of those particulars; or

(*c*) in purported compliance with section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) or (*f*), or section 133(1)(*g*) in respect of a change in the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*), provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of a corporation who —

(*a*) contravenes section 133(1) or (3); or

(*b*) in purported compliance with section 133, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (2) — Disclosure by substantial shareholders in corporation

Duty of substantial shareholder to notify corporation of interests

135.—(1) A person who is or (if the person has ceased to be one) had been a substantial shareholder in a corporation must give written notice to the corporation of particulars of the voting shares in the corporation in which the person has or had an interest or interests and the nature and extent of that interest or those interests.

[2/2009]

(2) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe;

(*b*) must be given within 2 business days after the person becomes aware that the person is or (if the person has ceased to be one) had been a substantial shareholder; and

(*c*) must be given even though the person has ceased to be a substantial shareholder before the expiration of the period referred to in paragraph (*b*).

[2/2009]

Duty of substantial shareholder to notify corporation of change in interests

136.—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a corporation in voting shares in the corporation, the substantial shareholder must give written notice to the corporation within 2 business days after the substantial shareholder becomes aware of the change.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), "percentage level", in relation to a substantial shareholder in a corporation, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(*a*) all the voting shares (excluding treasury shares) in the corporation; or

(*b*) where the share capital of the corporation is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

Duty of person who ceases to be substantial shareholder to notify corporation

137.—(1) A person who ceases to be a substantial shareholder in a corporation must give written notice to the corporation within

2 business days after the person becomes aware that the person has ceased to be a substantial shareholder.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

Beneficial owner to ensure notification by person who holds, acquires or disposes of interests on beneficial owner's behalf

137A. Where a person (*A*) authorises another person (*B*) to hold, acquire or dispose of, on *A*'s behalf, voting shares or an interest or interests in voting shares in a corporation, *A* must take reasonable steps to ensure that *B* notifies *A* as soon as practicable and, in any case, no later than 2 business days after any acquisition or disposal of any of those voting shares or interest or interests in voting shares effected by *B* on *A*'s behalf which will or may give rise to any duty on the part of *A* to give notice under this Subdivision.

[2/2009]

Notification by person who holds, acquires or disposes of interests for benefit of another person

137B. Where a person (*A*) holds voting shares in a corporation, being voting shares in which another person (*B*) has an interest, *A* must give to *B* a notice of any acquisition or disposal of any of those shares effected by *A*, in such form as the Authority may prescribe, as soon as practicable and, in any case, no later than 2 business days after acquiring or disposing of the shares.

[2/2009]

Corporation to keep register of substantial shareholders

137C.—(1) A corporation must keep a register in which it must immediately enter —

(*a*) the names of persons from whom it has received a notice under section 135; and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137, the information given in that notice.

[2/2009]

(2) The corporation must keep the register at its registered office or, if the corporation does not have a registered office, at its principal place of business in Singapore and the register must be open for inspection by a member of the corporation without charge, and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the corporation requires.

[2/2009]

(3) A person may request the corporation to provide the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the corporation requires for every page or part thereof required to be copied, and the corporation must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the corporation received the request.

[2/2009]

(4) The Authority may at any time in writing require the corporation to provide it with a copy of the register or any part of the register and the corporation must send the copy to the Authority within 7 days after the day on which the corporation received the requirement.

[2/2009]

(5) Any corporation which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) A corporation is not, by reason of anything done under this Subdivision —

(*a*) to be taken for any purpose of the Companies Act 1967 to have notice of; or

(*b*) to be put upon inquiry as to,

a right of a person to or in relation to a share in the corporation.

[2/2009]

Penalties under this Subdivision

137D.—(1) Any person who —

(*a*) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B; or

(*b*) in purported compliance with section 135, 136, 137 or 137B, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(*a*) contravenes section 135, 136(1) or (2), 137, 137A or 137B; or

(*b*) in purported compliance with section 135, 136, 137 or 137B, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Powers of court with respect to non-compliance by substantial shareholders

137E.—(1) Where a person is or has been a substantial shareholder in a corporation and has failed to comply with section 135, 136 or 137, a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person who is or has been a substantial shareholder from disposing of any interest in shares in the corporation in which that person is or has been a substantial shareholder;

(*b*) an order restraining a person who is, or is entitled to be the holder of the shares referred to in paragraph (*a*) from disposing of any interest in those shares;

(*c*) an order restraining the exercise by any person of any voting or other rights attached to any share in the corporation in which the substantial shareholder has or has had an interest;

(*d*) an order directing the corporation not to make payment, or to defer making payment, of any sum due from the corporation in respect of any share in which the substantial shareholder has or has had an interest;

(*e*) an order directing the sale of any or all of the shares in the corporation in which the substantial shareholder has or has had an interest;

(*f*) an order directing the corporation not to register or cause to be registered in the register of members the transfer or transmission of shares specified by the court;

(*g*) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any shares or interest in shares in the corporation specified by the court;

(*h*) an order that any exercise by any person of the voting or other rights attached to shares in the corporation specified by the court in which the substantial shareholder has or has had an interest be disregarded;

(*i*) for the purposes of securing compliance with any other order made under this section, an order directing the corporation or any other person to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any share may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

[2/2009]

(4) Where a share is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold share is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the person who is or has been a substantial shareholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

Power of corporation to require disclosure of beneficial interest in its voting shares

137F.—(1) Any corporation may by written notice require any member of the corporation within such reasonable time as is specified in the notice —

(*a*) to inform it whether the member holds any voting shares in the corporation as beneficial owner or as trustee; and

(*b*) if the member holds them as trustee, to indicate so far as the member can the persons for whom the member holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where a corporation is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in the corporation, the corporation may by written notice require that other person within such reasonable time as is specified in the notice —

(*a*) to inform it whether that other person holds that interest as beneficial owner or as trustee; and

(*b*) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) Any corporation may by written notice require any member of the corporation to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the corporation held by the member are the subject of an agreement or arrangement under which another person is entitled to control the member's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever a corporation receives information from a person pursuant to a requirement imposed on the person under this section

with respect to shares held by a member of the corporation, it is under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 137C —

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) the information received pursuant to the requirement.

[2/2009]

(7) Section 137C applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(*a*) intentionally or recklessly contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

(*a*) contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(*a*) or (9)(*a*) if the person proves that the information in question was already in the possession of the corporation or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (3) — Disclosure by corporation

Duty of corporation to make disclosure

137G.—(1) Where a corporation has been notified in writing by —

(*a*) a director or chief executive officer of the corporation pursuant to a requirement imposed on him or her under section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) or (*f*), or under section 133(1)(*g*) in respect of a change in the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*); or

(*b*) a substantial shareholder in the corporation pursuant to a requirement imposed on the substantial shareholder under section 135, 136 or 137,

the corporation must announce or otherwise disseminate the information stated in the notice to the organised market operated by the approved exchange on whose official list any or all of the shares of the corporation are listed, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

[2/2009; 4/2017]

(2) The corporation must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any corporation that —

(*a*) intentionally or recklessly contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information knowing that it is false or misleading in a material particular or reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any corporation that —

(*a*) contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not

exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a corporation under subsection (3) or (4), any officer of the corporation who —

(*a*) causes the corporation to contravene subsection (1);

(*b*) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(*c*) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

must —

(*d*) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(*e*) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding $25,000.

[2/2009]

(6) In this section, "officer" means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the corporation, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Division 2 — Disclosure of Interest in Business Trust and Interest in Trustee-Manager of Business Trust

Application and interpretation of this Division

137H.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) A reference to a registered business trust is a reference to a registered business trust any or all of the units in which are listed for quotation on the official list of an approved exchange.

[2/2009; 4/2017]

(3) A reference to a recognised business trust is a reference to a recognised business trust any or all of the units in which are listed for quotation on the official list of an approved exchange, such listing being a primary listing.

[2/2009; 4/2017]

(4) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities or securities-based derivatives contracts under this Division.

[35/2014; 4/2017]

(5) Section 130(6) and (7) applies for the purposes of —

(*a*) sections 135(2)(*b*), 136(1) and 137(1) as applied by section 137J(1); and

(*b*) sections 137L(6), 137N(2)(*b*)(i), 137P(1) and 137R(1),

as they apply for the purposes of sections 133(3)(*b*)(i), 135(2)(*b*), 136(1), 137(1) and 137E(6).

[2/2009]

Persons obliged to comply with this Division and power of Authority to grant exemption or extension

137I.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

Authority may extend scope of Division in certain circumstances

137IA. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(*a*) to any person or class of persons, other than the persons to which this Division applies;

(*b*) to any securities or securities-based derivatives contracts, or class of securities or securities-based derivatives contracts, other than the securities or securities-based derivatives contracts to which this Division applies;

(*c*) to any interests in securities or securities-based derivatives contracts, or class of interests in securities or securities-based derivatives contracts, other than the interests in securities or securities-based derivatives contracts to which this Division applies; or

(*d*) to require the disclosure of interests in any entity, arrangement or trust other than a business trust or a trustee-manager of a business trust,

and the provisions of this Division apply accordingly.

[4/2017]

Subdivision (1) — Disclosure by substantial unitholders of business trust

Duty of substantial unitholder to notify trustee-manager of interests

137J.—(1) Sections 135 to 137B apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a registered business trust or recognised business trust as though —

(*a*) references to the corporation to which notification should be given were references to the trustee-manager of the business trust;

(*b*) references to shares or voting shares in the corporation were references to units or voting units in the business trust; and

(*c*) references to a substantial shareholder in the corporation were references to a substantial unitholder of the business trust,

and such person must comply with those provisions accordingly.

[2/2009]

(2) Any person to whom subsection (1) applies who —

(*a*) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) Any person to whom subsection (1) applies who —

(*a*) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not

exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Trustee-manager to keep register of substantial unitholders

137K.—(1) The trustee-manager of a registered business trust or recognised business trust must keep a register in which it must immediately enter —

(*a*) the names of persons from whom it has received a notice under section 135 as applied by section 137J(1); and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137J(1), the information given in that notice.

[2/2009]

(2) The trustee-manager must keep the register at its registered office or, if the trustee-manager does not have a registered office, at its principal place of business in Singapore, and the register must be open for inspection by a unitholder of the business trust without charge and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the trustee-manager requires.

[2/2009]

(3) A person may request the trustee-manager to provide the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the trustee-manager requires for every page or part thereof required to be copied, and the

trustee-manager must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee-manager received the request.

[2/2009]

(4) The Authority may at any time in writing require the trustee-manager to provide it with a copy of the register or any part of the register and the trustee-manager must send the copy to the Authority within 7 days after the day on which the trustee-manager received the requirement.

[2/2009]

(5) Any trustee-manager which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Powers of court with respect to non-compliance by substantial unitholders

137L.—(1) Where a person is or has been a substantial unitholder of a registered business trust or recognised business trust and has failed to comply with section 135, 136 or 137 as applied by section 137J(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person from disposing of any interest in units in the business trust of which the person is or has been a substantial unitholder;

(*b*) an order restraining a person who is, or is entitled to be, the holder of the units referred to in paragraph (*a*) from disposing of any interest in those units;

(*c*) an order restraining the exercise by any person of any voting or other rights attached to any unit in the business trust in which the substantial unitholder has or has had an interest;

(*d*) an order directing the trustee-manager of the business trust not to make payment, or to defer making payment, out of the property of the business trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;

(*e*) an order directing the sale of any or all of the units in the business trust in which the substantial unitholder has or has had an interest;

(*f*) an order directing the trustee-manager of the business trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;

(*g*) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the business trust specified by the court;

(*h*) an order that any exercise by any person of the voting or other rights attached to units in the business trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;

(*i*) for the purposes of securing compliance with any other order made under this section, an order directing the trustee-manager of the business trust or any other person to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any unit may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the business trust.

[2/2009]

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the person who is or has been a substantial unitholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

Power of trustee-manager to require disclosure of beneficial interest in voting units

137M.—(1) The trustee-manager of a registered business trust or recognised business trust may by written notice require any unitholder of the business trust within such reasonable time as is specified in the notice —

(*a*) to inform it whether the unitholder holds any voting units in the business trust as beneficial owner or as trustee; and

(*b*) if the unitholder holds them as trustee, to indicate so far as the unitholder can the persons for whom the unitholder holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where the trustee-manager of a registered business trust or recognised business trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the business trust, the trustee-manager may by written notice require that other person within such reasonable time as is specified in the notice —

(*a*) to inform it whether that other person holds that interest as beneficial owner or as trustee; and

(*b*) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) The trustee-manager of a registered business trust or recognised business trust may by written notice require any unitholder of the business trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the business trust held by the unitholder are the subject of an agreement or arrangement under which another person is entitled to

control the unitholder's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever the trustee-manager of a registered business trust or recognised business trust receives information from a person pursuant to a requirement imposed on the person under this section with respect to units held by a unitholder of the business trust, it is under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137K —

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) the information received pursuant to the requirement.

[2/2009]

(7) Section 137K applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(*a*) intentionally or recklessly contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing

offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

(*a*) contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(*a*) or (9)(*a*) if the person proves that the information in question was already in the possession of the trustee-manager of the registered business trust or recognised business trust, or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (2) — Disclosure by directors and chief executive officer of trustee-manager of business trust

Duty of director and chief executive officer of trustee-manager to notify of interests

137N.—(1) Every director and chief executive officer of the trustee-manager of a registered business trust or recognised business trust must give written notice to the trustee-manager of particulars of —

(*a*) units or derivatives of units in the business trust, being units or derivatives of units held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures or units of debentures of the business trust which are held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*c*) such other securities or securities-based derivatives contracts as the Authority may prescribe which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and

(*d*) any change in respect of the particulars of any matter referred to in paragraphs (*a*), (*b*) and (*c*).

[2/2009; 4/2017]

(2) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe; and

(*b*) must be given —

(i) in the case of a notice under subsection (1)(*d*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, derivatives of units, debentures, units of debentures, other securities or securities-based derivatives contracts referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(3) For the purposes of this section, a director or chief executive officer of a trustee-manager is deemed to have an interest in securities or securities-based derivatives contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the trustee-manager) (as the case may be) has an interest in those securities or securities-based derivatives contracts.

[2/2009; 4/2017]

(4) In this section —

"family member" means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years;

"unit", in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[2/2009]

Penalties under this Subdivision

137O.—(1) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

(*a*) intentionally or recklessly contravenes section 137N(1) or (2); or

(*b*) in purported compliance with section 137N, provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

(*a*) contravenes section 137N(1) or (2); or

(*b*) in purported compliance with section 137N, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (3) — Disclosure by holders of voting shares in trustee-manager

Duty of holders of voting shares in trustee-manager to notify trustee-manager

137P.—(1) Where the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or

recognised business trust reaches, crosses or falls below 15%, 30%, 50% or 75%, the person must give written notice to the trustee-manager within 2 business days after the person becomes aware of this.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust is ascertained by expressing the total votes attached to all the voting shares in which the person has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(*a*) all the voting shares (excluding treasury shares) in the trustee-manager; or

(*b*) where the share capital of the trustee-manager is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

Penalties under this Subdivision

137Q.—(1) Any person who —

(*a*) intentionally or recklessly contravenes section 137P(1) or (2); or

(*b*) in purported compliance with section 137P, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every

day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(*a*) contravenes section 137P(1) or (2); or

(*b*) in purported compliance with section 137P, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (4) — Disclosure by trustee-manager

Duty of trustee-manager of business trust to make disclosure

137R.—(1) Where the trustee-manager of a registered business trust or recognised business trust —

(*a*) acquires or disposes of interests in units or derivatives of units in, or debentures or units of debentures of, the business trust;

(*aa*) acquires or disposes of interests in such securities or securities-based derivatives contracts of the business trust as may be prescribed by regulations made under section 341; or

(*b*) has been notified in writing by —

(i) a substantial unitholder of the business trust pursuant to a requirement imposed on the substantial unitholder under section 135, 136 or 137 as applied by section 137J(1);

(ii) a director or chief executive officer of the trustee-manager pursuant to a requirement imposed on him or her under section 137N; or

(iii) a person who holds an interest or interests in voting shares in the trustee-manager pursuant to a requirement imposed on the person under section 137P,

the trustee-manager must announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received (as the case may be) to the organised market operated by the approved exchange on whose official list any or all of the units in the business trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the trustee-manager became aware of the acquisition or disposal, or received the notice.

[2/2009; 4/2017]

(2) The trustee-manager must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any trustee-manager of a registered business trust or recognised business trust that —

(*a*) intentionally or recklessly contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information which the trustee-manager knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any trustee-manager of a registered business trust or recognised business trust that —

(*a*) contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a trustee-manager under subsection (3) or (4), any officer of the trustee-manager who —

(*a*) causes the trustee-manager to contravene subsection (1);

(*b*) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(*c*) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

(*d*) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(*e*) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding $25,000.

[2/2009]

(6) In this section, "officer" means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the trustee-manager, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Division 3 — Disclosure of Interests in Real Estate Investment Trust and Interests in Shares of Responsible Person

Application and interpretation of this Division

137S.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) In this Division —

"real estate investment trust" means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and any or all the units in which are listed, by way of a primary listing, for quotation on the official list of an approved exchange;

"trustee" means —

(*a*) in relation to a real estate investment trust authorised under section 286, the trustee approved under section 289 for the trust; and

(*b*) in relation to any other real estate investment trust, an entity equivalent to a trustee referred to in paragraph (*a*).

[2/2009; 4/2017]

(3) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities, securities-based derivatives contracts or units in a collective investment scheme under this Division.

[35/2014; 4/2017]

(4) Section 130(6) and (7) applies for the purposes of —

(*a*) sections 135(2)(*b*), 136(1) and 137(1) as applied by section 137U(1); and

(*b*) sections 137W(6), 137Y(2)(*b*)(i), 137ZA(1) and 137ZC(1),

as they apply for the purposes of sections 133(3)(*b*)(i), 135(2)(*b*), 136(1), 137(1) and 137E(6).

[2/2009]

Persons obliged to comply with Division and power of Authority to grant exemption or extension

137T.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether

citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

Authority may extend scope of Division in certain circumstances

137TA. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(*a*) to any person or class of persons, other than the persons to which this Division applies;

(*b*) to any securities, securities-based derivatives contracts or units in a collective investment scheme, or class of securities, securities-based derivatives contracts or units in a collective investment scheme, other than the securities, securities-based derivatives contracts or units in a collective investment scheme to which this Division applies;

(*c*) to any interests in securities, securities-based derivatives contracts or units in a collective investment scheme, or class of interests in securities, securities-based derivatives contracts or units in a collective investment scheme, other than the interests in securities, securities-based derivatives contracts or units in a collective investment scheme to which this Division applies; or

(*d*) to require the disclosure of interests in any entity, arrangement or trust other than a real estate investment trust or a responsible person for a real estate investment trust,

and the provisions of this Division apply accordingly.

[4/2017]

Subdivision (1) — Disclosure by substantial unitholders of real estate investment trust

Duty of substantial unitholder to notify trustee and responsible person of interests

137U.—(1) Sections 135 to 137B apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a real estate investment trust as though —

(*a*) references to the corporation to which notification should be given were references to —

(i) the trustee of the real estate investment trust; and

(ii) the responsible person for the real estate investment trust;

(*b*) references to shares or voting shares in the corporation were references to units or voting units in the real estate investment trust; and

(*c*) references to a substantial shareholder in the corporation were references to a substantial unitholder of the real estate investment trust,

and such person must comply with those provisions accordingly.

[2/2009]

(2) Any person to whom subsection (1) applies who —

(*a*) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) Any person to whom subsection (1) applies who —

(*a*) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any

information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Trustee to keep register of substantial unitholders

137V.—(1) The trustee of a real estate investment trust must keep a register in which it must immediately enter —

(*a*) the names of persons from whom it has received a notice under section 135 as applied by section 137U(1); and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137U(1), the information given in that notice.

[2/2009]

(2) The trustee must keep the register at its registered office or, if the trustee does not have a registered office, at its principal place of business in Singapore, and the register must be open for inspection by a unitholder of the real estate investment trust without charge and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the trustee requires.

[2/2009]

(3) A person may request the trustee to provide the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the trustee requires for every page or part thereof required to be copied, and the trustee must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee received the request.

[2/2009]

(4) The Authority may at any time in writing require the trustee to provide it with a copy of the register or any part of the register and the trustee must send the copy to the Authority within 7 days after the day on which the trustee received the requirement.

[2/2009]

(5) Any trustee which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Powers of court with respect to non-compliance by substantial unitholders

137W.—(1) Where a person is or has been a substantial unitholder of a real estate investment trust and has failed to comply with section 135, 136 or 137 as applied by section 137U(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person who is or has been a substantial unitholder from disposing of any interest in units in the real estate investment trust of which the person is or has been a substantial unitholder;

(*b*) an order restraining a person who is, or is entitled to be, the holder of units referred to in paragraph (*a*) from disposing of any interest in those units;

(*c*) an order restraining the exercise by any person of any voting or other rights attached to any unit in the real estate

investment trust in which the substantial unitholder has or has had an interest;

(*d*) an order directing the trustee of the real estate investment trust not to make payment, or to defer making payment, out of the property of the trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;

(*e*) an order directing the sale of any or all of the units in the real estate investment trust in which the substantial unitholder has or has had an interest;

(*f*) an order directing the trustee of the real estate investment trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;

(*g*) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the real estate investment trust specified by the court;

(*h*) an order that any exercise by any person of the voting or other rights attached to units in the real estate investment trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;

(*i*) for the purposes of securing compliance with any other order made under this section, an order directing the responsible person for or the trustee of the real estate investment trust, or any other person, to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any unit may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the

court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the real estate investment trust.

[2/2009]

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the person who is or has been a substantial unitholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000

for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

Power of trustee to require disclosure of beneficial interest in voting units

137X.—(1) The trustee of a real estate investment trust may by written notice require any unitholder of the trust within such reasonable time as is specified in the notice —

(*a*) to inform it whether the unitholder holds any voting units in the trust as beneficial owner or as trustee; and

(*b*) if the unitholder holds them as trustee, to indicate so far as the unitholder can the persons for whom the unitholder holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where the trustee of a real estate investment trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the trust, the trustee may by written notice require that other person within such reasonable time as is specified in the notice —

(*a*) to inform it whether that other person holds that interest as beneficial owner or as trustee; and

(*b*) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) The trustee of a real estate investment trust may by written notice require any unitholder of the trust to inform it, within such

reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the trust held by the unitholder are the subject of an agreement or arrangement under which another person is entitled to control the unitholder's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever the trustee of a real estate investment trust receives information from a person pursuant to a requirement imposed on the person under this section with respect to units held by a unitholder of the trust, it is under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137V —

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) the information received pursuant to the requirement.

[2/2009]

(7) Section 137V applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(*a*) intentionally or recklessly contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

(*a*) contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(*a*) or (9)(*a*) if the person proves that the information in question was already in the possession of the trustee of the real estate investment trust, or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (2) — Disclosure by directors and chief executive officer of responsible person

Duty of director and chief executive officer of responsible person to notify of interests

137Y.—(1) Every director and chief executive officer of the responsible person for a real estate investment trust must give written notice to the responsible person of particulars of —

(*a*) units in the trust, being units held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures or units of debentures of the trust which are held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*c*) such other securities, securities-based derivatives contracts or units in a collective investment scheme as the Authority may prescribe, which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and

(*d*) any change in respect of the particulars of any matter referred to in paragraphs (*a*), (*b*) and (*c*).

[2/2009; 4/2017]

(2) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe; and

(*b*) must be given —

(i) in the case of a notice under subsection (1)(*d*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, debentures, units of debentures, other securities, securities-based derivatives contracts or units in a collective investment scheme referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(3) For the purposes of this section, a director or chief executive officer of a responsible person is deemed to have an interest in securities, securities-based derivatives contracts or units in a collective investment scheme referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the responsible person) (as the case may be) has an interest in those securities, securities-based derivatives contracts or units in a collective investment scheme.

[2/2009; 4/2017]

(4) In this section —

"family member" means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years;

"unit", in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[2/2009]

Penalties under this Subdivision

137Z.—(1) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(*a*) intentionally or recklessly contravenes section 137Y(1) or (2); or

(*b*) in purported compliance with section 137Y, provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(*a*) contravenes section 137Y(1) or (2); or

(*b*) in purported compliance with section 137Y, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (3) — Disclosure by holders of voting shares in responsible person

Duty of holders of voting shares in responsible person to notify responsible person

137ZA.—(1) Where the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust reaches, crosses or falls below 15%, 30%, 50% or 75%, the person must give written notice to the responsible person within 2 business days after the person becomes aware of this.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust is ascertained by expressing the total votes attached to all the voting shares in which the person has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(*a*) all the voting shares (excluding treasury shares) in the responsible person; or

(*b*) where the share capital of the responsible person is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

Penalties under this Subdivision

137ZB.—(1) Any person who —

(*a*) intentionally or recklessly contravenes section 137ZA(1) or (2); or

(*b*) in purported compliance with section 137ZA, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(*a*) contravenes section 137ZA(1) or (2); or

(*b*) in purported compliance with section 137ZA, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (4) — Disclosure by responsible person

Duty of responsible person for real estate investment trust to make disclosure

137ZC.—(1) Where the responsible person for a real estate investment trust —

(*a*) acquires or disposes of interests in units in, or debentures or units of debentures of, the real estate investment trust;

(*aa*) acquires or disposes of interests in such securities, securities-based derivatives contracts or units in a collective investment scheme of the real estate investment trust as may be prescribed by regulations made under section 341; or

(*b*) has been notified in writing by —

(i) a substantial unitholder of the real estate investment trust pursuant to a requirement imposed on the substantial unitholder under section 135, 136 or 137 as applied by section 137U(1);

(ii) a director or chief executive officer of the responsible person pursuant to a requirement imposed on him or her under section 137Y; or

(iii) a person who holds an interest or interests in voting shares in the responsible person pursuant to a requirement imposed on the person under section 137ZA,

the responsible person must announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received (as the case may be) to the organised market operated by the approved exchange on whose official list any or all of the units in the trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the responsible person became aware of the acquisition or disposal, or received the notice.

[2/2009; 4/2017]

(2) The responsible person must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any responsible person for a real estate investment trust that —

(*a*) intentionally or recklessly contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information which the responsible person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any responsible person for a real estate investment trust that —

(*a*) contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a responsible person under subsection (3) or (4), any officer of the responsible person who —

(*a*) causes the responsible person to contravene subsection (1);

(*b*) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(*c*) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

(*d*) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(*e*) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding $25,000.

[2/2009]

(6) In this section, "officer" means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the responsible person, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Division 4 — Civil Penalty

Civil penalty

137ZD.—(1) Whenever it appears to the Authority that any person has —

(*a*) intentionally or recklessly, contravened any of the following provisions:

(i) section 133(1) or (3), 135, 136(1) or (2), 137, 137A, 137B, 137F(5), 137G(1) or (2), 137M(5), 137N(1) or (2), 137P(1) or (2), 137R(1) or (2), 137X(5), 137Y(1) or (2), 137ZA(1) or (2) or 137ZC(1) or (2);

(ii) section 135, 136, 137, 137A or 137B as applied by section 137J(1);

(iii) section 135, 136, 137, 137A or 137B as applied by section 137U(1);

(*b*) in purported compliance with any of the following provisions, provided, announced or disseminated any information which the person knows is false or misleading in a material particular or is reckless as to whether it is:

(i) section 133, 135, 136, 137, 137B, 137F(5), 137G, 137M(5), 137N, 137P, 137R, 137X(5), 137Y, 137ZA or 137ZC;

(ii) section 135, 136, 137 or 137B as applied by section 137J(1);

(iii) section 135, 136, 137 or 137B as applied by section 137U(1); or

(*c*) being an officer of a corporation to which Division 1 applies, an officer of a trustee-manager of a registered or recognised business trust to which Division 2 applies, or an officer of a responsible person for a real estate investment trust to which Division 3 applies, intentionally or recklessly committed an act referred to in subsection (5)(*a*), (*b*) or (*c*) of section 137G, 137R or 137ZC, as the case may be,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that act.

[2/2009]

(2) If the court is satisfied on a balance of probabilities that subsection (1)(*a*), (*b*) or (*c*) (as the case may be) has been proved, the court may make an order against the person for the payment of a civil penalty of a sum not less than $50,000 and not more than $2 million.

[2/2009]

(3) Despite subsection (2), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of having committed an act referred to in subsection (1)(*a*), (*b*) or (*c*) (whichever is applicable), and the order may be made on such terms as may be agreed between the Authority and the person.

[2/2009]

(4) Nothing in this section is to be construed to prevent the Authority from entering into an agreement with the person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) for an act referred to in subsection (1)(*a*), (*b*) or (*c*).

[2/2009]

(5) A civil penalty imposed under this section is to be paid into the Consolidated Fund and is to be treated as a debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[2/2009; 4/2017]

(6) If the person fails to pay the civil penalty imposed on the person within the time specified in the court order referred to in subsection (3) or specified under the agreement referred to in subsection (4), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

[2/2009]

(7) Any defence that is available to a person who is prosecuted for an act under subsection (1)(*a*), (*b*) or (*c*), is also available to a person against whom an action is brought under this section for the same act.

[2/2009]

Action under section 137ZD not to commence, etc., in certain situations

137ZE.—(1) An action under section 137ZD for an act referred to in subsection (1)(*a*), (*b*) or (*c*) of that section must not be commenced against any person —

(*a*) after the expiration of 6 years from the date of the act; or

(*b*) if the person has been convicted or acquitted in criminal proceedings instituted against the person for that act, except where the person has been acquitted because of the withdrawal of the charge against the person.

[2/2009]

(2) An action under section 137ZD against any person for an act referred to in subsection (1)(*a*), (*b*) or (*c*) of that section must be stayed after criminal proceedings have been commenced against the person for that act, and may thereafter be continued only if —

(*a*) that person has been discharged in respect of that act and the discharge does not amount to an acquittal; or

(*b*) the charge against that person in respect of that act has been withdrawn.

[2/2009]

Jurisdiction of District Court

137ZF. A District Court has jurisdiction to hear and determine any action under section 137ZD regardless of the monetary amount.

[2/2009]

Rules of Court

137ZG. Rules of Court may be made —

(*a*) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under section 137ZD; and

(*b*) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

[2/2009]

PART 7A

SHORT SELLING

[4/2017]

Interpretation of this Part

137ZH.—(1) In this Part, unless the context otherwise requires —

"securities lending arrangement" means a written arrangement where a person (called in this Part the lender) who has an interest in specified capital markets products is to transfer title to some or all of the specified capital markets products to another person (called in this Part the borrower) for an agreed period of time, after which the borrower is to transfer title to those specified capital markets products back to the lender;

"short position" means the amount by which the quantity, volume or value of any specified capital markets products in which a person has an interest is less than the quantity, volume or value of the specified capital markets products which the person is under an obligation to deliver, where the quantity, volume or value of any specified capital markets products is determined in accordance with the criteria, methods or formulae prescribed by regulations made under section 137ZM;

"short sell order" means an order to sell any specified capital markets products where the person who makes the order does not, at the time of the order, have an interest in the specified capital markets products;

"specified capital markets products" means any capital markets products listed or to be listed on an approved exchange that is, or that belongs to a class of capital markets products that is, prescribed by regulations made under section 137ZM.

[4/2017]

(2) In this Part and subject to subsection (3), a person has an interest in specified capital markets products if —

(*a*) the person is the legal owner of the specified capital markets products;

(*b*) the person is the beneficial owner of the specified capital markets products;

(*c*) the person has authority (whether formal or informal, or express or implied) to dispose of the specified capital markets products;

(*d*) the person —

(i) has purchased or entered into an unconditional agreement or arrangement to purchase the specified capital markets products, but has not received delivery of the specified capital markets products;

(ii) has tendered the specified capital markets products for conversion or exchange, or has issued irrevocable instructions to convert or exchange capital markets products into the specified capital markets products, but has not received delivery of the specified capital markets products;

(iii) has exercised an option to subscribe for the specified capital markets products, but has not received delivery of the specified capital markets products; or

(iv) has exercised a right under a warrant to subscribe for the specified capital markets products, but has not received delivery of the specified capital markets products,

and, under the agreement, arrangement, conversion, exchange, option or right (referred to in sub-paragraphs (i) to (iv)), the person is to receive delivery of the specified capital markets products before the time that the person is to deliver the specified capital markets products;

(*e*) the person —

(i) is the lender in a securities lending arrangement;

(ii) has transferred title to the specified capital markets products to the borrower in the securities lending arrangement; and

(iii) is to receive title from the borrower in the securities lending arrangement to the specified capital markets products before the time that the person is to deliver the specified capital markets products; or

(*f*) the person is a party to an agreement or arrangement that is, or that belongs to a class of agreements or arrangements that is, prescribed by regulations made under section 137ZM for the purposes of this paragraph.

[4/2017]

(3) Despite subsection (2), a person does not have an interest in specified capital markets products if —

(*a*) the person is a borrower under a securities lending arrangement and has obtained title to the specified capital markets products pursuant to the securities lending arrangement;

(*b*) the person is the legal owner or the beneficial owner of the specified capital markets products but has sold, or entered into an unconditional agreement or arrangement to sell, the specified capital markets products; or

(*c*) the person is the legal owner or the beneficial owner of the specified capital markets products, or has authority to dispose of the specified capital markets products, but is a party to an agreement or arrangement that is, or that belongs to a class of agreements or arrangements that is, prescribed by regulations made under section 137ZM for the purposes of this paragraph.

[4/2017]

(4) In the definition of "short position" in subsection (1), the following are the specified capital markets products which a person is under an obligation to deliver:

(*a*) the specified capital markets products in respect of which the person has an obligation to deliver under a sale agreement, but has not delivered;

(*b*) the specified capital markets products in respect of which the person has an obligation to vest title in a lender under a securities lending arrangement, but has not vested title;

(*c*) the specified capital markets products in respect of which the person has any other non-contingent legal obligation to deliver, but has not delivered.

[4/2017]

Persons obliged to comply with this Part and power of Authority to grant exemptions or extensions

137ZI.—(1) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[4/2017]

(2) This Part extends to acts done or omitted to be done outside Singapore.

[4/2017]

(3) Despite section 337(1), the Authority may by regulations made under section 137ZM exempt any person or class of persons from all or any provisions of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(4) The Authority may, by written notice, exempt any person or class of persons from all or any provisions of this Part, subject to such conditions or restrictions as the Authority may specify in writing.

[4/2017]

(5) It is not necessary to publish any exemption granted under subsection (4) in the *Gazette*.

[4/2017]

(6) Any person that is exempted under subsection (3) or (4) must satisfy every condition or restriction imposed on the person under the applicable subsection.

[4/2017]

(7) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(8) Any person who contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Disclosure of short sell orders

137ZJ.—(1) Subject to subsection (2), a person (*A*) who makes a short sell order on any approved exchange must, before or at the time of the short sell order, disclose to the approved exchange —

(*a*) that *A* intends to make or is making a short sell order; and

(*b*) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(2) Where another person (*B*) places the short sell order mentioned in subsection (1) on *A*'s behalf, *A* need not comply with subsection (1) if, before or at the time of the short sell order, *A* discloses to *B* —

(*a*) that *A* intends to make or is making a short sell order; and

(*b*) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(3) Where *A* has made the disclosure mentioned in subsection (2) to *B*, *B* must, before or at the time of the short sell order, disclose to the approved exchange —

(*a*) that *A* intends to make or is making a short sell order; and

(*b*) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[4/2017]

Reporting of short position

137ZK.—(1) Where a person's (*A*) short position in relation to any specified capital markets products is equivalent to or more than the short position threshold prescribed by regulations made under section 137ZM, *A* must, at the time or times and in the form and manner prescribed by regulations made under section 137ZM, report to the Authority directly or through another person (*B*) —

(*a*) information on —

(i) the identity and business activities of *A* and (if applicable) *B*; and

(ii) *A*'s short position in relation to the specified capital markets products,

prescribed by regulations made under section 137ZM; and

(*b*) any change to the information mentioned in paragraph (*a*).

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to publish information

137ZL. Without affecting section 322, the Authority may, for the purpose of maintaining a fair, orderly or transparent market, publish in any form or manner the information or any part of the information reported to the Authority under section 137ZK(1).

[4/2017]

Power of Authority to make regulations

137ZM. Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[4/2017]

PART 8

SECURITIES INDUSTRY COUNCIL AND TAKE-OVER OFFERS

Securities Industry Council

138.—(1) The advisory body known as the Securities Industry Council referred to in section 14 of the repealed Securities Industry Act (Cap. 289, 1985 Revised Edition) continues in existence as if it had been established under this Act.

(2) The function of the Securities Industry Council is, in addition to the functions conferred upon it under this Part, to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council consists of such representatives of business, the Government and the Authority as the Minister may appoint and those representatives are to serve for such period or periods as the Minister may determine.

(4) The Securities Industry Council has the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(5) Nothing in subsection (4) compels the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of a document containing a privileged communication made by or to him or her in that capacity or authorise the taking of possession of any such document which is in his or her possession.

[34/2012]

(6) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to produce the document referred to in subsection (5) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom or by or on behalf of whom the communication was made.

[34/2012]

(7) The Authority may consult the Securities Industry Council for the proper and effective implementation of this Act.

(8) For the purposes of this Act, every member of the Securities Industry Council —

(*a*) is deemed to be a public servant within the meaning of the Penal Code 1871; and

(*b*) has, in case of any action or suit brought against him or her for any act done or omitted to be done in the execution of his or her duty under the provisions of this Act, the like protection and privileges as are by law given to a Judge in the execution of his or her office.

(9) The Securities Industry Council must in the exercise of its functions have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

(10) Subject to the provisions of this Act, the Securities Industry Council may regulate its own procedure and is not bound by the rules of evidence.

Take-over Code

139.—(1) This section and section 140 apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies unincorporate, whether incorporated or carrying on business in Singapore or not, and extend to acts done outside Singapore.

(2) For the more effective administration, supervision and control of take-over offers and matters connected therewith, the Authority is to, on the advice of the Securities Industry Council and under section 321, issue a code known as the Singapore Code on Take-overs and Mergers (called in this Act the Take-over Code).

(3) To avoid doubt, the Take-over Code is deemed not to be subsidiary legislation.

(4) The Take-over Code applies to a take-over offer and to matters connected therewith, and all parties concerned in a take-over offer or a matter connected therewith must comply with its provisions.

(5) The Take-over Code is administered and enforced by the Securities Industry Council.

(6) The Authority may, on the advice of the Securities Industry Council, revise the Take-over Code by deleting, amending or adding to the provisions thereof.

(7) The Securities Industry Council may issue rulings on the interpretation of the general principles and rules in the Take-over Code and lay down the practice to be followed by parties concerned in a take-over offer or a matter connected therewith, and such rulings or practice is final.

(8) A failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Take-over Code does not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(9) Nothing in subsection (8) is to be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party concerned in a take-over offer or a matter connected therewith.

(10) Where the Securities Industry Council has reason to believe that any party concerned in a take-over offer or a matter connected therewith, or any person advising on a take-over offer or a matter connected therewith, is in breach of the provisions of the Take-over Code or is otherwise believed to have committed acts of misconduct in relation to such take-over offer or matter, the Securities Industry Council has power to enquire into the suspected breach or misconduct.

(11) For the purpose of subsection (10), the Securities Industry Council may summon any person to give evidence on oath or affirmation, which it is authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

Offences relating to take-over offers

140.—(1) A person who has no intention to make an offer in the nature of a take-over offer must not give notice or publicly announce that the person intends to make a take-over offer.

(2) A person must not make a take-over offer or give notice or publicly announce that the person intends to make a take-over offer if the person has no reasonable or probable grounds for believing that the person will be able to perform the person's obligations if the take-over offer is accepted or approved, as the case may be.

(3) Where a person contravenes subsection (1) or (2), the person and, where the person is a corporation, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

PART 9

SUPERVISION AND INVESTIGATION

Division 1 — Supervisory Powers

[2/2009]

Subdivision (1) — Powers of Authority to require disclosure of information about capital markets products

[4/2017]

Interpretation of this Subdivision

141. In this Subdivision, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

Acquisition and disposal of capital markets products

142.—(1) The Authority may, where it considers it necessary for the protection of investors, require the holder of a capital markets services licence to deal in capital markets products, or an exempt person carrying on business in such activity, to disclose to the Authority, in relation to any acquisition or disposal of capital markets products —

(*a*) the name of the person from or through whom or on whose behalf the capital markets products were acquired; or

(*b*) the name of the person to or through whom or on whose behalf the capital markets products were disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

[4/2017]

(2) The Authority may require a person who has acquired, held or disposed of capital markets products to disclose to the Authority whether the person acquired, held or disposed of those capital markets products (as the case may be) as trustee for, or on behalf of, another person (whether or not as a nominee), and if so —

(*a*) the name of that other person; and

(*b*) the nature of any instructions given to the firstmentioned person in respect of the acquisition, holding or disposal.

[4/2017]

(3) The Authority may require an approved exchange to disclose to the Authority, in relation to an acquisition or disposal of capital markets products on the organised market of that approved exchange, the names of the members of that approved exchange who acted in the acquisition or disposal.

[4/2017]

(4) The Authority may require an approved clearing house or a recognised clearing house for an organised market to disclose to the Authority, in relation to any dealing in capital markets products on that organised market, the names of the members of the approved clearing house or recognised clearing house who were concerned in any act or omission in relation to the dealing.

[4/2017]

Exercise of certain powers in relation to capital markets products and financial instruments

143.—(1) This section applies where the Authority considers that —

(*a*) it may be necessary to prohibit trading in securities or securities-based derivatives contracts or units in a collective investment scheme under section 46;

(*b*) it may be necessary to give a direction or take any action under section 46AA or 81S in relation to any capital markets products or financial instruments;

(*c*) a person may have contravened any of the provisions of Part 7 in relation to any capital markets products; or

(*d*) a person may have contravened any of the provisions of Part 12 in relation to any capital markets products or financial instruments.

[4/2017]

(2) The Authority may require an officer of an entity or trust, the securities, securities-based derivatives contracts and units in a collective investment scheme of which are mentioned in subsection (1), to disclose to the Authority any information of which he or she is aware and which may have affected any dealing or trading that has taken place, or which may affect any dealing or trading that may take place, in the securities, securities-based derivatives contracts and units in a collective investment scheme.

[4/2017]

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

(*a*) any dealing in capital markets products mentioned in subsection (1);

(*b*) any advice given, or any report or analysis issued or published concerning such capital markets products, by the holder of a capital markets services licence to deal in capital markets products, or a representative of such a holder;

(*c*) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to deal in capital markets products and who has dealt in or given advice or issued or published a report or an analysis concerning such capital markets products;

(*d*) the financial position of any business carried on by a nominee controlled by a person mentioned in paragraph (*c*) or jointly controlled by 2 or more persons at least one of whom is a person mentioned in that paragraph;

(*e*) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in capital markets products, being a book relating to dealings in such capital markets products,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[4/2017]

Exercise of certain powers in relation to financial benchmarks

144.—(1) This section applies where the Authority considers that —

(*a*) it may be necessary to give a direction in relation to any designated benchmark under section 123ZZB; or

(*b*) a person may have contravened any of the provisions of Part 12 in relation to a financial benchmark.

[4/2017]

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

(*a*) the activity of administering a financial benchmark;

(*b*) the activity of providing information in relation to a financial benchmark;

(*c*) the financial position of any authorised benchmark administrator, exempt benchmark administrator,

authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter;

(*d*) the financial position of any business carried on by a nominee controlled by a person mentioned in paragraph (*c*) or jointly controlled by 2 or more persons, at least one of whom is a person mentioned in that paragraph;

(*e*) an audit of, or any report of an auditor concerning, any book of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter, or designated benchmark submitter, being a book relating to a designated benchmark,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[4/2017]

Self-incrimination

145.—(1) A person is not excused from disclosing information to the Authority, under a requirement made of the person under section 142, 143 or 144, on the ground that the disclosure of the information might tend to incriminate the person.

(2) Where a person claims, before making a statement disclosing information that the person is required to disclose by a requirement made of the person under section 142, 143 or 144, that the statement might tend to incriminate the person, that statement —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings under section 148; but

(*b*) is admissible in evidence for civil proceedings under Part 12.

Saving for advocates and solicitors

146.—(1) Nothing in this Subdivision compels the disclosure by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of information containing a privileged communication made by or to him or her in that capacity.

[34/2012]

(2) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to disclose the information referred to in subsection (1) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[34/2012]

Immunities

147.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the Authority if the person had done so in good faith in compliance with a requirement of the Authority under section 142, 143 or 144.

(2) Any person who complies with a requirement of the Authority under section 142, 143 or 144 is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

Offences

148.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, 143 or 144 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, 143 or 144, discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that the defendant believed

on reasonable grounds that the information or statement was true and was not misleading.

Copies of or extracts from documents to be admitted in evidence

149.—(1) Subject to this section, a copy of or extract from a document produced under this Subdivision that is proved to be a true copy of the document or of the relevant part of the document is admissible in evidence as if it were the original document or the relevant part of the original document.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Subdivision (2) — Inspection powers of Authority

Inspection by Authority

150.—(1) The Authority may inspect under conditions of secrecy, the books of an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, an approved trustee mentioned in section 289(1), the holder of a capital markets services licence, an exempt person, an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter, a designated benchmark submitter, or a representative.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

(2) For the purpose of an inspection under this section —

(*a*) a person referred to in subsection (1) or any person in possession of the books, must produce such books to the

Authority and give such information and facilities as the Authority may require; and

(*b*) a person referred to in subsection (1) must procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as the Authority may require.

(3) The Authority may —

(*a*) make copies of, or take possession of, any of the books;

(*b*) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and

(*c*) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on.

(4) No person is entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority, the Authority —

(*a*) must permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and

(*b*) may permit another person to inspect any of the books.

(6) The Authority may require a person who produced any of the books to the Authority to explain to the best of the person's knowledge and belief any matter about the compilation of the books or to which the books relate.

(7) Any person who, without reasonable excuse, fails to comply with subsection (2) or a requirement of the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Sections 146 and 147 apply, with the necessary modifications, in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 applies, with the necessary modifications, in relation to a copy of, or extract from, a book inspected under this section.

Confidentiality of inspection reports

150A.—(1) Where a written report or any part of a written report (called in this section the report) has been produced by the Authority upon an inspection under section 150 in respect of any person mentioned in subsection (1) of that section (called in this section the inspected person) and is provided by the Authority to the inspected person, the report must not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[4/2017]

(2) Disclosure of the report referred to in subsection (1) may be made —

(*a*) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that inspected person;

(*b*) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or

(*c*) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(*c*), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the inspected person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

(*a*) the disclosure was made contrary to the person's desire;

(*b*) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(*c*) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

Subdivision (3) — Inspection powers of foreign regulatory authority

Inspection by foreign regulatory authority

150B.—(1) A foreign regulatory authority of a country or jurisdiction other than Singapore may conduct an inspection in Singapore of the books of —

(*a*) the holder of a capital markets services licence;

(*b*) a person exempted under section 99(1)(*a*), (*b*), (*c*), (*d*) or (*h*) from the requirement to hold a capital markets services licence;

(*c*) an approved exchange;

(*d*) a recognised market operator incorporated in Singapore;

(*e*) a licensed trade repository;

(*f*) an approved clearing house;

(*g*) a recognised clearing house incorporated in Singapore;

(*h*) an approved holding company incorporated in Singapore;

(*i*) an approved trustee mentioned in section 289;

(*j*) an authorised benchmark administrator;

(*k*) an exempt benchmark administrator;

(*l*) an authorised benchmark submitter;

(*m*) an exempt benchmark submitter; or

(*n*) a designated benchmark submitter,

(called in this section and in section 150C a relevant person) with the prior written approval of the Authority and under conditions of secrecy.

[2/2009; 4/2017]

[Act 12 of 2024 wef 30/08/2024]

(1A) A foreign regulatory authority may, with the prior written approval of the Authority, appoint any person to conduct the inspection under subsection (1) and in such event, this section (other than this subsection) applies to the person as if a reference to

the foreign regulatory authority or any official of the foreign regulatory authority in this section includes a reference to the person.

[Act 12 of 2024 wef 30/08/2024]

(2) In deciding whether to grant approval to a foreign regulatory authority under subsection (1) or (1A), the Authority may have regard to the following considerations:

(*a*) whether the inspection, and the information obtained in the course of the inspection, is required by the foreign regulatory authority for the sole purpose of enabling the foreign regulatory authority to carry out its regulatory functions;

(*b*) whether the foreign regulatory authority has regulatory oversight in its jurisdiction over the relevant person;

(*c*) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person;

(*d*) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority;

(*e*) such other matters as the Authority may consider relevant.

[2/2009; 4/2017]

[Act 12 of 2024 wef 30/08/2024]

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, impose conditions or restrictions on the foreign regulatory authority relating to —

(*a*) the classes of information to which the foreign regulatory authority has or does not have access in the course of the inspection;

(*b*) the conduct of the inspection;

(*c*) the use or disclosure of any information obtained in the course of the inspection; and

(*d*) such other matters as the Authority may determine.

[2/2009]

(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the relevant person, at any time, by written notice to the relevant person impose any conditions or restrictions on the relevant person, and the relevant person must comply with such conditions or restrictions.

[4/2017]

(4A) To avoid doubt, this section, and section 150C in relation to an inspection under this section, do not apply to any inspection by a foreign regulatory authority of the books of any person, if —

(*a*) the foreign regulatory authority is an AML/CFT authority as defined in section 17 of the Financial Services and Markets Act 2022, and exercises consolidated supervision authority as defined in that section over that person; and

[Act 18 of 2022 wef 28/04/2023]

(*b*) the inspection is solely for the purpose of such consolidated supervision.

[31/2017]

(4B) Where —

(*a*) the relevant person is a person exempted under section 99(1)(*a*) or (*b*); and

(*b*) the foreign regulatory authority has already obtained the approval of the Authority under section 45 of the Banking Act 1970 or section 83 of the Financial Advisers Act 2001 to conduct an inspection under that provision of the relevant person,

then the foreign regulatory authority is treated as having obtained the Authority's written approval under subsection (1).

[Act 12 of 2024 wef 30/08/2024]

(5) For the purposes of this section and section 150C, a reference to a foreign regulatory authority is a reference to an authority of a country or jurisdiction other than Singapore, exercising any function that corresponds to a regulatory function of the Authority under the

Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[2/2009]

[Act 18 of 2022 wef 28/04/2023]

[Act 12 of 2024 wef 30/08/2024]

Confidentiality of inspection report by foreign regulatory authority

150C.—(1) Where a written report or any part of a written report (called in this section the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any relevant person (called in this section the inspected person) and is provided by the foreign regulatory authority to the inspected person, the report must not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[2/2009; 4/2017]

(2) Disclosure of the report referred to in subsection (1) may be made —

(*a*) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that inspected person;

(*b*) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person;

(*c*) to the Authority, if requested by the Authority; or

(*d*) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(*d*), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers

or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the inspected person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

(*a*) the disclosure was made contrary to the person's desire;

(*b*) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(*c*) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

Division 2 — Power of Minister to Appoint Inspector for Investigating Dealings in Securities, etc.

Power of Minister to appoint inspectors

151.—(1) Despite anything in this Act, the Minister may, if he or she thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in capital markets products, administering a designated benchmark or providing information in relation to a designated benchmark.

[4/2017]

(2) An inspector appointed under subsection (1) has all the powers conferred upon an inspector under Part 9 of the Companies Act 1967 and that Part applies, with the necessary modifications, to such investigation.

(3) Any inspector appointed under subsection (1) must report the results of the inspector's investigation to the Minister and the Minister may, if he or she thinks it in the public interest to do so, cause the report to be printed and published.

Division 3 — Investigative Powers of Authority

Subdivision (1) — Preliminary

Interpretation of this Division

152. In this Division —

"auditor" means a public accountant who is registered or deemed to be registered under the Accountants Act 2004;

"computer" and "data" have the meanings given by section 2(1) of the Computer Misuse Act 1993;

"law enforcement agency" means any authority or person charged with the duty of investigating offences or charging offenders under any written law;

"legal counsel" has the meaning given by section 3(7) of the Evidence Act 1893;

"officer" —

(*a*) in relation to the Authority, includes any person employed by the Authority in an executive capacity; and

(*b*) in relation to any corporation (other than a law enforcement agency), has the meaning given by section 4(1) of the Companies Act 1967.

[Act 12 of 2024 wef 24/01/2025]

Subdivision (2) — General

Investigation by Authority

153.—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

(*a*) to perform any of its functions and duties under this Act;

(*b*) to ensure compliance with this Act or any written direction issued under this Act;

(*c*) to investigate an alleged or suspected contravention of any provision of this Act or any written direction issued under this Act.

(2) The Authority may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1) despite the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) Subject to subsection (5), a requirement imposed by the Authority under this Division has effect despite any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Subject to subsection (5), any person who complies with a requirement imposed by the Authority under this Division is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any

requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) Nothing in this section requires a person to disclose any information subject to legal privilege.

(6) No civil or criminal action, other than proceedings for an offence under section 168A, shall lie against any person —

(*a*) for giving assistance to the Authority, including answering questions, if the person had given the assistance or answered the questions in good faith in compliance with a requirement imposed by the Authority under this Division;

(*b*) for providing information, producing books or giving access to data to the Authority, if the person had done so in good faith in compliance with a requirement imposed by the Authority under this Division; or

(*c*) for doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

(7) In this section, a reference to a requirement imposed by the Authority under this Division includes a reference to a requirement imposed by an investigator or authorised person under Subdivision (3) or (4).

[Act 12 of 2024 wef 24/01/2025]

Confidentiality of investigation reports

154.—(1) Where a written report or any part of a written report (called in this section the report) has been produced by the Authority in respect of any investigation under section 153 and is provided by the Authority to the person under investigation (called in this section the investigated person), the report must not be disclosed by the investigated person or, if the investigated person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report mentioned in subsection (1) may be made —

(*a*) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that investigated person;

(*b*) by any officer or auditor of the investigated person to any other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or

(*c*) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(*c*), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

(4) The obligation on an officer or auditor mentioned in subsection (1) continues after the termination or cessation of his or her employment or appointment by the investigated person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

(*a*) the disclosure was made contrary to the person's desire;

(*b*) where the disclosure was made in any written or printed form, the person had, as soon as practicable after receiving the report, surrendered or taken all reasonable steps to

surrender the report and all copies of the report to the Authority; and

(*c*) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies of the report in other forms had been surrendered to the Authority.

[Act 12 of 2024 wef 24/01/2025]

Self-incrimination and saving for advocates and solicitors

155.—(1) A person is not excused from disclosing information to the Authority, or an investigator or authorised person mentioned in Subdivision (3) or (4), pursuant to a requirement made of the person under any provision of this Division, on the ground that the disclosure of the information might tend to incriminate the person.

(2) Where a person claims, before making a statement disclosing information that the person is required to disclose under any provision of this Division to the Authority or to an investigator or authorised person mentioned in Subdivision (3) or (4), that the statement might tend to incriminate the person, that statement is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 168A(4).

(3) For the purposes of any proceedings for an offence under this Act, the making of a statement by an accused person made pursuant to a requirement mentioned in subsection (1), is not to be regarded under section 258(3) of the Criminal Procedure Code 2010 as caused by any inducement, threat or promise merely because the Authority, investigator or authorised person had earlier informed the accused person that the accused person was not excused from disclosing information on the ground that the disclosure of the information might tend to incriminate the accused person, if the Authority, investigator or authorised person (as the case may be) believed in good faith, when so informing the accused person, that —

(*a*) the accused person was concerned in an offence under this Act; or

(*b*) a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, that the accused person was concerned in an offence under this Act.

(4) Nothing in this Division —

(*a*) compels an advocate and solicitor or legal counsel to disclose or produce a privileged communication, or a book or other material containing a privileged communication, made by or to the advocate and solicitor or legal counsel in that capacity; or

(*b*) authorises the taking of any such book or other material which is in the possession of an advocate and solicitor or legal counsel.

(5) Despite subsection (4), an advocate and solicitor or legal counsel —

(*a*) who is required under this Division to disclose or produce a privileged communication, or a book or other material containing a privileged communication, made by or to the advocate and solicitor or legal counsel in that capacity; and

(*b*) who refuses to disclose or produce the privileged communication, book or other material,

must give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[Act 12 of 2024 wef 24/01/2025]

Subdivision (3) — Examination of persons

Requirement to appear for examination

156.—(1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person —

(*a*) to give to the Authority all reasonable assistance in connection with the investigation; and

(*b*) to appear before an officer of the Authority duly authorised by the Authority for examination and to answer questions.

(2) A written requirement imposed under subsection (1) must state the general nature of the matter mentioned in that subsection.

[Act 12 of 2024 wef 24/01/2025]

Proceedings at examination

157. The provisions of this Subdivision apply where, pursuant to a requirement made under section 156 for the purposes of an investigation under this Division, a person (called in this Subdivision the examinee) appears before another person (called in this Subdivision the investigator) for examination.

[Act 12 of 2024 wef 24/01/2025]

Requirements made of examinee

158.—(1) The investigator may examine the examinee on oath or affirmation, and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

[Act 12 of 2024 wef 24/01/2025]

Examination to take place in private

159.—(1) The examination must take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person must not be present at the examination unless the person is —

(*a*) the investigator or the examinee;

(*b*) a person approved by the Authority; or

(*c*) entitled to be present by virtue of a direction under subsection (1).

[Act 12 of 2024 wef 24/01/2025]

Record of examination

160.—(1) The investigator may, and must if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

(*a*) the investigator may require the examinee to read the record, or to have it read to the examinee, and may require the examinee to sign it; and

(*b*) the investigator must, if requested in writing by the examinee to give to the examinee a copy of the written record, provide a copy of the written record without charge within a reasonable time, subject to such conditions as the investigator may impose.

[Act 12 of 2024 wef 24/01/2025]

Giving copies of record to other persons

161.—(1) The Authority may, subject to such conditions or restrictions as it may impose, give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a legal proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy of a written record or book to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a further copy of the copy, must not, except in connection with preparing, beginning or carrying on, or in the course of, any legal proceeding —

(*a*) use the copy or a further copy of the copy; or

(*b*) publish, or communicate to a person, the copy, a further copy of the copy, or any part of the contents of the copy.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person other than a person mentioned in

subsection (1), a copy of a written record of the examination, or the copy together with a copy of any related book.

[Act 12 of 2024 wef 24/01/2025]

Copies given subject to conditions

162. If a copy of any written record or book is given to a person under section 160(2) or 161(1) or (3) subject to conditions or restrictions imposed by the investigator or the Authority (as the case may be), the person, and any other person who has possession, custody or control of the copy or the further copy of the copy, must comply with the conditions or restrictions.

[Act 12 of 2024 wef 24/01/2025]

Subdivision (4) — Powers to obtain information

Power of Authority to order production of books, provision of information or giving of access to data

163. For the purpose of an investigation under this Division, the Authority may, in writing, require —

(*a*) a person who is believed to possess, or to have power to access, any book, or who is believed to possess any information, relating to any matter under investigation; or

(*b*) a person who is believed to have power to access any data relating to any matter under investigation,

to —

(*c*) produce the book or a copy of the book, or to provide the information, at the time and place specified in the written requirement;

(*d*) give the Authority or any officer of the Authority who is authorised by the Authority for this purpose (called in this section an investigator) access to the book or data; or

(*e*) provide such reasonable assistance as the Authority or an investigator may require for the purposes of accessing the book or data.

[Act 12 of 2024 wef 24/01/2025]

Power to enter premises without warrant

164.—(1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (called in this section an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (each called in this section an authorised person) may enter any premises.

(2) An investigator or authorised person accompanying the investigator must not enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the premises a written notice which —

(*a*) gives at least 2 working days' notice of the intended entry;

(*b*) indicates the subject matter and purpose of the investigation; and

(*c*) indicates the nature of the offences investigated.

(3) Subsection (2) does not apply —

(*a*) if the investigation relates to an alleged or suspected contravention of any provision of this Act and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated in relation to the contravention; or

(*b*) if the investigator has taken all such steps as are reasonably practicable to give notice under subsection (2)(*a*) but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) may only be exercised upon production of —

(*a*) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying the investigator; and

(*b*) a document containing information indicating the subject matter and purpose of the investigation and the nature of the offences investigated.

(5) Without affecting section 163, an investigator or authorised person entering any premises under this section may —

(*a*) bring with him or her to the premises such items as appear to him or her to be necessary;

(*b*) require any person on the premises to produce any book or copy of any book or to give access to any data which the investigator or authorised person considers relates to any matter relevant to the investigation;

(*c*) require any person on the premises to state, to the best of the person's knowledge and belief, where any such book or data is to be found; and

(*d*) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any such book or data.

[Act 12 of 2024 wef 24/01/2025]

Warrant to seize books, etc.

165.—(1) A Magistrate may, on the application of the Authority —

(*a*) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book, or a computer in which any data is contained or to which any data is available —

(i) being any book or data the production of which, or access to which, has been required under section 163 or 164, but which has not been produced, or access to which has not been given, in compliance with that requirement; or

(ii) being any book or data which, if production of which or access to which is required under section 163 or 164, will be concealed, removed, tampered with or destroyed; and

(*b*) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book, or a computer in which any other data is

contained or to which any other data is available, which relates to any matter relevant to the investigation concerned, direct that the powers exercisable under the warrant extend to such other book or computer.

(2) A warrant issued under subsection (1) authorises the Authority or any person named in the warrant, with or without assistance —

(*a*) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(*b*) to search the premises and to break open and search anything, whether a fixture or not, in the premises;

(*c*) to take possession of, or secure against interference, any book or computer that appears to be a book or computer mentioned in subsection (1)(*a*) or (*b*);

(*d*) to require any person to provide an explanation of any book or data that appears to be any book or data mentioned in subsection (1)(*a*) or (*b*), or to state, to the best of that person's knowledge and belief, where any such book or data may be found;

(*e*) to search any person on those premises, if there are reasonable grounds to suspect that the person has in his or her possession any book or computer that appears to be a book or computer mentioned in subsection (1)(*a*) or (*b*), or any equipment or article which relates to any matter relevant to the investigation concerned;

(*f*) to remove from those premises for examination any book that appears to be a book mentioned in subsection (1)(*a*) or (*b*), or any equipment (including a computer) or article which relates to any matter relevant to the investigation concerned;

(*g*) to access, inspect and check the operation of a computer on the premises specified in the warrant, if there are reasonable grounds to suspect that any data mentioned in subsection (1)(*a*) or (*b*) is or has been contained in or available to the computer, or that the computer is a computer mentioned in subsection (1)(*a*) or (*b*);

(*h*) to use any computer mentioned in paragraph (*g*), or cause any such computer to be used —

(i) to search any book or data that appears to be a book or any data mentioned in subsection (1)(*a*) or (*b*), that is contained in or available to such computer; and

(ii) to make a copy of any such book or data;

(*i*) to prevent any other person from gaining access to, or using, any computer mentioned in paragraph (*g*) (including by changing any username, password or other authentication information required to gain access to the computer);

(*j*) to order any person —

(i) to stop accessing or using or to not access or use any computer mentioned in paragraph (*g*); or

(ii) to access or use any such computer only under such conditions as the Authority or any person named in the warrant may specify; and

(*k*) to order —

(i) any person whom the Authority or any person named in the warrant reasonably suspects of using, or of having used, a computer mentioned in paragraph (*g*);

(ii) any person having charge of, or otherwise concerned with the operation of, any such computer; or

(iii) any person whom the Authority or any person named in the warrant reasonably believes has knowledge of or access to any username, password or other authentication information required to gain access to any such computer,

to provide any of the following types of assistance to the Authority:

(iv) assistance to gain access to the computer (including assistance through the provision of any username,

password or other authentication information required to gain access to the computer);

(v) assistance to prevent a person (other than the Authority or any person named in the warrant) from gaining access to, or using, the computer, including assistance in changing any username, password or other authentication information required to gain access to the computer.

(3) The Authority or any person named in the warrant may allow any equipment or article mentioned in subsection (2)(*f*) to be retained on the premises specified in the warrant, subject to such conditions as the Authority or that person may require.

(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may bring with him or her to the premises such items as appear to him or her to be necessary.

(5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant when the Authority or any person named in the warrant proposes to execute the warrant, the Authority or that person must, before executing the warrant —

(*a*) take such steps as are reasonable in all the circumstances to inform the occupier of the premises of the intended entry into the premises; and

(*b*) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(6) If the Authority or any person named in the warrant is unable to inform the occupier of the premises of the intended entry into the premises, the Authority or that person must, when executing the warrant, leave a copy of the warrant in a prominent place on the premises.

(7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant must, if the premises are unoccupied or if the occupier of the premises

is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(9) In this section —

"occupier", in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant reasonably believes to be the occupier of those premises;

"premises" includes any structure, building, aircraft, vehicle or vessel.

[Act 12 of 2024 wef 24/01/2025]

Powers where books are produced, etc.

166.—(1) This section applies where —

(*a*) any book is produced to the Authority, or access to any book, or any data contained in or available to a computer, is given to the Authority —

(i) pursuant to a written requirement under section 163; or

(ii) during an entry into any premises by an investigator or authorised person under section 164;

(*b*) under a warrant issued under section 165(1), the Authority or a person named therein —

(i) takes possession of any book or computer; or

(ii) secures any book or computer against interference; or

(*c*) under a previous application of subsection (6), any book or computer is delivered into the possession of the Authority or a person authorised by it.

(2) If subsection (1)(*a*) applies, the Authority may take possession of any book or computer mentioned in that provision.

(3) The Authority or, where applicable, a person mentioned in subsection (1)(*b*) or (*c*) may —

(*a*) inspect, and make copies of, or take extracts from, a book, or any data contained in or available to the computer, mentioned in that subsection;

(*b*) use, or permit the use of, a book, or any data contained in or available to the computer, mentioned in that subsection for the purposes of any proceedings;

(*c*) retain possession of a book or computer mentioned in that subsection for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section;

(ii) for a decision to be made about whether or not any proceedings to which the book or any data contained in or available to the computer would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on; and

(*d*) require any book stored in any electronic form, or any data, which the Authority or person mentioned in subsection (1)(*b*) or (*c*) is satisfied relates to any matter relevant to an investigation under this Division, to be produced in a form which can be taken away and which is visible and legible.

(4) No person is entitled, as against the Authority or, where applicable, a person mentioned in subsection (1)(*b*) or (*c*) to claim a lien on any book or computer mentioned in that subsection, but such a lien is not otherwise prejudiced.

(5) While any book or computer is in the possession of the Authority or (where applicable) the person mentioned in subsection (1)(*b*) or (*c*), the Authority or the person —

(*a*) must permit another person to inspect at all reasonable times the book or computer as the second-mentioned person would be entitled to inspect if the book or computer

were not in the possession of the Authority or the firstmentioned person; and

(*b*) may permit any other person to inspect the book or computer.

(6) If subsection (1)(*a*) or (*b*)(i) applies, an investigator or authorised person mentioned in subsection (1)(*a*) or a person mentioned in subsection (1)(*b*) may deliver any book or computer into the possession of the Authority or of a person authorised by the Authority to receive them.

(7) If subsection (1)(*a*) or (*b*) or (6) applies, the Authority, an investigator or authorised person mentioned in subsection (1)(*a*), a person mentioned in subsection (1)(*b*) or a person into whose possession any book or computer is delivered under subsection (6), may require —

(*a*) if subsection (1)(*a*) applies — a person who produced the book or gave access to the book or the data contained in or available to the computer; or

(*b*) if subsection (1)(*b*) applies — a person who was a party to the preparation of the book or any data contained in or available to the computer,

to explain, to the best of his or her knowledge and belief, any matter about the preparation of the book or data or any matter to which the book or data relates.

[Act 12 of 2024 wef 24/01/2025]

Powers where books not produced, information not provided or access to book or data not given

167. Where a person fails to comply with a written requirement imposed by the Authority under section 163 to produce any book, provide any information or give access to any book or data, the Authority may require the person to state, to the best of his or her knowledge and belief —

(*a*) the place where such book, or any computer in which such data is contained or to which such data is available, may be found;

(*b*) the person who last had possession, custody or control of such book, or any computer in which such data is contained or to which such data is available, and the place where that person may be found; or

(*c*) the person who possesses such information and the place where that person may be found.

[Act 12 of 2024 wef 24/01/2025]

Copies of or extracts from books to be admitted in evidence

168.—(1) Subject to this section, a copy of or extract from any book referred to in this Division that is proved to be a true copy of the book, or of the relevant part of the book, is admissible in evidence as if it were the original book, or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or extract from any book is a true copy of the book or of a part of the book, may be given by a person who has compared the copy or extract with the book or the relevant part of the book, and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

[Act 12 of 2024 wef 24/01/2025]

Offences under this Division

168A.—(1) An advocate and solicitor or legal counsel who, without reasonable excuse, fails to comply with section 155(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(2) A person who, without reasonable excuse, refuses or fails to comply with —

(*a*) any requirement imposed under section 156(1), 158(3), 163, 164(5)(*b*), (*c*) or (*d*), 166(3)(*d*) or (7) or 167; or

(*b*) any requirement imposed pursuant to a warrant issued under section 165(1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who, without reasonable excuse, refuses or fails to comply with —

(*a*) any requirement of an investigator under section 160(2)(*a*); or

(*b*) section 161(2) or 162,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) A person who —

(*a*) in purported compliance with a requirement imposed under section 155(5), 163, 164(5)(*b*), (*c*) or (*d*), 166(3)(*d*) or (7) or 167, or pursuant to a warrant issued under section 165(1); or

(*b*) in the course of examination of the person,

provides information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) It is a defence to a prosecution for an offence under subsection (4) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and not misleading.

(6) Any person who, knowing or having reasonable grounds to believe that any book, computer, equipment or article relates to a matter that the Authority is investigating or about to investigate under this Division —

(*a*) conceals, destroys, mutilates or alters that book, computer, equipment or article; or

(*b*) if any such book, computer, equipment or article is within the territory of Singapore, takes or sends the book, computer, equipment or article out of Singapore,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) A person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under this Division, or obstructs or hinders a person who is exercising any power under section 164(1) or (5) or executing a warrant issued under section 165(1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 164(1) or under a warrant issued under section 165(1), all reasonable facilities and assistance for the effective exercise of that person's powers under section 164(1) or (5) or under the warrant (as the case may be) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

[Act 12 of 2024 wef 24/01/2025]

Division 4 — Transfer of evidence

Interpretation of this Division

168B. In this Division —

"Commercial Affairs Officer" means a Commercial Affairs Officer appointed under section 64 of the Police Force Act 2004;

"data" has the meaning given by section 2(1) of the Computer Misuse Act 1993;

"police officer" means a member of the Singapore Police Force.

[Act 12 of 2024 wef 24/01/2025]

Evidence obtained by Authority may be used in criminal investigations and proceedings

168C.—(1) Despite the provisions of any written law or rule of law, the Authority may provide any book, written record of any

examination or other information, or access to any data, obtained by the Authority under Division 3 to —

(*a*) a police officer;

(*b*) a Commercial Affairs Officer; or

(*c*) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged or suspected contravention of any provision under this Act.

(2) To avoid doubt, any book, written record of examination or other information provided, or any data to which access is provided, by the Authority under subsection (1) is not inadmissible in any criminal proceedings by reason only that it was first obtained by the Authority under this Act, and the admissibility thereof is to be determined in accordance with the rules of evidence under written law and any relevant rules of law.

[Act 12 of 2024 wef 24/01/2025]

Evidence obtained under Criminal Procedure Code 2010 may be used for purposes of Act

168D. Despite the provisions of any written law or any rule of law, any book, data, statement or other information obtained by —

(*a*) a police officer or a Commercial Affairs Officer in the exercise of his or her powers under Divisions 1 and 2 of Part 4 of the Criminal Procedure Code 2010; or

(*b*) an authorised person mentioned in section 20(1) or (1A), 39(1) or 40(2) of the Criminal Procedure Code 2010, in the exercise of his or her powers under those sections,

may be provided to the following persons for the following purposes, if it is in the public interest to do so:

(*c*) to the Authority — for the purpose of any investigation under section 153(1);

(*d*) to the Minister or to an Appeal Advisory Committee constituted under section 310 — for the purpose of any appeal against a decision of the Authority under this Act.

[Act 12 of 2024 wef 24/01/2025]

PART 10

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

169. In this Part, unless the context otherwise requires —

"enforce" means enforce through criminal, civil or administrative proceedings;

"enforcement" means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities and derivatives industry of, or financial benchmarks in, the foreign country of the regulatory authority concerned;

"foreign country" means a country or territory other than Singapore;

"investigation" means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities and derivatives industry of, or financial benchmarks in, the foreign country of the regulatory authority concerned;

"material" includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

"regulatory authority", in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

"supervision", in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

(*a*) a person operating an organised market, an intermediary or any other person regulated by the regulatory authority;

(*b*) the issuance of or trading in capital markets products in the foreign country of the regulatory authority; or

(*c*) a person administering a financial benchmark, or providing information in relation to a financial benchmark, in the foreign country of the regulatory authority.

[34/2012; 4/2017]

Application of this Part

169A. This Part does not apply to any request for assistance mentioned in section 19(1) of the Financial Services and Markets Act 2022.

[31/2017]

[Act 18 of 2022 wef 28/04/2023]

Conditions for provision of assistance

170.—(1) The Authority may provide the assistance referred to in section 172 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

(*a*) the request by the regulatory authority for assistance is received by the Authority on or after 6 March 2000;

(*b*) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;

(*c*) the contravention of the law or regulatory requirement to which the request relates took place on or after 6 March 2000;

(*d*) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its

request must not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;

(*e*) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (*f*)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;

(*f*) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as the Authority may impose;

(*g*) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;

(*h*) the matter to which the request relates is of sufficient gravity;

(*i*) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) In subsection (1)(*e*) and (*f*), "designated third party", in relation to a foreign country, means —

(*a*) any person or body responsible for supervising the regulatory authority in question;

(*b*) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or

(*c*) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

Other factors to consider for provision of assistance

171. In deciding whether to grant a request for assistance referred to in section 172 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

(*a*) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;

(*b*) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;

(*c*) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

Assistance that may be rendered

172.—(1) Despite the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

(*a*) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;

(*b*) order any person to provide to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;

(*c*) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;

(*d*) order any person to make an oral statement to the Authority on any information requested by the regulatory authority,

record such statement, and transmit the recorded statement to the regulatory authority; or

(*e*) request any Ministry, Government department or statutory authority to provide to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(*c*) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(*b*), (*c*) or (*d*) has effect despite any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893 —

(*a*) to provide or transmit any material or copy thereof that contains; or

(*b*) to disclose,

a privileged communication made by or to him or her in that capacity.
[34/2012]

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to provide or transmit any material or copy thereof that contains, or to disclose, any privileged communication is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.
[34/2012]

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(*d*) on the ground that the statement might tend to incriminate the person but, where the person claims before making the statement that the statement might tend to incriminate the person, that statement —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 173; but

(*b*) is admissible in evidence in civil proceedings under Part 12.

Offences under this Part

173. Any person who —

(*a*) without reasonable excuse refuses or fails to comply with an order under section 172(1)(*b*), (*c*) or (*d*);

(*b*) in purported compliance with an order under section 172(1)(*b*) or (*c*), provides to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or

(*c*) in purported compliance with an order made under section 172(1)(*d*), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

174.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 173, shall lie against any person for —

(*a*) providing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if the person had provided or transmitted that material or copy in good faith in compliance with an order made under section 172(1)(*b*) or (*c*);

(*b*) making a statement to the Authority in good faith and in compliance with an order made under section 172(1)(*d*); or

(*c*) doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(*a*) or (*b*) is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

PART 11

INVESTOR COMPENSATION SCHEME

Interpretation of this Part

175. In this Part, "member", in relation to an approved exchange, means a person who —

(*a*) holds membership of any class or description of the approved exchange, whether or not the person holds any share in the share capital of such exchange; and

(*b*) is licensed by the Authority to carry on the business of dealing in capital markets products.

[2/2009; 4/2017]

Establishment of fidelity fund

176.—(1) Each approved exchange must establish, keep and administer a fidelity fund (called in this Part a fidelity fund or fund).

[2/2009]

(2) The assets of the fidelity fund of an approved exchange —

(*a*) are the property of the exchange;

(*b*) must be kept separate from all other property of the exchange; and

(*c*) must be held in trust for the purposes set out in this Part.

[2/2009]

Moneys constituting fidelity fund

177. The fidelity fund of an approved exchange consists of —

(*a*) all moneys paid to the exchange by its members in accordance with this Part;

(*b*) all moneys paid to the fund by the exchange;

(*c*) all interest and profits from time to time accruing from the investment of the fund;

(*d*) all moneys recovered by or on behalf of the exchange in the exercise of any right of action conferred by this Part;

(*e*) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 194; and

(*f*) all other moneys lawfully paid into the fund.

[2/2009]

Fund to be kept in separate bank account

178. All moneys forming part of a fidelity fund must, pending the investment or application thereof in accordance with this Part, be kept in a separate bank account in Singapore.

Payments out of fidelity fund

179. Subject to this Part, there is to be paid out of the fidelity fund of an approved exchange as required and in such order as the exchange considers proper —

(*a*) the amount of all claims, including costs, allowed by the exchange or established against the exchange under this Part;

(*b*) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;

(*c*) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 194;

(*d*) all expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the exchange in relation thereto; and

(*e*) all other moneys payable out of the fund in accordance with this Act.

[2/2009]

Accounts of fund

180.—(1) An approved exchange must establish and keep proper accounts of its fidelity fund and must, within 5 months from the last day of each financial year of that exchange, cause a balance sheet in respect of such accounts to be made out as at the last day of that financial year.

[2/2009]

(2) The approved exchange must appoint an auditor to audit the accounts of the fidelity fund.

[2/2009]

(3) The auditor appointed by the approved exchange must —

(*a*) regularly and fully audit the accounts of the fidelity fund; and

(*b*) audit each balance sheet and cause it to be laid before the exchange not later than 3 months after the balance sheet was made out.

[2/2009]

Fidelity fund to consist of amount of $20 million, etc.

181. The fidelity fund of an approved exchange must consist of an amount of not less than —

(*a*) $20 million; or

(*b*) such other amount as the Authority may, by order in the *Gazette*, specify in substitution of the amount specified under paragraph (*a*),

to be paid to the credit of the fund on the approval of the exchange under this Act or at any time after its approval as determined by the Authority.

[2/2009]

Provisions if fund is reduced below minimum amount

182. If the fidelity fund of an approved exchange is reduced below the minimum amount referred to in section 181, the exchange must take steps to make up the deficiency —

(*a*) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and

(*b*) in the event that there are insufficient funds to transfer under paragraph (*a*), by requiring each member of the exchange to contribute to the fund such amount as the exchange may determine.

[2/2009]

Levy to meet liabilities

183.—(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of an approved exchange in relation thereto, the approved exchange —

(*a*) may impose on every member a levy of such amount as it thinks fit; or

(*b*) if ordered by the Authority, must impose a levy of such amount which must in the aggregate be equivalent to the amount so specified in the order.

[2/2009]

(2) The amount of the levy must be paid within the time and in the manner specified by the approved exchange either generally or in relation to any particular case.

[2/2009]

(3) No member of an approved exchange may be required to pay by way of levy under this section more than $300,000 in the aggregate in any particular case.

[2/2009]

Power of approved exchange to make advances to fund

184.—(1) An approved exchange may, out of its general funds, give or advance any sum of money to its fidelity fund on such terms as it thinks fit.

[2/2009]

(2) Any sum of money advanced by an approved exchange under subsection (1) may be repaid out of the fidelity fund to the general funds of the approved exchange.

[2/2009]

Investment of fund

185. Any moneys in a fidelity fund that are not immediately required for any purpose referred to in this Part may be invested by an approved exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

[2/2009]

Application of fund

186.—(1) Subject to this Part, a fidelity fund must be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

(*a*) in the course of, or in connection with, a dealing in capital markets products;

(*b*) by a member of an approved exchange or by any agent of such member; and

(*c*) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —

(i) by that member or by any of its agents for or on behalf of any other person; or

(ii) by that member either as the sole trustee or as trustee with any other person or persons, or by any of its agents as trustee or for or on behalf of the trustees of that money or property.

[2/2009; 4/2017]

(2) Subject to this Part, the fidelity fund is to be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Insolvency, Restructuring and Dissolution Act 2018 an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy (as the case may be) certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of an approved exchange, are insufficient to satisfy any debts arising from dealings in capital markets products that have been proved in the bankruptcy by creditors of the bankrupt member.

[2/2009; 4/2017; 40/2018]

(3) Subsection (2) applies in the case of a member of an approved exchange who has made a voluntary arrangement with the member's creditors under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 in like manner as that subsection applies in the case of a member who has become bankrupt.

[2/2009; 40/2018]

(4) For the purposes of subsection (3) —

(*a*) a reference to a trustee in bankruptcy in subsection (2) is deemed to be a reference to a nominee within the meaning of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018;

(*b*) a reference to debts proved in bankruptcy in subsection (2) is deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*c*) a reference to the bankrupt in subsection (2) is deemed to be a reference to the person who made the voluntary arrangement under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(5) Subject to this Part, the fidelity fund is to be applied for the purpose of paying to a liquidator of a member of an approved exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member

are insufficient to satisfy any debts arising from dealings in capital markets products that have been proved in the liquidation of the member.

[2/2009; 4/2017]

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) may be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under subsection (5) may be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) may be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator (as the case may be) for the purpose of satisfying debts arising from dealings in capital markets products, and for no other purpose.

[4/2017]

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

(*a*) compensating pecuniary loss under subsection (1); or

(*b*) making a payment under subsection (2) or (5),

must not, in respect of each member, exceed the prescribed amount.

(11) Subject to the provisions of this section —

(*a*) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or

(*b*) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each

creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator (as the case may be) under subsection (2) or (5),

must not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund, to the extent to which the fund is subsequently reimbursed therefor, is disregarded.

(13) In this section, "agent", in relation to a member of an approved exchange —

(*a*) means a person who is a director, an officer, an employee or a representative of the member; and

(*b*) includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer, an employee or a representative of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer, an employee or a representative of the member.

[2/2009]

(14) In this section, any reference to dealing in capital markets products is a reference to such dealing which is done or to be done —

(*a*) on the approved exchange which establishes, keeps and administers the fidelity fund; or

(*b*) through a trading linkage of the approved exchange with an overseas exchange.

[4/2017]

Claims against fund

187.—(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 is entitled to claim compensation out of the fidelity fund and to take proceedings in the General Division of the High Court under this Act against an approved exchange to establish such claim.

[2/2009; 40/2019]

(2) A person does not have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of an approved exchange.

[2/2009]

(3) Subject to this Part, the amount which any claimant is entitled to claim as compensation out of a fidelity fund is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of and disbursements incidental to the making and proof of the claimant's claim) less the amount or value of all moneys or other benefits received or receivable by the claimant from any source other than the fund in reduction of the loss.

Notice calling for claims against fund

188.—(1) An approved exchange may cause to be published in a daily newspaper published and circulating generally in Singapore a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation out of the fidelity fund, in relation to the person specified in the notice, may be made.

[2/2009]

(2) A claim for compensation out of a fidelity fund in respect of a defalcation must be made in writing to the approved exchange —

(*a*) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

(*b*) where no such notice has been published, within 6 months after the claimant became aware of the defalcation.

[2/2009]

(3) Any claim which is not made in accordance with subsection (2) is barred unless the approved exchange otherwise allows.

[2/2009]

(4) No action for damages shall lie against an approved exchange or against any member or employee of the approved exchange by reason of any notice published in good faith and without malice for the purposes of this section.

[2/2009]

Power of approved exchange to settle claims

189.—(1) An approved exchange may, subject to this Part, allow and settle any proper claim for compensation out of a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

[2/2009]

(2) Subject to subsection (3), a person must not commence proceedings under this Part against an approved exchange without the consent of the approved exchange, unless —

(*a*) the approved exchange has disallowed the person's claim; and

(*b*) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property, in respect of which the defalcation was committed, available against a member of the approved exchange in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

[2/2009]

(3) A person who has been refused consent to commence proceedings under this Part by an approved exchange under subsection (2) may apply for permission to a Judge sitting in chambers in the General Division of the High Court who may make such order in the matter as he or she thinks fit.

[2/2009; 40/2019]

[Act 25 of 2021 wef 01/04/2022]

(4) An approved exchange must, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of the disallowance in the prescribed form on the claimant or the claimant's solicitor.

[2/2009]

(5) No proceedings against an approved exchange in respect of a claim which has been disallowed by the exchange may be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

[2/2009]

(6) In any proceedings brought to establish a claim —

(*a*) evidence of any admission or confession by, or other evidence which would be admissible against, the member of an approved exchange or other person by whom it is alleged a defalcation was committed, is admissible to prove the commission of the defalcation, even though the member or other person is not the defendant in or a party to those proceedings; and

(*b*) all defences which would have been available to that member or person are available to the approved exchange.

[2/2009]

(7) An approved exchange or, where proceedings are brought to establish a claim, the General Division of the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, even though the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the approved exchange or the General Division of the High Court (as the case may be) acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

[2/2009; 40/2019]

Power of approved exchange to require production of evidence

190.—(1) An approved exchange may require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of an approved exchange or the directors of that member or any other person concerned, or of enabling criminal proceedings to be taken against any person in respect of a defalcation.

[2/2009]

(2) Where a person who is required under subsection (1) to produce or deliver any contract note, document or statement of evidence fails to do so, the approved exchange may disallow any claim by the person under this Part.

[2/2009]

Subrogation of approved exchange to rights, etc., of claimant upon payment from fund

191. On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the approved exchange is subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant by reason of the defalcation on which the claim was based.

[2/2009]

Payment of claims only from fund

192. No moneys or other property belonging to an approved exchange, other than the fidelity fund, is available for the payment of any claim under this Part, whether the claim is allowed by the approved exchange or is made the subject of an order of the General Division of the High Court.

[2/2009; 40/2019]

Provision where fund insufficient to meet claims or where claims exceed total amount payable

193.—(1) Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the General Division of the High Court have been made, then the amount at credit in the fund must, subject to subsection (2), be apportioned between the claimants in such manner as the approved exchange thinks equitable, and such claim must, so far as it then remains unpaid, be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

[2/2009; 40/2019]

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the General Division of the High Court have been made in relation to a defalcation by or in connection with a member of an approved exchange exceeds the total amount which may, pursuant to section 186(10), be paid under this Part in respect of that member, then such total amount must be apportioned between the claimants in such manner as the approved exchange thinks equitable.

[2/2009; 40/2019]

(3) Upon payment out of the fidelity fund of such total amount in accordance with the apportionment of all such claims under subsection (2), any order relating thereto and all other claims against the fund which may thereafter arise or be made in respect of that defalcation by or in connection with that member are absolutely discharged.

Power of approved exchange to enter into contracts of insurance

194.—(1) An approved exchange may enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the approved exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

[2/2009]

(2) Any contract under subsection (1) may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members named therein.

(3) No action shall lie against an approved exchange or against any member or employee of an approved exchange for injury alleged to have been suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

[2/2009]

Application of insurance moneys

195. No claimant against a fidelity fund has any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or has any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

PART 12

MARKET CONDUCT

Division 1 — Prohibited Conduct — Capital Markets Products

[4/2017]

Application of this Division

196. This Division applies to —

(*a*) acts occurring within Singapore in relation to —

(i) securities or securities-based derivatives contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;

(ii) securities or securities-based derivatives contracts of any business trust;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore or elsewhere;

(iv) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore or elsewhere;

(v) derivatives contracts, whether traded in Singapore or elsewhere;

(vi) spot foreign exchange contracts for purposes of leveraged foreign exchange trading, whether traded in Singapore or elsewhere; or

(vii) any other capital markets products, whether traded in Singapore or elsewhere; and

(*b*) acts occurring outside Singapore in relation to —

(i) securities or securities-based derivatives contracts of a corporation that is formed or carrying on business in Singapore;

(ii) securities or securities-based derivatives contracts of a business trust, the trustee of which is formed in

Singapore or carries on business on behalf of the business trust in Singapore;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore;

(iv) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore;

(v) derivatives contracts traded in Singapore;

(vi) spot foreign exchange contracts for purposes of leveraged foreign exchange trading that are traded in or accessible from Singapore; or

(vii) any other capital markets products that are traded in Singapore.

[4/2017]

Interpretation of this Division

196A. In this Division —

(*a*) "debenture" has the meaning given by section 2(1) and, in relation to a business trust, means any debenture issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust;

(*b*) a reference to a securities-based derivatives contract of a corporation in sections 196(*a*)(i) and (*b*)(i), 198, 202 and 203 is to be read as a reference to a securities-based derivatives contract of which the underlying thing or any of the underlying things are securities of the corporation; and

(*c*) a reference to a securities-based derivatives contract of a business trust in sections 196(*a*)(ii) and (*b*)(ii), 198, 202 and 203 is to be read as a reference to a securities-based derivatives contract of which the underlying thing or any of the underlying things, are securities of the business trust.

[4/2017]

False trading and market rigging transactions

197.—(1) A person must not do any thing, cause any thing to be done or engage in any course of conduct, if the person's purpose, or any of the person's purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) is to create a false or misleading appearance —

(*a*) of active trading in any capital markets products on an organised market; or

(*b*) with respect to the market for, or the price of, any capital markets products traded on an organised market.

[34/2012; 4/2017]

(1A) A person must not do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any capital markets products on an organised market, or with respect to the market for, or the price of, any capital markets products traded on an organised market, if —

(*a*) the person knows that doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will be likely to create, that false or misleading appearance; or

(*b*) the person is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will be likely to create, that false or misleading appearance.

[34/2012; 4/2017]

(2) A person must not maintain, inflate, depress, or cause fluctuations in, the market price of any capital markets products —

(*a*) by means of any purchase or sale of any capital markets products that does not involve a change in the beneficial ownership of the capital markets products; or

(*b*) by any fictitious transaction or device.

[4/2017]

(3) Without limiting subsection (1), it is presumed that a person's purpose, or one of a person's purposes, is to create a false or

misleading appearance of active trading in capital markets products on an organised market if the person —

(*a*) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of the capital markets products, being a transaction that does not involve any change in the beneficial ownership of the capital markets products;

(*b*) makes or causes to be made an offer to sell the capital markets products at a specified price, where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the person has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of the capital markets products at a price that is substantially the same as the firstmentioned price; or

(*c*) makes or causes to be made an offer to purchase the capital markets products at a specified price, where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the person has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of the capital markets products at a price that is substantially the same as the firstmentioned price.

[4/2017]

(4) The presumption under subsection (3) may be rebutted if the defendant establishes that the purpose or purposes for which the defendant did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in the capital markets products on the organised market.

[34/2012; 4/2017]

(5) For the purposes of this section, a purchase or sale of capital markets products does not involve a change in the beneficial ownership if any of the following persons has an interest in the capital markets products after the purchase or sale:

(*a*) a person who had an interest in the capital markets products before the purchase or sale;

(*b*) a person associated with the person mentioned in paragraph (*a*).

[4/2017]

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of capital markets products that did not involve a change in the beneficial ownership of the capital markets products, it is a defence if the defendant establishes that the purpose or purposes for which the defendant purchased or sold the capital markets products was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, the capital markets products.

[4/2017]

(7) The reference in subsection (3)(*a*) to a transaction of purchase or sale of the capital markets products includes —

(*a*) a reference to the making of an offer to purchase or sell the capital markets products; and

(*b*) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell the capital markets products.

[4/2017]

Market manipulation in relation to securities and securities-based derivatives contracts

198.—(1) A person must not effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities, or securities-based derivatives contracts, of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities, or securities-based derivatives contracts (as the case may be) of the corporation on an organised market, with the intent to induce other persons to subscribe for, purchase or sell securities, or securities-based derivatives contracts (as the case may be) of the corporation or of a related corporation.

[4/2017]

(2) A person must not effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities, or securities-based derivatives contracts, of a business trust, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities, or securities-based derivatives contracts (as the case may be) of the business trust on an organised market, with the intent to induce other persons to subscribe for, purchase or sell securities, or securities-based derivatives contracts (as the case may be) of the business trust.

[4/2017]

(3) In this section —

(*a*) a reference to transactions in securities or securities-based derivatives contracts of a corporation includes —

(i) a reference to the making of an offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and

(ii) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and

(*b*) a reference to transactions in securities or securities-based derivatives contracts of a business trust includes —

(i) a reference to the making of an offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and

(ii) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be.

[4/2017]

False or misleading statements, etc.

199. A person must not make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

(*a*) to induce other persons to subscribe for securities, securities-based derivatives contracts or units in a collective investment scheme;

(*b*) to induce the sale or purchase of securities, securities-based derivatives contracts or units in a collective investment scheme, by other persons; or

(*c*) to have the effect (whether significant or otherwise) of raising, lowering, maintaining or stabilising the market price of securities, securities-based derivatives contracts or units in a collective investment scheme,

if, when the person makes the statement or disseminates the information —

(*d*) the person does not care whether the statement or information is true or false; or

(*e*) the person knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

[4/2017]

Fraudulently inducing persons to deal in capital markets products

200.—(1) A person must not —

(*a*) by making or publishing any statement, promise or forecast that the person knows or ought reasonably to have known to be misleading, false or deceptive;

(*b*) by any dishonest concealment of material facts;

(*c*) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or

(*d*) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in capital markets products.

[4/2017]

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1)(*d*), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1) in relation to the dealing in capital markets products that are securities, securities-based derivatives contracts or units in a collective investment scheme, the opinion of any public accountant as to the financial position of any company at any time or during any period in respect of which he or she has made an audit or examination of the affairs of the company according to recognised audit practice is admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, even though the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

[4/2017]

Employment of manipulative and deceptive devices

201. A person must not, directly or indirectly, in connection with the subscription, purchase or sale of any capital markets products —

(*a*) employ any device, scheme or artifice to defraud;

(*b*) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;

(*c*) make any statement the person knows to be false in a material particular; or

(*d*) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

[4/2017]

Bucketing

201A.—(1) A person must not knowingly execute, or hold himself, herself or itself out as having executed, an order for the purchase or sale of a derivatives contract, without having effected in good faith a purchase or sale of that derivatives contract in accordance with the order or with the business rules and practices of an organised market on which the derivatives contract is to be purchased or sold.

[4/2017]

(2) A person must not knowingly execute, or hold himself, herself or itself out as having executed, an order to make a purchase or sale of a spot foreign exchange contract for purposes of leveraged foreign exchange trading, without having effected in good faith a purchase or sale in accordance with the order.

[4/2017]

Manipulation of price of derivatives contracts and cornering

201B. A person must not, directly or indirectly —

(*a*) manipulate or attempt to manipulate the price of a derivatives contract traded on an organised market, or of any underlying thing which is the subject of such derivatives contract; or

(*b*) corner, or attempt to corner, any underlying thing which is the subject of a derivatives contract.

[4/2017]

Dissemination of information about illegal transactions

202.—(1) A person must not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to any of the following effect if any condition in subsection (2) is satisfied:

(*a*) the price of any securities or securities-based derivatives contract, of a corporation will, or is likely, to rise or fall or

be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to the securities or securities-based derivatives contracts, of that corporation (or of a related corporation) which to the person's knowledge was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201;

(*b*) the price of any securities or securities-based derivatives contract, of a business trust will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to the securities or securities-based derivatives contracts, of that business trust which to the person's knowledge was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201;

(*c*) the price of a class of derivatives contracts will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into, or other act or thing done or to be done, in relation to that class of derivatives contracts by one or more persons which to the person's knowledge was entered into, or done, in contravention of section 197, 200, 201, 201A or 201B, or if entered into, or done, would be in contravention of section 197, 200, 201, 201A or 201B;

(*d*) the price of a class of spot foreign exchange contracts for purposes of leveraged foreign exchange trading, will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into, or other act or thing done or to be done, in relation to that class of spot foreign exchange contracts for purposes of leveraged foreign exchange trading, by one or more persons which to the person's knowledge was entered into, or done, in contravention of section 197, 200, 201, 201A or 201B, or if

entered into, or done, would be in contravention of section 197, 200, 201, 201A or 201B.

[4/2017]

(2) For the purpose of subsection (1), the condition is either —

(*a*) the person mentioned in subsection (1), or a person associated with that person, has entered into or purports to enter into any such transaction, or has done or purports to do any such act or thing; or

(*b*) the person mentioned in subsection (1), or a person associated with that person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of, the statement or information.

[4/2017]

Continuous disclosure

203.—(1) A person to whom this subsection applies must not intentionally, recklessly or negligently fail to notify the approved exchange of such information as is required to be disclosed by the approved exchange under the listing rules or any other requirement of the approved exchange, if the person is required by the approved exchange under the listing rules or any other requirement of the approved exchange to notify the approved exchange of information on specified events or matters as they occur or arise for the purpose of the approved exchange making that information available to an organised market operated by the approved exchange.

[4/2017]

(2) Subsection (1) applies to any of the following:

(*a*) an entity, the securities or securities-based derivatives contracts of which are listed for quotation on an approved exchange;

(*b*) a trustee-manager of a business trust, where the securities or securities-based derivatives contracts of the business trust are listed for quotation on an approved exchange;

(*c*) a responsible person of a collective investment scheme, where the units in the collective investment scheme are listed for quotation on an approved exchange.

[4/2017]

(3) Despite section 204 or 335, a contravention of subsection (1) is not an offence unless the failure to notify is intentional or reckless.

[4/2017]

Penalties under this Division

204.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 232; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[2/2009]

Division 2 — Prohibited Conduct — Financial Benchmarks

Application of this Division

205. This Division applies to —

(*a*) acts occurring within Singapore in relation to financial benchmarks, whether administered in Singapore or elsewhere; and

(*b*) acts occurring outside Singapore in relation to financial benchmarks that are administered in Singapore.

[4/2017]

Interpretation of this Division

206. In this Division —

"administer", in relation to a financial benchmark, means the activity of administering the financial benchmark;

"international body" means the European Central Bank, the Organization of the Petroleum Exporting Countries, and such other international bodies as may be prescribed by regulations made under section 341;

"public authority" means —

(*a*) any ministry or department of the Government, or any statutory body, or any board, commission, committee or similar body, whether corporate or unincorporated, established under a public Act for a public purpose;

(*b*) in relation to a foreign country or territory, an authority of the foreign country or territory, or any board, commission, committee or similar body, whether corporate or unincorporated, established under the law of the foreign country or territory for a public purpose; or

(*c*) such other organisation as the Authority may prescribe by regulations made under section 341.

[4/2017]

Manipulation of financial benchmarks

207.—(1) A person must not do any thing, cause any thing to be done or engage in any course of conduct, if the person's purpose, or any of the person's purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) is to create a false or misleading appearance as to the price, value, performance or rate of any financial benchmark.

[4/2017]

(2) A person must not do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a

false or misleading appearance, as to the price, value, performance or rate of any financial benchmark, if —

(*a*) the person knows that doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will likely create, that false or misleading appearance; or

(*b*) the person is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will likely create, that false or misleading appearance.

[4/2017]

Exception for conduct pursuant to policy requirement

208. Section 207 does not apply in respect of any thing done or to be done or any course of conduct engaged by, or by a person acting on behalf of, a public authority or international body, whether in Singapore or elsewhere —

(*a*) in respect of monetary policy;

(*b*) in respect of policies with respect to exchange rates, the management of public debt or foreign exchange reserves; or

(*c*) for the purpose of managing the price or value of any commodity.

[4/2017]

False or misleading statements

209. A person must not make a statement, disseminate any information or express any opinion that is false or misleading in a material particular to a person who carries out the activity of administering a financial benchmark if —

(*a*) the person intends that the statement, information or opinion be used for the purpose of administering a financial benchmark; and

(*b*) the person knows or ought reasonably to have known that the statement, information or opinion is false or misleading

in a material particular, or is reckless as to whether the statement, information or opinion is false or misleading in a material particular.

[4/2017]

Penalties under this Division

210.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

[4/2017]

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 232; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[4/2017]

211. [*Repealed by Act 4 of 2017*]

212. [*Repealed by Act 4 of 2017*]

Division 3 — Insider Trading

Application of this Division

213. This Division applies to —

(*a*) acts occurring within Singapore in relation to —

(i) securities or securities-based derivatives contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;

(ii) securities or securities-based derivatives contracts of any business trust;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore or elsewhere;

(iv) securities-based derivatives contracts, whether traded in Singapore or elsewhere; or

(v) CIS units —

(A) listed for quotation or quoted on an organised market in Singapore or elsewhere; or

(B) traded in Singapore or elsewhere; and

(*b*) acts occurring outside Singapore in relation to —

(i) securities or securities-based derivatives contracts of a corporation that is formed or carries on business in Singapore;

(ii) securities or securities-based derivatives contracts of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore;

(iv) securities-based derivatives contracts traded in Singapore; or

(v) CIS units —

(A) listed for quotation or quoted on an organised market in Singapore; or

(B) traded in Singapore.

[4/2017]

Interpretation of this Division

214.—(1) In this Division —

"Collective Investment Scheme unit" or "CIS unit" means —

(*a*) a right or interest (however described) in a collective investment scheme (whether or not constituted as an

entity), and includes an option to acquire any such right or interest in the collective investment scheme; or

(*b*) a contract or arrangement under which —

(i) a party to the contract or arrangement is required to, or may be required to, discharge its obligations under the contract or arrangement at some future time; and

(ii) the value of the contract or arrangement, is determined (whether directly or indirectly, or whether wholly or in part) by reference to, derived from, or varies by reference to any of the following:

(A) the value or amount of units of a collective investment scheme;

(B) fluctuations in the values or amount of units of a collective investment scheme;

"debenture" has the meaning given by section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

"financial performance", in relation to a business trust, means the performance of the business relating to the trust property of the business trust which is managed and operated by the trustee of the business trust;

"information" includes —

(*a*) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;

(*b*) matters relating to the intentions, or the likely intentions, of a person;

(*c*) matters relating to negotiations or proposals with respect to —

(i) commercial dealings; or

(ii) dealing in capital markets products that are securities, securities-based derivatives contracts or CIS units;

(iii) [*Deleted by Act 4 of 2017*]

(*d*) information relating to the financial performance of a corporation or business trust, or otherwise;

(*e*) information that —

(i) a person proposes to enter into, or had previously entered into, one or more transactions or agreements in relation to any securities, securities-based derivatives contract or CIS unit; or

(ii) a person has prepared or proposes to issue a statement relating to any securities, securities-based derivatives contract or CIS unit; and

(*f*) matters relating to the future;

"persons who commonly invest", in relation to investment in any kind of securities, securities-based derivatives contracts or CIS units, means a section of the public that is accustomed, or would be likely, to deal in securities, securities-based derivatives contracts or CIS units, or in a class of securities, securities-based derivatives contracts or CIS units, of that kind;

"purchase", in relation to securities-based derivatives contracts or CIS units, includes a contract or arrangement under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another's behalf;

"sell", in relation to securities-based derivatives contracts or CIS units, includes a contract or arrangement under which a party acquires an option or right from another party —

(*a*) grant or assign the option or right; or

(*b*) take, or cause to be taken, such action as releases the option or right,

whether or not on another's behalf;

"trust property" has the meaning given by section 2 of the Business Trusts Act 2004.

[2/2009; 4/2017]

(2) In this Division —

(*a*) a reference to a securities-based derivatives contract of a corporation in sections 213(*a*)(i) and (*b*)(i) and 218 is a reference to a securities-based derivatives contract of which the underlying thing, or any of the underlying things, is a security of that corporation; and

(*b*) a reference to a securities-based derivatives contract of a business trust in sections 213(*a*)(ii) and (*b*)(ii) and 218 is a reference to a securities-based derivatives contract of which the underlying thing, or any of the underlying things, is a security of that business trust.

[4/2017]

Information generally available

215. For the purposes of this Division, information is generally available if —

(*a*) it consists of readily observable matter;

(*b*) without limiting paragraph (*a*) —

(i) it has been made known in a manner that would, or would be likely to, bring it to the attention of any of the following classes of persons:

(A) persons who commonly invest in securities of a kind of which the price or value might be affected by the information;

(B) persons who commonly invest in securities-based derivatives contracts of a

kind of which the price or value might be affected by the information;

(C) persons who commonly invest in CIS units of a kind of which the price or value might be affected by the information; and

(ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or

(*c*) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:

(i) information referred to in paragraph (*a*);

(ii) information made known as referred to in paragraph (*b*)(i).

[4/2017]

Material effect on price or value of securities, securities-based derivatives contracts or CIS units

216. For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units, if the information would, or would be likely to, influence any of the following persons in deciding whether or not to subscribe for, buy or sell those securities, securities-based derivatives contracts or CIS units:

(*a*) the persons who commonly invest in the securities, securities-based derivatives contracts or CIS units;

(*b*) any one or more classes of persons who constitute the persons mentioned in paragraph (*a*).

[4/2017]

Trading and procuring trading in securities, securities-based derivatives contracts or CIS units

217.—(1) For the purposes of this Division, trading in any securities, securities-based derivatives contracts or CIS units, that is ordinarily permitted on an organised market is taken to be

permitted on that organised market even though trading in such securities, securities-based derivatives contracts or CIS units (as the case may be) on that organised market is suspended.

[4/2017]

(2) For the purposes of this Division but without limiting the meaning that the expression "procure" has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the firstmentioned person is taken to procure the act or omission by the other person.

Prohibited conduct by connected person in possession of inside information

218.—(1) Subject to this Division, where —

(*a*) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of that corporation; and

(*b*) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities or securities-based derivatives contracts of that corporation,

subsections (2), (3), (4), (5) and (6) apply.

[4/2017]

(1A) Subsections (2), (3), (4A), (5) and (6) apply if —

(*a*) a person is connected to —

(i) a corporation that is the trustee of, or manages or operates, a business trust; or

(ii) a corporation that is the trustee or manager of a collective investment scheme —

(A) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(B) all or any units of which are listed on an approved exchange;

(*b*) the connected person possesses —

(i) where the person is connected to a corporation mentioned in paragraph (*a*)(i), any information concerning the corporation or business trust that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or

(ii) where the person is connected to a corporation mentioned in paragraph (*a*)(ii), any information concerning the corporation or collective investment scheme that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of the corporation, or the price or value of CIS units in the scheme; and

(*c*) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on —

(A) where the person is connected to a corporation mentioned in paragraph (*a*)(i), the price or value of securities or securities-based

derivatives contracts of the corporation or business trust; or

(B) where the person is connected to a corporation mentioned in paragraph (*a*)(ii), the price or value of securities or securities-based derivatives contracts of the corporation, or the price or value of CIS units in the collective investment scheme.

[4/2017]

(2) The connected person must not (whether as principal or agent) —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A); or

(*b*) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A).

[4/2017]

(3) The connected person must not, directly or indirectly, communicate the information mentioned in subsection (1) or (1A), or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A); or

(*b*) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A).

[4/2017]

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or claimant proves that the connected person was at the material time —

(*a*) in possession of information concerning the corporation to which the person was connected; and

(*b*) the information was not generally available,

it is presumed, until the contrary is proved, that the connected person knew at the material time that —

(*c*) the information was not generally available; and

(*d*) if the information were generally available, it might have a material effect on the price or value of securities or securities-based derivatives contracts of that corporation.

[4/2017]

[Act 25 of 2021 wef 01/04/2022]

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation mentioned in subsection (1A)(*a*)(i) or (ii), the presumption in subsection (4B) applies until the contrary is proved, if the prosecution or claimant proves that the connected person was at the material time —

(*a*) in possession of information concerning the corporation, business trust or collective investment scheme, as the case may be; and

(*b*) the information was not generally available.

[4/2017]

[Act 25 of 2021 wef 01/04/2022]

(4B) For the purpose of subsection (4A), the presumption is the connected person knew at the material time that —

(*a*) the information was not generally available; and

(*b*) if the information were generally available, it might have a material effect on —

(i) where the person is connected to a corporation mentioned in subsection (1A)(*a*)(i), the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or

(ii) where the person is connected to a corporation mentioned in subsection (1A)(*a*)(ii), the price or value of the securities or securities-based derivatives contracts of the corporation or the price or value of CIS units in the collective investment scheme.

[4/2017]

(5) In this Division —

(*a*) "connected person" means a person referred to in subsection (1) or (1A) who is connected to a corporation; and

(*b*) a person is connected to a corporation if —

(i) the person is an officer of that corporation or of a related corporation;

(ii) the person is a substantial shareholder in that corporation or in a related corporation; or

(iii) the person occupies a position that may reasonably be expected to give the person access to information of a kind to which this section applies by virtue of —

(A) any professional or business relationship existing between the person (or the person's employer or a corporation of which the person

is an officer) and that corporation or a related corporation; or

(B) being an officer of a substantial shareholder in that corporation or in a related corporation.

[2/2009]

(6) In subsection (5), "officer", in relation to a corporation, includes —

(*a*) a director, secretary or employee of the corporation;

(*b*) a receiver, or receiver and manager, of property of the corporation;

(*c*) a judicial manager of the corporation;

(*d*) a liquidator of the corporation; and

(*e*) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Prohibited conduct by other persons in possession of inside information

219.—(1) Subject to this Division, where —

(*a*) a person who is not a connected person referred to in section 218 (called in this section the insider) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units; and

(*b*) the insider knows that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities, securities-based derivatives contracts or CIS units, as the case may be,

subsections (2) and (3) apply.

[4/2017]

(2) The insider must not (whether as principal or agent) —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivatives contracts or CIS units, as the case may be; or

(*b*) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivatives contracts or CIS units, as the case may be.

[4/2017]

(3) The insider must not, directly or indirectly, communicate the information mentioned in subsection (1), or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1); or

(*b*) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1).

[4/2017]

Not necessary to prove intention to use

220.—(1) To avoid doubt, in any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or claimant to prove that the accused person or defendant intended to use the information referred to in section 218(1)(*a*) or (1A)(*a*) or 219(1)(*a*) in contravention of section 218 or 219, as the case may be.

[Act 25 of 2021 wef 01/04/2022]

(2) In any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or claimant to prove the absence of facts or circumstances which if they existed

would, by virtue of sections 222 to 230 or any regulations made under section 341, preclude the act from constituting a contravention of section 218 or 219, as the case may be.

[Act 25 of 2021 wef 01/04/2022]

Penalties under this Division

221.—(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 232; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[2/2009]

Exception for redemption of units in collective investment scheme

222. Sections 218(2) and 219(2) do not apply in respect of the redemption of units in a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less —

(*a*) any liabilities of that collective investment scheme to which the units relates; and

(*b*) any reasonable charge for purchasing the units.

Exception for underwriters

223.—(1) Sections 218(2) and 219(2) do not apply in respect of —

(*a*) subscribing for, or purchasing, securities, securities-based derivatives contracts or CIS units under an underwriting agreement or a sub-underwriting agreement;

(*b*) entering into an agreement referred to in paragraph (*a*); or

(*c*) selling securities, securities-based derivatives contracts or CIS units subscribed for, or purchased, under an agreement referred to in paragraph (*a*).

[4/2017]

(2) Sections 218(3) and 219(3) do not apply in respect of the communication of information in relation to securities, securities-based derivatives contracts or CIS units —

(*a*) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities, securities-based derivatives contracts or CIS units; or

(*b*) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities, securities-based derivatives contracts or CIS units if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:

(i) enter into a sub-underwriting agreement in relation to any such securities, securities-based derivatives contracts or CIS units;

(ii) subscribe for, or purchase, any such securities, securities-based derivatives contracts or CIS units.

[4/2017]

Exception for purchase pursuant to legal requirement

224.—(1) Sections 218(2) and 219(2) do not apply in respect of the purchase of securities, securities-based derivatives contracts or CIS units pursuant to a requirement imposed by the Government, a

statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[4/2017]

(2) Sections 218(2) and 219(2) do not apply in respect of the sale of securities, securities-based derivatives contracts or CIS units pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

[4/2017]

Exception for information communicated pursuant to legal requirement

225. Sections 218(3) and 219(3) do not apply in respect of the communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

Attribution of knowledge within corporations

226.—(1) For the purposes of this Division —

(*a*) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his or her possession in the course of the performance of duties as such an officer; and

(*b*) if an officer of a corporation knows or ought reasonably to know any matter or thing because he or she is an officer of the corporation, it is to be presumed, until the contrary is proved, that the corporation knows or ought reasonably to know that matter or thing.

(2) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —

(*a*) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer;

(*b*) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or

agreement was given to that person by a person in possession of the information; and

(*c*) the information was not so communicated and no such advice was so given.

Attribution of knowledge within partnerships and limited liability partnerships

227.—(1) For the purposes of this Division —

(*a*) a partner of a partnership or a limited liability partnership (as the case may be) is taken to possess any information —

(i) which another partner of the partnership or limited liability partnership (as the case may be) possesses and which came into such other partner's possession in his or her capacity as a partner of the partnership or limited liability partnership (as the case may be); or

(ii) which an employee of the partnership or a manager of a limited liability partnership (as the case may be) possesses and which came into the possession of such an employee or manager in the course of the performance of his or her duties as such an employee or manager; and

(*b*) if a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (as the case may be) knows or ought reasonably to know any matter or thing in his or her capacity as such a partner, manager or employee, it is to be presumed that every partner of the partnership or limited liability partnership (as the case may be) knows or ought reasonably to know that matter or thing.

(2) The partners of a partnership or limited liability partnership (as the case may be) do not contravene section 218(2) or 219(2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or a manager or managers, or an employee or employees, of the partnership or limited liability

partnership (as the case may be) are in actual possession of information if —

(*a*) the decision to enter into the transaction or agreement was taken on behalf of the partnership or limited liability partnership by any one or more of the following persons:

(i) a partner who is taken to have possessed the information merely because another partner, or a manager or employee, of the partnership or limited liability partnership, was in possession of the information;

(ii) an employee of the partnership or limited liability partnership or a manager of the limited liability partnership who was not in possession of the information;

(*b*) the partnership or limited liability partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(*c*) the information was not so communicated and no such advice was so given.

(3) A partner of a partnership or limited liability partnership (as the case may be) does not contravene section 218(2) or 219(2) by entering into a transaction or agreement otherwise than on behalf of the partnership or limited liability partnership merely because he or she is taken to possess information that is in the possession of another partner, a manager or an employee of the partnership.

Exception for knowledge of individual's own intentions or activities

228. An individual does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because the

individual is aware that the individual proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

Exception for corporations and its officers, etc.

229.—(1) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because the corporation is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(2) Subject to subsection (3), a corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(3) Subsection (2) does not apply unless the officer of the corporation mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218(2) or 219(2) by entering into a transaction or agreement on behalf of a corporation in relation to securities, securities-based derivatives contracts or CIS units merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(5) Subsection (4) does not apply unless the person became aware of the matters referred to in that subsection in the course of the

performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

Unsolicited transactions by holder of capital markets services licence and representatives

230.—(1) The holder of a capital markets services licence to deal in capital markets products, or a representative of such a holder, does not contravene section 218(2) or 219(2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities, securities-based derivatives contracts or CIS units if —

(*a*) the holder or representative entered into the transaction or agreement concerned on behalf of another person (called in this section the principal) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the holder or representative;

(*b*) the holder or representative has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and

(*c*) the principal is not an associate of the holder or representative.

[2/2009; 4/2017]

(2) Nothing in this section affects the application of section 218(2) or 219(2) in relation to the principal.

Parity of information defences

231.—(1) In any proceedings against a person for a contravention of section 218(2) or 219(2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the firstmentioned person's possession, it is a defence if the court is satisfied that —

(*a*) the information came into the firstmentioned person's possession solely as a result of the information having been made known as referred to in section 215(*b*)(i); or

(*b*) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 218(3) or 219(3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the court is satisfied that —

(*a*) the information came into the firstmentioned person's possession solely as a result of the information having been made known as referred in section 215(*b*)(i); or

(*b*) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

Division 4 — Civil Liability

Civil penalty

232.—(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part, the court may make an order against the person for the payment of a civil penalty of a sum not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the person gained as a result of the contravention; or

(ii) the amount of the loss that the person avoided as a result of the contravention;

(*b*) $2 million.

[4/2017]

(3) The civil penalty ordered under subsection (2) must not be less than —

(*a*) in the case where the person is a corporation, $100,000; and

(*b*) in any other case, $50,000.

[4/2017]

(4) Despite subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section prevents the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section must be paid into the Consolidated Fund and is to be treated as a judgment debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[34/2012; 4/2017]

(7) If the person fails to pay the civil penalty imposed on the person within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may recover the civil penalty on behalf of the Government as though the civil penalty were a judgment debt due to the Authority.

[34/2012]

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, is also available to a defendant to an action under this section in respect of that contravention.

Action under section 232 not to commence, etc., in certain situations

233.—(1) An action under section 232 must not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in this Part.

(2) An action under section 232 must not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in this Part, except where the person has been acquitted on the ground of the withdrawal of the charge against the person.

(3) An action under section 232 must be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in this Part, and may thereafter be continued only if —

(*a*) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or

(*b*) the charge against the person in respect of that contravention has been withdrawn.

Civil liability

234.—(1) A person who has acted in contravention of any of the provisions in this Part (called in this section and sections 235 and 236 the contravening person) is, if the contravening person had gained a profit or avoided a loss as a result of that contravention, whether or not the contravening person had been convicted or had a civil penalty imposed on the contravening person in respect of that contravention, liable to pay compensation to any person (called in this section and sections 235 and 236 the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in the case where the contravening person had acted in contravention of section 218 or 219, the information mentioned in section 218(1) or (1A) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention had not occurred.

[2/2009; 34/2012; 4/2017]

(1A) Without affecting subsection (1), the contravening person is, whether or not the contravening person had gained a profit or avoided a loss as a result of that contravention, and whether or not the contravening person had been convicted or had a civil penalty imposed on the contravening person in respect of that contravention, liable to pay compensation to the claimant, if —

(*a*) the contravening person has contravened section 199, 200 or 201 in connection with any dealing in capital markets products, by —

(i) making, disseminating or publishing any false, misleading or deceptive statement, information, promise or forecast; or

(ii) concealing or omitting to state any material fact; and

(*b*) the claimant —

(i) in reliance on that statement, information, promise or forecast or in ignorance of that concealed or omitted material fact, had (whether contemporaneously with the contravention or otherwise) been dealing in capital markets products of the same description; and

(ii) had suffered loss.

[34/2012; 4/2017]

(2) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant referred to in subsection (1)(*b*), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable.

[34/2012]

(2A) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1A) is —

(*a*) in any case where the claimant had contemporaneously with the contravention been dealing in capital markets products of the same description, and had suffered the loss referred to in subsection (1)(*b*), any one of the following amounts that is elected by the claimant:

(i) the amount of the loss suffered by the claimant referred to in subsection (1)(*b*), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable;

(ii) the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(*a*)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(*a*)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention

under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L; or

(*b*) in any other case, the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(*a*)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(*a*)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L.

[34/2012; 4/2017]

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, is also available to a defendant to an action under this section in respect of the contravention.

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the dealing in which the loss occurred.

[34/2012; 4/2017]

(5) For the purposes of this section, in determining whether any dealing in capital markets products took place contemporaneously with the contravention, the court is to take into account the following matters:

(*a*) the volume of capital markets products of the same description dealt in between the date and time of the contravention, and the date and time of the dealing in capital markets products;

(*b*) if the contravention was effected by a transaction or transactions involving the dealing in capital markets

products, the date on and time at which the transaction or transactions were cleared and settled;

(*c*) whether the dealing in capital markets products took place before or after the contravention;

(*d*) in the case of a contravention under section 203, 218 or 219, whether the dealing in capital markets products that are securities, securities-based derivatives contracts or CIS units as defined in section 214(1) (as the case may be) took place before or after the information to which the contravention relates became generally known;

(*e*) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

[34/2012; 4/2017]

(6) In this section and section 236, "maximum recoverable amount", in respect of each contravention by a contravening person means —

(*a*) the amount of the profit that the contravening person gained; or

(*b*) the amount of the loss that the contravening person avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay, in respect of the same contravention, to other claimants (each being a claimant whose claim is one where the amount of compensation that the contravening person is liable to pay is specified under subsection (2) or (2A)(*a*)(i)).

[34/2012]

Action under section 234 not to commence, etc., in certain situations

235.—(1) Except with the permission of court, no action under section 234 may be brought against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in the contravening person gaining a profit or avoiding a loss after the commencement of —

(*a*) criminal proceedings under this Part against the contravening person for the same contravention; or

(*b*) an action under section 232 against the contravening person for the same contravention.

[Act 25 of 2021 wef 01/04/2022]

(2) Any action under section 234 against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in the contravening person gaining a profit or avoiding a loss, being an action that is pending on the date of commencement of —

(*a*) criminal proceedings under this Part against the contravening person for the same contravention; or

(*b*) an action under section 232 against the contravening person for the same contravention,

must be stayed, and may not thereafter be continued except with the permission of court.

[Act 25 of 2021 wef 01/04/2022]

(3) Permission under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 236(1) for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed (as the case may be) must comply with such directions relating to the filing and proof of the claimant's claim under section 236 as that court may issue in the claimant's case.

[Act 25 of 2021 wef 01/04/2022]

Civil liability in event of conviction, etc.

236.—(1) Despite section 234, where the contravening person —

(*a*) has been convicted of an offence under this Part; or

(*b*) has an order for the payment of a civil penalty made against the contravening person under section 232, other than by way of a default judgment or a consent order made with or without admission of contravention under section 232(4),

in respect of the contravention of any of the provisions in this Part, the court which convicted the contravening person or made the order against the contravening person (called in this section the relevant court) may, after the conviction or the order imposing the civil

penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

[2/2009; 34/2012]

(2) For the purposes of subsection (1), the relevant court must not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty (as the case may be) has been made final.

(3) Subject to subsection (3A), the relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay compensation to each claimant who has filed and proven that claimant's claim for compensation.

[34/2012]

(3A) Where the amount of compensation that a claimant would have been entitled if the claimant had brought an action under section 234 is specified under section 234(2) or (2A)(*a*)(i), the compensation amount ordered by the relevant court for that claimant is equal to the lesser of the following amounts:

(*a*) the amount of compensation which that claimant has proven to the satisfaction of the court that the claimant would have been entitled to if the claimant had brought an action under section 234 against the contravening person;

(*b*) the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (*a*) bears to the total amount of all other claims (each being a claim the claimant of which is one who, if the claimant had brought an action under section 234, would have been entitled to the amount of compensation specified under section 234(2) or (2A)(*a*)(i)) which have been proved to the court.

[34/2012]

(4) For the purposes of this section, a conviction is made final if —

(*a*) the conviction is upheld on appeal, revision or otherwise;

(*b*) the conviction is not subject to further appeal;

(*c*) no notice of appeal against the conviction is lodged within the time prescribed by sections 377 and 378 of the Criminal Procedure Code 2010; or

(*d*) any appeal against the conviction is withdrawn.

[15/2010]

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

(*a*) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;

(*b*) the order is not subject to further appeal;

(*c*) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court made under section 238; or

(*d*) any appeal against the imposition of the penalty is withdrawn.

Division 5 — Attributed Liability

Interpretation of this Division

236A. In this Division, unless the context otherwise requires —

"defendant" means an individual liable to an order for a civil penalty under section 236H in respect of a contravention of any provision in this Part committed by a corporation, partnership, limited liability partnership or unincorporated association;

"defendant corporation" means a corporation —

(*a*) liable to be punished under section 236B(1) or to an order for a civil penalty under section 236B(3) in respect of a contravention of any provision in this Part committed by its employee or officer; or

(*b*) liable to an order for a civil penalty under section 236C(1);

"defendant partnership" means a partnership or limited liability partnership —

(*a*) liable to be punished under section 236E(1) or to an order for a civil penalty under section 236E(3) in respect of a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be; or

(*b*) liable to an order for a civil penalty under section 236F(1);

"partnership", in Subdivision (2), means the partnership at the time of the contravention by the contravening person referred to in section 236E(1) or 236F(1), as the case may be.

[2/2009]

Subdivision (1) — Corporations

Liability of corporation when employee or officer commits contravention with consent or connivance of corporation

236B.—(1) Where an offence of contravening any provision in this Part is proved to have been committed by an employee or an officer of a corporation (called in this section the contravening person) —

(*a*) with the consent or connivance of the corporation; and

(*b*) for the benefit of the corporation,

the corporation shall be guilty of that offence as if the corporation had committed the contravention, and shall be liable to be proceeded against and punished accordingly.

[2/2009]

(2) No proceedings shall be instituted against a corporation under subsection (1) after —

(*a*) a court has made an order against the corporation for the payment of a civil penalty under subsection (3); or

(*b*) the corporation has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

[2/2009]

(3) Where it appears to the Authority that a corporation is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty in respect of that contravention as if the corporation had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under subsection (1) for a contravention of any provision of this Part, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than $100,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the corporation gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the corporation avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(5) [*Deleted by Act 4 of 2017*]

(6) Sections 232(4) to (7) and 233 apply in relation to an action brought against a corporation under subsection (3) as they apply in relation to an action under section 232.

[2/2009]

(7) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the corporation if it were prosecuted under subsection (1) in respect of that contravention,

is also available to the corporation in an action under subsection (3) in respect of that contravention.

[2/2009]

(8) The means by which consent or connivance of the corporation under subsection (1) or (3) may be established include proving that —

(*a*) the corporation's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;

(*b*) a high managerial agent of the corporation intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or

(*c*) a corporate culture existed within the corporation that directed or encouraged non-compliance with the relevant provision.

[2/2009]

(9) In this section —

"board of directors" means the body (by whatever name called) exercising the executive authority of the corporation;

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation in which the relevant activity takes place;

"high managerial agent" means an employee, agent or officer of the corporation with duties of such responsibility that his or her conduct may fairly be assumed to represent the corporation's policy.

[2/2009]

Civil penalty when corporation fails to prevent or detect contravention by employee or officer

236C.—(1) A corporation which fails to prevent or detect a contravention of any provision in this Part committed by an

employee or officer of the corporation (called in this section the contravening person), which contravention is —

(*a*) committed for the benefit of the corporation; and

(*b*) attributable to the negligence of the corporation,

commits a contravention and shall be liable to an order for a civil penalty under this section.

[2/2009]

(2) Where it appears to the Authority that a corporation has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty.

[2/2009]

(3) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), the court may make an order against the corporation for the payment of a civil penalty of a sum not less than $100,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the corporation gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the corporation avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(4) [*Deleted by Act 4 of 2017*]

(5) Sections 232(4) to (7) and 233 apply in relation to an action brought against a corporation under subsection (2) as they apply in relation to an action under section 232.

[2/2009]

(6) Any defence that would be available to the contravening person if the contravening person were prosecuted for the contravening person's contravention is also available to the corporation in an action

under subsection (2) in respect of its failure to prevent or detect that contravention.

[2/2009]

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a corporation, the court is to take into account the following matters:

(*a*) whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;

(*b*) whether the corporation has consistently enforced compliance with its policies and procedures referred to in paragraph (*a*);

(*c*) such other factors as the court may consider relevant.

[2/2009]

Civil liability of corporation for contravention by employee or officer

236D.—(1) A defendant corporation which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236B(1) or 236C(1) is, whether or not it had been convicted or had a civil penalty imposed on it, liable to pay compensation to any person (called in this section the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219,

the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

[2/2009; 34/2012; 4/2017]

(2) The amount of compensation that the defendant corporation is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(*a*) by the contravening person under an order of court or an agreement to pay; or

(*b*) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the defendant corporation if it were prosecuted under section 236B(1) or had an action brought against it under section 236C(2),

is also available to the defendant corporation in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether the dealing took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters set out in section 234(5).

[2/2009; 4/2017]

(6) In this section, "maximum recoverable amount" means —

(*a*) the amount of profit that the defendant corporation gained; or

(*b*) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant corporation had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

Subdivision (2) — Partnerships and limited liability partnerships

Liability of partnership and limited liability partnership when partner, etc., commits contravention with consent or connivance

236E.—(1) Where an offence of contravening any provision of this Part is proved to have been committed by a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (called in this section the contravening person) —

(*a*) with the consent or connivance of the partnership or limited liability partnership; and

(*b*) for the benefit of the partnership or limited liability partnership,

the partnership or limited liability partnership shall be guilty of that offence as if it had committed the contravention, and every partner of that partnership, or the limited liability partnership (as the case may be) shall be liable to be proceeded against and punished accordingly.

[2/2009]

(2) No proceedings shall be instituted against any partner of the partnership or the limited liability partnership under subsection (1) after —

(*a*) a court has made an order against the partner or limited liability partnership for the payment of a civil penalty under subsection (3); or

(*b*) the partner or limited liability partnership has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

[2/2009]

(3) Where it appears to the Authority that a partnership or a limited liability partnership is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty in respect of that contravention as if the partnership or limited liability partnership had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision of this Part, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than $50,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the partnership or limited liability partnership avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(5) [*Deleted by Act 4 of 2017*]

(6) Sections 232(4) to (7) and 233 apply in relation to an action brought against a partnership or limited liability partnership under subsection (3) as they apply in relation to an action under section 232.

[2/2009]

(7) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the partnership or limited liability partnership if it were prosecuted under subsection (1) in respect of that contravention,

is also available to the partnership or limited liability partnership in an action under subsection (3) in respect of that contravention.

[2/2009]

(8) The means by which consent or connivance of the partnership or limited liability partnership under subsection (1) or (3) may be established include proving that —

(*a*) the executive partners of the partnership or limited liability partnership intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;

(*b*) a high managerial agent of the partnership or limited liability partnership intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or

(*c*) a corporate culture existed within the partnership or limited liability partnership that directed or encouraged non-compliance with the relevant provision.

[2/2009]

(9) In this section —

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the partnership or limited liability partnership generally or in the part of the partnership or limited liability partnership in which the relevant activity takes place;

"executive partners" means the partners exercising the executive authority of the partnership or limited liability partnership;

"high managerial agent" means a partner, manager or employee of the partnership or limited liability partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the partnership or limited liability partnership's policy.

[2/2009]

Civil penalty when partnership or limited liability partnership fails to prevent or detect contravention by partner, etc.

236F.—(1) A partnership or limited liability partnership which fails to prevent or detect a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be (called in this section the contravening person), which contravention is —

(*a*) committed for the benefit of the partnership or limited liability partnership; and

(*b*) attributable to the negligence of the partnership or limited liability partnership,

commits a contravention and shall be liable to an order for a civil penalty under this section.

[2/2009]

(2) Where it appears to the Authority that a partnership or limited liability partnership has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty.

[2/2009]

(3) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than $50,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the partnership or limited liability partnership avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(4) [*Deleted by Act 4 of 2017*]

(5) Sections 232(4) to (7) and 233 apply in relation to an action brought against a partnership or limited liability partnership under subsection (2) as they apply in relation to an action under section 232.

[2/2009]

(6) Any defence that would be available to the contravening person if the contravening person were prosecuted for the contravening person's contravention is also available to the partnership or limited liability partnership in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

[2/2009]

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a partnership or limited liability partnership, the court is to take into account the following matters:

(*a*) whether the partnership or limited liability partnership has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;

(*b*) whether the partnership or limited liability partnership has consistently enforced compliance with its policies and procedures referred to in paragraph (*a*);

(*c*) such other factors as the court may consider relevant.

[2/2009]

Civil liability of partnership or limited liability partnership for contravention by partner, etc.

236G.—(1) A defendant partnership which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236E(1) or 236F(1) is, whether or not the partners of the partnership or the limited liability partnership had been convicted or the partnership or limited liability partnership had a civil penalty imposed on it, liable to pay compensation to any person (called in this section the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

[2/2009; 34/2012; 4/2017]

(2) The amount of compensation that the defendant partnership is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(*a*) by the contravening person under an order of court or an agreement to pay; or

(*b*) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the defendant partnership if it were prosecuted under section 236E(1) or had an action brought against it under section 236F(2),

is also available to the defendant partnership in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether the dealing took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters set out in section 234(5).

[2/2009; 4/2017]

(6) In this section, "maximum recoverable amount" means —

(*a*) the amount of profit that the defendant partnership gained; or

(*b*) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant partnership had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

Subdivision (3) — Officers, partners, etc., of entities

Civil penalty against officer of corporation, etc.

236H.—(1) Where it appears to the Authority that a corporation, partnership, limited liability partnership or unincorporated association (called in this section the contravening person) has contravened any provision in this Part —

(*a*) with the consent or connivance of a person (called in this section the defendant) who is an officer or (where its affairs are managed by its members) a member of the corporation, a partner of the partnership, a partner or manager of the limited liability partnership, or an officer of the unincorporated association (other than a partnership) or a member of its governing body, as the case may be; or

(*b*) as a result of any neglect on the part of the defendant,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the defendant to seek an order for a civil penalty in respect of that contravention as if the defendant had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(2) If the court is satisfied on a balance of probabilities that the contravening person has contravened a provision in this Part with the consent or connivance of the defendant, or as a result of any neglect on the part of the defendant, the court may make an order against the defendant for the payment of a civil penalty of a sum not less than $50,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the defendant gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the defendant avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(3) [*Deleted by Act 4 of 2017*]

(4) Sections 232(4) to (7) and 233 apply in relation to an action brought against a defendant under subsection (1) as they apply in relation to an action under section 232.

[2/2009]

(5) Any defence that would be available to —

(*a*) the contravening person if it were prosecuted for its contravention; or

(*b*) the defendant if he or she were prosecuted under section 331 in respect of that contravention,

is also available to the defendant in an action under subsection (1) in respect of that contravention.

[2/2009]

Civil liability of officer of corporation, etc.

236I.—(1) A defendant who has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by a contravening person referred to in section 236H(1) is, whether or not the defendant had been convicted under section 331 or had a civil penalty imposed on the defendant under section 236H, liable to pay compensation to any person (called in this section the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219,

the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

[2/2009; 34/2012; 4/2017]

(2) The amount of compensation that the defendant is liable to pay to the claimant is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(*a*) by the contravening person under an order of court or an agreement to pay; or

(*b*) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(*a*) the contravening person if it were prosecuted for its contravention; or

(*b*) the defendant if he or she were prosecuted under section 331 in respect of that contravention,

is also available to the defendant in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether a dealing in capital markets products took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters referred to in section 234(5)(*a*) to (*e*).

[2/2009; 4/2017]

(6) In this section, "maximum recoverable amount" means —

(*a*) the amount of the profit that the defendant gained; or

(*b*) the amount of the loss that the defendant avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

Subdivision (4) — General

Actions not to commence or stayed in certain situations

236J.—(1) Except with the permission of court, no action may be brought against —

(*a*) a defendant corporation under section 236B, 236C or 236D;

(*b*) a defendant partnership (including, in the case of a partnership, any of the partners) under section 236E, 236F or 236G; or

(*c*) a defendant under section 236H or 236I,

which relates to a contravention of a provision in this Part (called in this section the primary contravention) by a contravening person referred to in section 236B(1) or 236C(1) (in relation to the defendant corporation), 236E(1) or 236F(1) (in relation to the defendant partnership) or 236H(1) (in relation to the defendant), as the case may be, after the commencement of —

(*d*) criminal proceedings in respect of the primary contravention against the contravening person; or

(*e*) an action under section 232 in respect of the primary contravention against the contravening person,

and any such action in paragraph (*a*), (*b*) or (*c*) pending on the date of commencement of the proceedings or action in paragraph (*d*) or (*e*) must be stayed, and may not thereafter be continued except with the permission of court.

[2/2009]

[Act 25 of 2021 wef 01/04/2022]

(2) Permission under subsection (1) may not be granted if —

(*a*) in the criminal proceedings referred to in subsection (1)(*d*), the contravening person has been acquitted of the primary contravention; or

(*b*) in the action under section 232 referred to in subsection (1)(*e*), the court is not satisfied that the contravening person has committed the primary contravention.

[2/2009]

[Act 25 of 2021 wef 01/04/2022]

(3) Except with the permission of court, no action under section 236D, 236G or 236I may be brought against the defendant corporation, defendant partnership or defendant in respect of a primary contravention after the commencement of —

(*a*) criminal proceedings against the defendant corporation under section 236B(1), the defendant partnership (including, in the case of a partnership, any of the partners) under section 236E(1) or the defendant under section 331 in respect of the same contravention;

(*b*) an action against the defendant corporation under section 236B(3), the defendant partnership under section 236E(3) or the defendant under section 236H in respect of the same contravention; or

(*c*) an action against the defendant corporation under section 236C(2) or the defendant partnership under section 236F(2) in respect of the failure to prevent or detect that contravention,

and any such action under section 236D, 236G or 236I (as the case may be) pending on the date of commencement of the proceedings or action in paragraph (*a*), (*b*) or (*c*) must be stayed, and may not thereafter be continued except with the permission of court.

[2/2009]

[Act 25 of 2021 wef 01/04/2022]

(4) Permission under subsection (3) may not be granted if a date has been fixed by a court under section 236K for the filing of claims, and

in that event the claimant to the proposed action or the action that has been stayed (as the case may be) must comply with such directions relating to the filing and proof of the claimant's claim under section 236K as that court may issue in the claimant's case.

[2/2009]

[Act 25 of 2021 wef 01/04/2022]

Civil liability in event of conviction or civil penalty

236K.—(1) Despite section 236D, 236G or 236I, where a defendant corporation, defendant partnership (including, in the case of a partnership, any of the partners) or defendant —

(*a*) has been convicted of an offence under this Division; or

(*b*) has had an order for the payment of civil penalty made against it, him or her under this Division, other than by way of a default judgment or a consent order made with or without admission of contravention,

and has gained a profit or avoided a loss as a result of the contravention by the contravening person referred to in section 236B(1), 236C(1), 236E(1), 236F(1) or 236H(1) (as the case may be) the court which convicted or made the order for a civil penalty against the defendant corporation, defendant partnership (or any of the partners thereof) or defendant may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims against the defendant corporation, defendant partnership or defendant (as the case may be) for compensation in respect of that contravention.

[2/2009]

(2) Section 236(2) to (5) applies, with the necessary modifications, to an action under subsection (1), and in such application —

(*a*) any reference to the contravening person is to be read as the defendant corporation, the defendant partnership or the defendant in subsection (1); and

(*b*) the reference to an action under section 234 is to be read as an action under section 236D (in relation to the defendant corporation), 236G (in relation to the defendant

partnership) or 236I (in relation to the defendant), as the case may be.

[2/2009]

(3) In this section, "claimant" means any person who would qualify as a claimant to bring an action against the defendant corporation, defendant partnership or defendant under section 236D, 236G or 236I, as the case may be.

[2/2009]

Order for disgorgement against third party

236L.—(1) Without affecting any action under section 234, 236, 236D, 236G, 236I or 236K, where —

(*a*) a person has been convicted by a court of an offence in respect of a contravention of any provision in this Part;

(*b*) a person has had an order for the payment of a civil penalty made against the person under section 232 or any of the provisions in this Division by a court, other than by way of a default judgment or a consent order made with or without admission of contravention, in respect of a contravention of any provision in this Part; or

(*c*) in an action commenced under this section, a court is satisfied on a balance of probabilities that a contravention by a person of any provision in this Part has occurred,

the court may, on the application of the Authority or any claimant, make an order against any other person (called in this section a third party) who has received the whole or any part of the benefit of that contravention for disgorgement of that benefit, being benefit derived from trades carried out for the third party by the person referred to in paragraph (*a*), (*b*) or (*c*).

[2/2009]

(2) The court must issue a notice to a third party against whom an application for an order for disgorgement under subsection (1) is made, giving the third party an opportunity to show cause, within such time as may be specified in the notice, why the order should not be made.

[2/2009]

(3) An application for an order for disgorgement under subsection (1) must not be commenced after the expiration of 6 years from the date on which the contravention referred to in that subsection was committed.

[2/2009]

(4) The court is not to make an order for disgorgement against a third party, or is not to order disgorgement of the entire benefit derived by the third party, if the court is satisfied, on a balance of probabilities, that —

(*a*) the third party acquired the benefit without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the benefit was derived from the contravention referred to in subsection (1); and

(*b*) the third party has so altered the third party's position in reliance on the third party having an indefeasible interest in the benefit that, in the opinion of the court, it would be inequitable to make the order for disgorgement or to order disgorgement of the entire benefit derived by the third party, as the case may be.

[2/2009]

(5) Despite subsection (4), the court may make an order for disgorgement against a third party referred to in subsection (4) of a sum that is, in the opinion of the court, equitable.

[2/2009]

(6) The court may, after the order for disgorgement has been made final, fix a date, not earlier than 6 months from the date the order for disgorgement has been made final, on or before which all claimants have to file and prove their claims for compensation in respect of the contravention referred to in subsection (1).

[2/2009]

(7) The court may, after the expiry of the date fixed under subsection (6), order that each claimant who has filed and proven the claimant's claim for compensation be paid out of the sum under the final order for disgorgement, an amount —

(*a*) equal to the amount of loss suffered by the claimant, after deducting any other compensation paid or payable to the

same claimant under an order of court or an agreement to pay in respect of the same contravention; or

(*b*) equal to the pro-rated portion of the sum under the final order for disgorgement, calculated according to the relationship which the amount referred to in paragraph (*a*) bears to all amounts proved to the court,

whichever is the lesser.

[2/2009]

(8) Any sum remaining under the order for disgorgement must be paid into the Consolidated Fund and is to be treated as a debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[2/2009; 4/2017]

(9) If the third party fails to pay the sums under the order for disgorgement within the time specified in the court order under subsection (7) —

(*a*) each claimant may recover the sum due to the claimant under the order for disgorgement as though it were a judgment debt due to the claimant; and

(*b*) the remaining sum under the order for disgorgement may be recovered by the Authority as though it were a judgment debt due to the Authority and paid into the Consolidated Fund.

[2/2009]

(10) After the expiry of the date fixed under subsection (6), no person may make any subsequent application under this section for an order for disgorgement against the third party in respect of the same contravention.

[2/2009]

(11) For the purposes of this section, an order for disgorgement is made final if —

(*a*) the order is not set aside on appeal or revision or is varied only as to the sum to be disgorged;

(*b*) the order is not subject to further appeal;

(*c*) no notice of appeal against the order is lodged within the time prescribed by Rules of Court; or

(*d*) any appeal against the order is withdrawn.

[2/2009]

(12) In this section —

"benefit", in relation to a contravention of any provision in this Part, means a profit gained or loss avoided as a result of that contravention;

"claimant", in relation to a contravention of any provision in this Part, means any person who would qualify as a claimant under section 234 in respect of that contravention.

[2/2009]

Division 6 — Miscellaneous

[2/2009]

Jurisdiction of District Court

237. A District Court has jurisdiction to hear and determine any action or application under Division 4 or 5 regardless of the monetary amount.

[34/2012]

Rules of Court

238.—(1) Rules of Court may be made —

(*a*) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under Divisions 4 and 5; and

(*b*) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

[2/2009; 34/2012]

(2) Without limiting subsection (1), Rules of Court may, in relation to proceedings under sections 236, 236K and 236L —

(*a*) provide for the advertisement of a notice for the filing and proof of claims under those sections;

(*b*) prescribe the procedure for the filing, proof and hearing of those claims; and

(*c*) provide for the payment of the costs and fees of an action that has been stayed under section 235(2) or 236J.

[2/2009]

PART 13

OFFERS OF INVESTMENTS

Division 1 — Securities and Securities-based Derivatives Contracts

[4/2017]

Subdivision (1) — Interpretation

Preliminary provisions

239.—(1) In this Division —

"borrowing entity" means an entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received by it in response to an invitation to subscribe for or purchase debentures of the entity;

"control", in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

(*a*) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and

(*b*) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

"dealing in capital markets products", in respect of capital markets products that are securities or securities-based derivatives contracts, means (whether as principal or agent) —

(*a*) making or offering to make with any person; or

(*b*) inducing or attempting to induce any person to enter into or to offer to enter into,

any agreement for or with a view to acquiring, disposing of, subscribing for, entering into, effecting, arranging or underwriting any securities or securities-based derivatives contracts;

"debenture issuance programme" means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;

"expert" has the meaning given by section 4(1) of the Companies Act 1967;

"guarantor entity", in relation to a borrowing entity, means an entity that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing entity in response to an invitation to subscribe for or purchase debentures of the borrowing entity;

"immediate family", in relation to an individual, means the individual's spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

"issuer" means —

(*a*) in relation to an offer of securities or securities-based derivatives contracts (other than units or derivatives of units in a business trust), the entity that issues or will be issuing the securities or securities-based derivatives contracts being offered;

(*b*) in relation to an offer of units in a business trust, the trustee-manager of the business trust in its capacity as the trustee that issues or will be issuing the units; and

(*c*) in relation to an offer of derivatives of units in a business trust, the trustee-manager of the business trust in its capacity as the trustee, or any other entity that issues or will be issuing the derivatives of units;

"minimum subscription", in relation to any securities or securities-based derivatives contracts offered for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which must be raised by the issue of the securities or securities-based derivatives contracts so offered, failing which no securities or securities-based derivatives contracts will be allotted or issued;

"preliminary document" means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, securities or securities-based derivatives contracts to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information as the Authority may prescribe;

"product highlights sheet" means a product highlights sheet referred to in section 240AA(1);

"profile statement" means a profile statement referred to in section 240(4);

"promoter", in relation to a prospectus issued by or in connection with an entity or a business trust, means a promoter of the entity or business trust (as the case may be) who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of the person acting in a professional capacity;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities or securities-based derivatives

contracts, and includes any document deemed to be a prospectus under section 257, but does not include —

(*a*) a profile statement;

(*b*) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)); or

(*c*) a product highlights sheet;

"recognised securities exchange" means a corporation which has been declared by the Authority, by order in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

"related party" means —

(*a*) in relation to an entity —

(i) a director or an equivalent person of the entity;

(ii) the chief executive officer or equivalent person of the entity;

(iii) a person who controls the entity;

(iv) a related corporation;

(v) any other entity controlled by it;

(vi) any other entity controlled by the person referred to in sub-paragraph (iii); and

(vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(*b*) in relation to an individual —

(i) his or her immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual's immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which the individual and his or her immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

"replacement document" means a replacement prospectus or a replacement profile statement referred to in section 241(1), as the case may be;

"statutory meeting" has the meaning given by section 4(1) of the Companies Act 1967;

"supplementary document" means a supplementary prospectus or a supplementary profile statement referred to in section 241(1), as the case may be;

"trust deed" has the same meaning as "deed" in section 2 of the Business Trusts Act 2004;

"trust property" has the meaning given by section 2 of the Business Trusts Act 2004;

"underlying entity", in relation to an offer of units of shares or debentures, means the entity the shares or debentures of which are the subject of the offer;

"unit", in relation to a share or debenture, means any right or interest, whether legal or equitable, in the share or debenture, by whatever name called, and includes any option to acquire any such right or interest in the share or debenture.

[2/2009; 34/2012; 4/2017]

(2) For the purposes of this Division, a statement is deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division —

(*a*) any invitation to a person to deposit money with or to lend money to an entity is deemed to be an offer of debentures of the entity; and

(*b*) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation is deemed to be a debenture.

(3A) Despite subsection (3) —

(*a*) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of debentures; and

(*b*) the following documents issued or intended or required to be issued by a prescribed entity are not debentures:

(i) any certificate of deposit;

(ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.

(4) In subsections (3A) and (5) —

"deposit" has the meaning given by section 4B(4) of the Banking Act 1970;

"prescribed entity" means —

(*a*) any bank licensed under the Banking Act 1970; or

(*b*) any entity or any entity of a class which has been declared by the Authority, by order in the *Gazette*, to be a prescribed entity for the purposes of this subsection.

(4A) For the purposes of this Division, references to a debenture includes a debenture, or a unit of debenture, issued by a trustee of a trust on behalf of the trust.

[4/2017]

(5) The Authority may, by written notice —

(*a*) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

(*b*) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity must comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

(5A) Any person who contravenes any condition or restriction imposed under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(6) For the purposes of this Division, a person makes an offer of any securities or securities-based derivatives contracts if, and only if, as principal —

(*a*) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or

(*b*) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

[4/2017]

(7) In subsection (6), "sale" includes any disposal for valuable consideration.

(8) This Division applies only in relation to offers of securities or securities-based derivatives contracts made on or after 1 July 2002.

[4/2017]

Authority may disapply this Division to certain offers

239A.—(1) Despite any provision to the contrary in this Division, where —

(*a*) an offer of securities or securities-based derivatives contracts is one to which (but for this section) both this Division and Division 2 apply; and

(*b*) the Authority has by order in the *Gazette* declared that this Division does not apply to that offer or a class of offers to which that offer belongs,

then this Division does not apply to that offer.

[4/2017]

(2) This Division does not apply to an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, where —

(*a*) the business trust is also a collective investment scheme that has been authorised under section 286 or recognised under section 287; or

(*b*) the business trust is also a collective investment scheme and the offer is made in reliance on an exemption under Subdivision (4) of Division 2.

[4/2017]

Modification of provisions to certain offers

239B. The Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of securities or securities-based derivatives contracts as may be prescribed, and the provisions of this Division apply to such offer subject to such modifications or adaptations.

[2/2009; 4/2017]

Subdivision (1A) — Offers of units in and recognition of business trusts

Requirement for registration or recognition

239C.—(1) A person must not make an offer of units or derivatives of units in a business trust unless the business trust is a registered business trust or a recognised business trust.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to recognise business trusts constituted outside Singapore

239D.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

[4/2017]

(2) The Authority may recognise a business trust under subsection (1) if and only if the Authority is satisfied that —

(*a*) the laws and practices of the jurisdiction under which the business trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them under the Business Trusts Act 2004 in the case of registered business trusts;

(*b*) the business trust satisfies such criteria as may be prescribed by regulations made under section 341; and

(*c*) the person making the offer of, or the issuer of, units or derivatives of units in the business trust, or the trustee-manager of the business trust, satisfies such

criteria as may be prescribed by regulations made under section 341.

[4/2017]

(3) Without affecting subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

[4/2017]

(4) Without affecting subsection (2), the Authority may refuse to recognise any business trust where it appears to the Authority that it is not in the public interest to do so.

[4/2017]

(5) The Authority must not refuse to recognise a business trust under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —

(i) any property of the person making the offer (being an entity) or the issuer;

(ii) any property of the trustee-manager of the business trust; or

(iii) the trust property of the business trust.

[4/2017]

(6) Any person making an application under subsection (1) may, within 30 days after the person is notified that the Authority has

refused to recognise that business trust constituted outside Singapore, appeal to the Minister whose decision is final.

[4/2017]

(7) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

[4/2017]

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust that is recognised under subsection (1).

[4/2017]

(9) While a business trust remains a recognised business trust, each of the following persons must ensure that the criteria prescribed by regulations made under section 341 in accordance with subsection (2)(*b*) and (*c*) which are applicable to the person continue to be satisfied:

(*a*) a person making an offer of units or derivatives of units in the trust;

(*b*) an issuer of units or derivatives of units in the trust;

(*c*) the trustee-manager of the trust.

[4/2017]

(10) The trustee-manager of a recognised business trust must provide such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

[4/2017]

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to impose conditions or restrictions

239E.—(1) The Authority may recognise a business trust under section 239D(1) subject to such conditions or restrictions as it thinks fit to impose on any of the following persons for the purpose of protecting investors of the business trust:

(*a*) the trustee-manager of the trust;

(*b*) a person making an offer of units or derivatives of units in the trust;

(*c*) an issuer of units or derivatives of units in the trust.

[4/2017]

(2) Each of the persons mentioned in subsection (1) must comply with the conditions or restrictions applicable to the person.

[4/2017]

(3) The Authority may, at any time, by written notice to any of the persons mentioned in subsection (1), vary any condition or restriction or impose any further condition or restriction as the Authority thinks fit.

[4/2017]

(4) Any person who contravenes any condition or restriction applicable to the person under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Revocation, suspension or withdrawal of recognition

239F.—(1) The Authority may revoke the recognition of a recognised business trust granted under section 239D(1) if —

(*a*) the application for recognition, or any related information or record submitted to the Authority, whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;

(*b*) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;

(*c*) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or

(*d*) there has been a contravention of section 239D(9) or (10) or a condition or restriction mentioned in section 239E(1) or (3).

[4/2017]

(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue any directions it thinks fit to any of the following persons:

(*a*) a person making an offer of units or derivatives of units in the business trust;

(*b*) the issuer of units or derivatives of units in the business trust;

(*c*) the trustee-manager of the business trust,

and the person must comply with such directions.

[4/2017]

(3) The directions mentioned in subsection (2) may include a direction that the person provides the holders of the units or derivatives of units with an option to redeem or sell back to the person their units or derivatives of units (as the case may be) on such terms as the Authority may approve.

[4/2017]

(4) In determining whether to issue a direction under subsection (2), the Authority must consider —

(*a*) whether the trustee-manager of the business trust is able to liquidate the property of the business trust without material adverse financial effect to the unitholders and for this purpose, the factors which the Authority may take into account include —

(i) the liquidity of the property of the business trust;

(ii) the penalties (if any) payable for liquidating the property; and

(iii) where the units of the business trust are also listed for quotation or quoted on an overseas exchange, the potential impact which the liquidation may have on unitholders in the country or territory where the units are listed; and

(*b*) where the units or derivatives of units in the business trust are listed for quotation on the official list of an approved exchange, whether the holders of the units or derivatives of units are afforded an opportunity to liquidate, sell or redeem their units or derivatives of units on reasonable terms in accordance with the requirements of the listing rules of the approved exchange.

[4/2017]

(5) A person who, without reasonable excuse, contravenes any of the directions issued by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Despite subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.

[4/2017]

(7) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (6), it must notify the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1).

[4/2017]

(8) Subject to subsection (9), the Authority may, upon a written application made to it by the trustee-manager of the business trust or the person who made the application to the Authority for recognition of a business trust under section 239D(1), in such form and manner as

may be prescribed, withdraw the recognition of that recognised business trust.

[4/2017]

(9) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (8) where the Authority is of the opinion that —

(*a*) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or

(*b*) the withdrawal of the recognition would not be in the public interest.

[4/2017]

(10) The Authority must not —

(*a*) revoke the recognition of a recognised business trust under subsection (1) without giving the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1), an opportunity to be heard;

(*b*) impose a direction on a person mentioned in subsection (2) without giving that person an opportunity to be heard;

(*c*) suspend the recognition of a recognised business trust under subsection (6) without giving the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1), an opportunity to be heard; or

(*d*) refuse the withdrawal of the recognition of a recognised business trust under subsection (9) without giving the person mentioned in subsection (8) an opportunity to be heard.

[4/2017]

(11) Despite subsection (10), an opportunity to be heard need not be given for a revocation or suspension on the ground that the continued

recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —

(i) any property of the person making the offer (being an entity) or the issuer;

(ii) any property of the trustee-manager of the recognised business trust; or

(iii) the trust property of the recognised business trust.

[4/2017]

(12) The following persons may appeal to the Minister within 30 days after being notified of the following decisions of the Authority:

(*a*) where the Authority revokes the recognition of a recognised business trust under subsection (1), or suspends the recognition of a recognised business trust under subsection (6), the person or persons mentioned in subsection (7);

(*b*) where the Authority has imposed a direction on a person under subsection (2), the person mentioned in subsection (2);

(*c*) where the Authority refuses to withdraw the recognition of a recognised business trust under subsection (9), the person mentioned in subsection (8).

[4/2017]

(13) A decision of the Minister in an appeal under subsection (12) is final.

[4/2017]

(14) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (6) or withdraws a recognition under subsection (8), it may —

(*a*) impose such conditions on the revocation, suspension or withdrawal (as the case may be) as it considers appropriate; and

(*b*) publish notice of the revocation, suspension or withdrawal (as the case may be), and the reason for the revocation, suspension or withdrawal (as the case may be), in such manner as it considers appropriate.

[4/2017]

Subdivision (2) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

240.—(1) A person must not make an offer of securities or securities-based derivatives contracts unless the offer —

(*a*) is made in or accompanied by a prospectus in respect of the offer —

(i) that is prepared in accordance with section 243;

(ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and

(iii) that is registered by the Authority; and

(*b*) complies with such requirements as the Authority may prescribe.

[4/2017]

(2) A person who lodges a preliminary document with the Authority is deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as the Authority may prescribe.

(4) Despite subsection (1), an offer of securities or securities-based derivatives contracts may be made in or accompanied by an extract from, or an abridged version of, a prospectus (called in this section a profile statement), instead of a prospectus, if —

(*a*) a prospectus in respect of such offer is prepared in accordance with section 243, and the profile statement is prepared in accordance with section 246;

(*b*) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;

(*c*) the prospectus and profile statement are registered by the Authority;

(*d*) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and

(*e*) the offer complies with such requirements as the Authority may prescribe.

[4/2017]

(4A) The copy of a prospectus or profile statement lodged with the Authority must be signed —

(*a*) where the person making the offer is the issuer —

(i) in a case where the issuer is not the government of a State — by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of a State — by an official of that government who is authorised to sign the prospectus on its behalf;

(*b*) where the person making the offer is an individual and is not the issuer —

(i) in a case where the issuer is not the government of a State —

(A) by that person; and

(B) if the issuer is controlled by that person, one or more of his or her related parties, or that person and one or more of his or her related parties — by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of a State — by that person;

(*c*) where the person making the offer is an entity (not being the government of a State) and is not the issuer —

(i) in a case where the issuer is not the government of a State —

(A) by every director or equivalent person of that entity; and

(B) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties — by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of a State — by every director or equivalent person of that entity; and

(*d*) where the person making the offer is the government of a State and is not the issuer —

(i) in a case where the issuer is not the government of another State —

(A) by an official of the government of the State who is authorised to sign the prospectus on its behalf; and

(B) if the issuer is controlled by that government, one or more of its related parties, or that government and one or more of its related parties — by every director or every equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of another State — by an official of the government of the firstmentioned State who is authorised to sign the prospectus on its behalf.

(4B) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(*a*) by that director or equivalent person; or

(*b*) by a person who is authorised in writing by that director or equivalent person to sign on his or her behalf.

(4C) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(*a*) by that proposed director or equivalent person; or

(*b*) by a person who is authorised in writing by that proposed director or equivalent person to sign on his or her behalf.

(5) A person must not make any offer of securities or securities-based derivatives contracts in respect of an entity or a business trust that has not been formed or does not exist.

[4/2017]

(6) [*Deleted by Act 1 of 2005*]

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(8) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

(*a*) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (15);

(*b*) the Authority gives to the person making the offer a notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);

(*c*) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15); or

(*d*) the person making the offer gives a written notice to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority must not register the prospectus or profile statement.

[2/2009]

(8A) Where, after a notice of an opportunity to be heard has been given under subsection (8)(*a*), (*b*)(ii) or (*c*)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it

considers appropriate, except that that date must not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

[2/2009]

(8B) For the purposes of subsections (8) and (8A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

[2/2009]

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority must not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (4A) and which contains the information required to be stipulated in the prospectus under section 243, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

(9A) A person making an offer of securities or securities-based derivatives contracts may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

[4/2017]

(10) Subject to subsection (11) —

(*a*) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged is deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged; and

(*b*) where any amendment to a profile statement is lodged, the profile statement is deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

(11) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended is deemed, for the purposes of subsection (8), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(11A) An amendment to a prospectus or profile statement that is lodged is treated as part of the original prospectus or profile statement.

(12) The Authority may, for public information, publish —

(*a*) a prospectus or profile statement lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and, for the purposes of this subsection, the person making the offer must provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(13) The Authority must refuse to register a prospectus if —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included in it under section 243;

(*c*) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);

(*d*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;

(*e*) any written consent of an expert to the issue of the prospectus required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*ea*) any written consent of an issue manager to the issue of the prospectus required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*eb*) any written consent of an underwriter to the issue of the prospectus required under section 249A(2), or a copy

thereof which is verified as prescribed, is not lodged with the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(14) The Authority must refuse to register a profile statement if —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;

(*c*) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);

(*ca*) any written consent of an expert to the issue of the profile statement required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cb*) any written consent of an issue manager to the issue of the profile statement required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cc*) any written consent of an underwriter to the issue of the profile statement required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*d*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;

(*e*) the prospectus has not been registered by the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(15) The Authority must not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without

giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity or the business trust is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity, or in relation to or in respect of the trust property of the business trust.

[4/2017]

(16) Any person making an offer may, within 30 days after the person is notified that the Authority has refused to register a prospectus or profile statement to which the person's offer relates under subsection (13) or (14), appeal to the Minister, whose decision is final.

(17) If —

(*a*) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or

(*b*) an application to subscribe for or purchase securities or securities-based derivatives contracts is accepted, or securities or securities-based derivatives contracts are allotted, issued or sold, before a prospectus and, where applicable, profile statement in respect of the securities or

securities-based derivatives contracts has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

(*c*) the issue, circulation or distribution of the prospectus or profile statement;

(*d*) the acceptance of the application to subscribe for or purchase the securities or securities-based derivatives contracts; or

(*e*) the allotment, issue or sale of the securities or securities-based derivatives contracts,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(18) This section is subject to section 240A.

(19) For the purposes of subsections (13)(*a*) and (14)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(20) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of $50,000.

Requirement for product highlights sheet, where relevant

240AA.—(1) A person must not make an offer of any relevant securities or securities-based derivatives contracts, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(*a*) that complies with such requirements as the Authority may prescribe by regulations made under section 341; and

(*b*) a copy of which is lodged with the Authority.

[34/2012; 4/2017]

(2) A person must not publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of any relevant securities or securities-based derivatives contracts, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 240, if the document resembles or may otherwise be confused with a product highlights sheet, unless the person is required to do so —

(*a*) under any written law or rule of law, or by any court, in Singapore;

(*b*) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(*c*) by any listing rules or other requirements of any approved exchange or overseas exchange.

[34/2012; 4/2017]

(3) The Authority may, for public information, publish —

(*a*) a product highlights sheet lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

[34/2012]

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) In this section —

"asset-backed securities" has the meaning given by section 262(3);

"relevant securities or securities-based derivatives contracts" means —

(*a*) asset-backed securities;

(*b*) structured notes; or

(*c*) such other securities or securities-based derivatives contracts as the Authority may prescribe by regulations made under section 341;

"single purpose vehicle" means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

(*a*) act as counterparty to arrangements which involve the use of derivatives to create exposure to assets from which payments to holders of any structured notes are or will be primarily derived;

(*b*) issue any structured notes;

"specified financial institution" means —

(*a*) any bank licensed under the Banking Act 1970; or

(*b*) any entity that is, or that belongs to a class of entities that is, specified by the Authority, by notification in the *Gazette*, to be an entity, or a class of entities, for the purposes of this definition;

"structured notes" means any type of debentures or units of debentures —

(*a*) which is issued —

(i) in relation to —

(A) a synthetic securitisation transaction; or

(B) such other arrangement or transaction as the Authority may prescribe by regulations made under section 341; or

(ii) by a specified financial institution; and

(*b*) for which —

(i) the principal sum or any interest is, or both are, payable;

(ii) such other sum or sums as the Authority may prescribe by regulations made under section 341, is or are payable;

(iii) one or more underlying assets, being securities or securities-based derivatives contracts, equity interests, commodities, currencies or such other assets as the Authority may prescribe by regulations made under section 341, are to be physically delivered; or

(iv) 2 or more of sub-paragraphs (i), (ii) and (iii) apply,

in accordance with a formula based on one or more of the following:

(v) the performance of any type of securities or securities-based derivatives contracts, equity interest, commodity or index, or of a basket of 2 or more types of securities or securities-based derivatives contracts, equity interests, commodities or indices;

(vi) the credit risk or performance of any entity or a basket of entities;

(vii) the movement of interest rates or currency exchange rates;

(viii) such other variables as the Authority may prescribe by regulations made under section 341;

"synthetic securitisation transaction" means an arrangement involving the use of derivatives to create or replicate exposure to assets that are not transferred to, or are not a part of an asset pool held by, a single purpose vehicle.

[34/2012; 4/2017]

Exemption from requirement for product highlights sheet

240AB.—(1) Despite section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of

persons from all or any of the requirements in section 240AA, subject to such conditions or restrictions as the Authority may specify.

[4/2017]

(2) The Authority may, by written notice, exempt any person from all or any of the requirements in section 240AA, subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(3) The Authority may at any time add to, vary or revoke any condition or restriction imposed under subsection (1) or (2).

[4/2017]

(4) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

(5) Any person who contravenes any condition or restriction imposed under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Debenture issuance programme

240A.—(1) A prospectus for every offer of debentures or units of debentures that is part of a debenture issuance programme must comprise —

(*a*) a base prospectus applicable to every offer under the debenture issuance programme; and

(*b*) a pricing statement applicable to that particular offer.

(2) A profile statement for every offer of debentures or units of debentures that is part of a debenture issuance programme must comprise —

(*a*) an extract from, or an abridged version of, a base prospectus referred to in subsection (1)(*a*) (called in this section a base profile statement); and

(*b*) a pricing statement applicable to that particular offer.

(3) In respect of an offer referred to in subsection (1), the requirements of section 240(1)(*a*)(ii) and (iii) are satisfied if a copy of the base prospectus and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(4) In respect of an offer referred to in subsection (2), the requirements of section 240(4)(*b*) and (*c*) are satisfied if a copy of the base profile statement and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(5) To avoid doubt, where the base prospectus or base profile statement in relation to a debenture issuance programme has been lodged with and registered by the Authority, it is treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

(6) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (1), a reference to a prospectus is, unless the context otherwise requires or the Authority has prescribed otherwise, to be read as a reference to both the base prospectus and the pricing statement.

(7) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (2), a reference to a profile statement is, unless the context otherwise requires or the Authority has prescribed otherwise, to be read as a reference to both the base profile statement and the pricing statement.

(8) The Authority may, by regulations, prescribe how the provisions of this Subdivision apply to an offer referred to in subsection (1) or (2).

(9) To avoid doubt, a pricing statement may be registered by the Authority at any time after its lodgment with the Authority.

Lodging supplementary document or replacement document

241.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of securities or securities-based derivatives contracts, the person making that offer becomes aware of —

(*a*) a false or misleading statement in the prospectus or profile statement;

(*b*) an omission from the prospectus of any information that should have been included in it under section 243, or an omission from the profile statement of any information that should have been included in it under section 246, as the case may be; or

(*c*) a new circumstance that —

(i) has arisen since the prospectus or profile statement was lodged with the Authority; and

(ii) would have been required by —

(A) section 243 to be included in the prospectus; or

(B) section 246 to be included in the profile statement,

if it had arisen before the prospectus or the profile statement (as the case may be) was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (called in this section a supplementary or replacement document, as the case may be), with the Authority.

[4/2017]

(1A) If, after a base prospectus or a base profile statement referred to in section 240A is registered but before the expiration of 24 months from the registration of the base prospectus by the Authority, the person making that offer intends to update any information or include any new information in the base prospectus or base profile statement, the person may lodge a supplementary or replacement document with

the Authority, provided that no offer to which the base prospectus or base profile statement relates is subsisting at the time of the lodgment.

(1B) Subsections (7) to (16) do not apply to a supplementary or replacement document which is lodged under subsection (1A).

(1C) For the purposes of subsection (1A), an offer is not treated as subsisting if —

(*a*) a pricing statement in respect of the offer of debentures or units of debentures has not been registered by the Authority under section 240A; or

(*b*) a pricing statement in respect of the offer of debentures or units of debentures has been registered by the Authority under section 240A, and —

(i) the offer has closed with no application to subscribe for or purchase the debentures or units of debentures having been received or accepted; or

(ii) one or more applications to subscribe for or purchase the debentures or units of debentures have been received or accepted, and —

(A) in a case where the debentures or units of debentures are or will be listed for quotation on an approved exchange, trading in them has commenced; or

(B) in any other case, all of those debentures or units of debentures have been issued or sold.

[4/2017]

(2) At the beginning of a supplementary document, there must be —

(*a*) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;

(*b*) an identification of the prospectus or profile statement it supplements;

(*c*) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and

(*d*) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

(3) At the beginning of a replacement document, there must be —

(*a*) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and

(*b*) an identification of the prospectus or profile statement it replaces.

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(5) The person making the offer must take reasonable steps —

(*a*) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1) or (1A); and

(*b*) to make available to them the supplementary document or replacement document.

(6) For the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —

(*a*) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer is taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and

(*b*) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer is taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(6A) [*Deleted by Act 1 of 2005*]

(6B) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

(*a*) where the replacement document is a replacement prospectus, the prospectus in relation to the offer is taken to be the replacement prospectus; and

(*b*) where the replacement document is a replacement profile statement, the profile statement in relation to the offer is taken to be the replacement profile statement.

(7) If a supplementary document or replacement document is lodged with the Authority, the offer must be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for securities or securities-based derivatives contracts, then —

(*a*) where the securities or securities-based derivatives contracts have not been issued to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; or

(iii) must —

(A) treat the applications as withdrawn and cancelled, in which case the applications are deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been issued to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the

case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; or

(iii) must —

(A) treat the issue of the securities or securities-based derivatives contracts as void, in which case the issue is deemed void; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(9) Subsections (8)(*b*) and (11) have effect despite sections 76 and 76A, and Division 3A of Part 4, of the Companies Act 1967.

(10) An applicant who wishes to exercise the applicant's option under subsection (8)(*a*)(i) or (ii) to withdraw the applicant's application must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, upon which that person must, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of the applicant's application for the securities or securities-based derivatives contracts.

[4/2017]

(11) An applicant who wishes to exercise the applicant's option under subsection (8)(*b*)(i) or (ii) to return securities or

securities-based derivatives contracts issued to the applicant must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents (if any) purporting to be evidence of title to those securities or securities-based derivatives contracts to that person, upon which that person must, within 7 days from the receipt of such notification and documents (if any) pay to the applicant all moneys paid by the applicant for the securities or securities-based derivatives contracts, and the issue of those securities or securities-based derivatives contracts is deemed to be void.

[4/2017]

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase securities or securities-based derivatives contracts, then —

(*a*) where the securities or securities-based derivatives contracts have not been transferred to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the

supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; or

(iii) must —

(A) treat the applications as withdrawn and cancelled, in which case the applications are deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been transferred to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; or

(iii) must treat the sale of the securities or securities-based derivatives contracts as void, in which case the sale is deemed void, and must —

(A) if documents purporting to evidence title to the securities or securities-based derivatives contracts (called in this paragraph the title documents) have been issued to the applicants —

(AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgment of the supplementary document or replacement document; and

(AB) within 7 days from the date of receipt of the title documents or the date of lodgment of the supplementary

document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts; or

(B) if no title documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(13) An applicant who wishes to exercise the applicant's option under subsection (12)(*a*)(i) or (ii) to withdraw the applicant's application must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, upon which that person must, within 7 days of the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of the applicant's application for the securities or securities-based derivatives contracts.

[4/2017]

(14) An applicant who wishes to exercise the applicant's option under subsection (12)(*b*)(i) or (ii) to return securities or securities-based derivatives contracts sold to the applicant must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents (if any) purporting to evidence title to those securities or securities-based derivatives contracts to the person making the offer, upon which that person must, within 7 days from the receipt of such notification and documents (if any) pay to the applicant all moneys paid by the applicant for the securities or securities-based derivatives contracts and the sale of the securities or securities-based derivatives contracts is deemed to be void.

[4/2017]

(15) Any person who contravenes subsection (8) or (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a

further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(16) Any person who contravenes any other provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(17) For the purposes of subsection (1)(*a*), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Stop order for prospectus and profile statement

242.—(1) If a prospectus has been registered and —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included in it under section 243;

(*c*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of securities or securities-based derivatives contracts to which the prospectus relates direct that no or no further securities or securities-based derivatives contracts be allotted, issued or sold.

[4/2017]

(2) If a profile statement has been registered and —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of any information that is required to be included in it under section 246;

(*c*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of securities or securities-based derivatives contracts to which the profile statement relates direct that no or no further securities or securities-based derivatives contracts be allotted, issued or sold.

[4/2017]

(3) Despite subsections (1) and (2), the Authority must not serve a stop order if any of the securities or securities-based derivatives contracts to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on an approved exchange and trading in them has commenced.

[4/2017]

(4) The Authority must not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity or the business trust is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*aa*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —

(i) any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity;

(ii) any property of the trustee-manager of the business trust; or

(iii) the trust property of the business trust.

[4/2017]

(5) Where applications to subscribe for securities or securities-based derivatives contracts to which the prospectus or profile statement relates have been made prior to the stop order, then —

(*a*) where the securities or securities-based derivatives contracts have not been issued to the applicants —

(i) the applications are deemed to have been withdrawn and cancelled; and

(ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been issued to the applicants —

(i) the issue of the securities or securities-based derivatives contracts is deemed to be void; and

(ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(6) Subsection (5)(*b*) has effect despite sections 76 and 76A, and Division 3A of Part 4, of the Companies Act 1967.

(7) Where applications to purchase securities or securities-based derivatives contracts to which the prospectus or profile statement relates have been made prior to the stop order, then —

(*a*) where the securities or securities-based derivatives contracts have not been transferred to the applicants —

(i) the applications are deemed to have been withdrawn and cancelled; and

(ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been transferred to the applicants, the sale is deemed to be void, and the person making the offer must —

(i) if documents purporting to evidence title to the securities or securities-based derivatives contracts have been issued to the applicants —

(A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and

(B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is the later, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts; or

(ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further securities or

securities-based derivatives contracts to which the prospectus or profile statement relates be allotted, issued or sold.

[4/2017]

(9) An interim stop order, unless revoked by the Authority, is in force —

(*a*) in a case where —

(i) it is served during a hearing under subsection (4); or

(ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

(*b*) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(10) Subsections (5) and (7) do not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (5) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(13) For the purposes of subsections (1)(*a*) and (2)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Contents of prospectus

243.—(1) A prospectus for an offer of securities or securities-based derivatives contracts must contain —

(*a*) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and

(*b*) the matters prescribed by the Authority.

[4/2017]

(2) The prospectus must, with respect to subsection (1)(*a*), contain such information —

(*a*) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and

(*b*) only to the extent that a person whose knowledge is relevant —

(i) actually knows the information; or

(ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1)(*a*) relate to —

(*a*) the rights and liabilities attaching to the securities or securities-based derivatives contracts;

(*b*) in the case of an offer of securities or securities-based derivatives contracts other than units or derivatives of units in a business trust, the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;

(*c*) if the underlying entity is controlled by —

(i) the person making the offer;

(ii) one or more of the related parties of the person making the offer; or

(iii) the person making the offer and one or more of that person's related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity;

(*d*) in the case of an offer of units of shares or debentures, where —

(i) the person making the offer is or will be required to issue or deliver the relevant units, or meet financial or contractual obligations to the holders of those units; or

(ii) an entity which is controlled by one of the following is or will be required to issue or deliver the relevant units, or meet financial or contractual obligations to the holders of those units:

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer;

(C) the person making the offer and one or more of that person's related parties,

the capacity of that person or entity to issue or deliver the relevant securities, or the ability of that person or entity to meet those financial or contractual obligations;

(*e*) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, where —

(i) the person making the offer is the trustee-manager of the business trust; or

(ii) the trustee-manager of the business trust is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of that person's related parties,

the assets and liabilities, profits and losses, financial position and performance of the business trust and of the trustee-manager, and the prospects of the business trust;

(*f*) in the case of an offer of securities or securities-based derivatives contracts being derivatives of units in a business trust issued by an entity (*A*) other than the trustee-manager of the business trust, where —

(i) the person making the offer is *A*; or

(ii) *A* is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of that person's related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of *A*; and

(*g*) in the case of an offer of securities or securities-based derivatives contracts being derivatives of units in the business trust, where —

(i) the person making the offer is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units; or

(ii) an entity which is controlled by one of the following is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units:

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer;

(C) the person making the offer and one or more of that person's related parties,

the capacity of that person or entity to issue or deliver the relevant units or derivatives of units in that business trust, or the ability of that person or entity to meet those financial or contractual obligations.

[4/2017]

(4) In deciding what information must be included under subsection (1)(*a*), regard must be had to —

(*a*) the nature of the securities or securities-based derivatives contracts and the nature of the entity concerned;

(*b*) the matters that likely investors may reasonably be expected to know; and

(*c*) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

[4/2017]

(4A) Subject to any condition or restriction as may be prescribed by regulations made under section 341, the information mentioned in subsection (1) may be incorporated in the prospectus by reference to a document (called in this subsection and subsection (4B) the reference document) lodged with the Authority together with the prospectus.

[4/2017]

(4B) For the purposes of this Division, the information contained in the reference document is to be regarded as part of the prospectus.

[4/2017]

(5) For the purposes of subsection (2)(*b*), a person's knowledge is relevant only if the person is one of the following:

(*a*) the person making the offer;

(*b*) if the person making the offer is an entity, a director or an equivalent person of the entity;

(*c*) the issuer;

(*d*) a director or an equivalent person, or a proposed director or an equivalent person, of the issuer;

(*da*) a person named in the prospectus with the person's consent as an underwriter to the issue or sale;

(*e*) a person named in the prospectus as a stockbroker to the issue or sale if the person participates in any way in the preparation of the prospectus;

(*f*) a person named in the prospectus with the person's consent as having made a statement —

(i) that is included in the prospectus; or

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

(*g*) a person named in the prospectus with the person's consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section, or purporting to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

[4/2017]

(7) This section does not affect any liability that a person has under any other law.

(8) In subsection (3)(*e*) —

"assets and liabilities, profits and losses, financial position and performance", in relation to a business trust, means the assets and liabilities, profits and losses, financial position and performance of that business trust derived from the accounting records and other records kept by the trustee-manager of that business trust;

"prospects", in relation to a business trust, means the business and financial prospects anticipated with respect to the operations of the trustee-manager of the business trust, in its capacity as trustee-manager of the business trust.

[4/2017]

244. [*Repealed by Act 16 of 2003*]

Retention of over-subscriptions and statement of asset-backing in debenture issues

245.—(1) An entity must not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the entity has specified in the prospectus —

(*a*) that it expressly reserves the right to accept or retain over-subscriptions; and

(*b*) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to regulations made by the Authority for the purposes of this subsection, where an entity specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

(*a*) the entity must not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the entity and of its guarantor entities; and

(*b*) the prospectus must contain a statement or reference as to what the total assets and total liabilities of the entity would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Every entity or other person that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Contents of profile statement

246.—(1) A profile statement for an offer of securities or securities-based derivatives contracts must contain —

(*a*) the following particulars:

(i) identification of the person making the offer;

(i*a*) where the person making the offer is not the issuer, identification of the issuer and, where applicable, the underlying entity;

(i*b*) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, identification of the business trust, the trustee-manager of the business trust and the issuer;

(ii) identification of the persons signing the profile statement;

(iii) the nature of the securities or securities-based derivatives contracts;

(iv) the nature of the risks involved in investing in the securities or securities-based derivatives contracts;

(v) details of all amounts payable in respect of the securities or securities-based derivatives contracts (including any amount by way of fee, commission or charge);

(*b*) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and

(*c*) a statement that the persons referred to in section 240(4A) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.

[4/2017]

(2) A profile statement must not contain —

(*a*) any statement that is false or misleading in the form and context in which it is included;

(*b*) any material information that is not contained in the prospectus; and

(*c*) any material information that differs in any material particular from that set out in the prospectus.

(3) For the purposes of subsection (2)(*a*), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Exemption from requirements as to form or content of prospectus or profile statement

247.—(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as the Authority may determine.

(2) The Authority must not grant an exemption under subsection (1) unless it is of the opinion that —

(*a*) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or

(*b*) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

(3) The Authority may exempt any class of persons, or any class or description of prospectuses or profile statements, from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as the Authority may determine.

(4) [*Deleted by Act 16 of 2003*]

(5) Any person who contravenes any of the conditions or restrictions imposed under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Exemption for certain governmental and international entities as regards signing of copy of prospectus or profile statement by all directors or equivalent persons

248.—(1) This section applies only to entities that are both of a governmental and international character.

(2) An entity to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 240(1)(*a*)(ii), (4)(*b*), (4A), (13)(*c*) and (14)(*c*) and the Authority may, if it considers those requirements unduly burdensome on the entity, exempt such entity from complying therewith.

(3) The Authority may subject such exemption to a requirement that such minimum number of directors or equivalent persons who are resident in Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

(4) In the event that no director or equivalent person is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the entity.

(5) The Authority may, if satisfied that a particular entity cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority is deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement must be registered by the Authority.

Expert's consent to issue of prospectus or profile statement containing statement by him or her

249.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement made by, an expert, the prospectus or profile statement must not be issued unless —

(*a*) the expert has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn his or her written consent to the issue thereof with the statement included in the form and context in which it is included; and

(*b*) there appears in the prospectus or profile statement (as the case may be) a statement that the expert has given and has not withdrawn his or her consent.

[4/2017]

(1A) Every person making the offer must cause a true copy of every written consent referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(1B) Every issuer must keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities or securities-based derivatives contracts to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (1A) for a period of at least 6 months after the registration of the prospectus or profile statement.

[4/2017]

(2) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(3) The Authority may exempt any person or class of persons, or any prospectus or profile statement or class or description of prospectuses or profile statements, from this section, subject to such conditions or restrictions as the Authority may determine.

(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Consent of issue manager and underwriter to being named in prospectus or profile statement

249A.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement in which a person is named as the issue manager to the offer, the prospectus or profile statement must not be issued unless —

(*a*) the person has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn the person's written consent to being named in the prospectus or profile statement as issue manager to that offer; and

(*b*) there appears in the prospectus or profile statement (as the case may be) a statement that the person has given and has not withdrawn the person's consent.

[4/2017]

(2) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement must not be issued unless —

(*a*) the person has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn the person's written consent to being named in the prospectus or profile statement as underwriter to that offer; and

(*b*) there appears in the prospectus or profile statement (as the case may be) a statement that the person has given and has not withdrawn such consent.

[4/2017]

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(4) Every person making the offer must cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(5) Every issuer must keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities or securities-based derivatives contracts to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.

[4/2017]

Duration of validity of prospectus and profile statement

250.—(1) A person must not make an offer of securities or securities-based derivatives contracts, or allot, issue or sell any securities or securities-based derivatives contracts, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[4/2017]

(2) In a case where an entity makes an offer of securities or securities-based derivatives contracts or where the securities or securities-based derivatives contracts being offered are those issued

by an entity or a proposed entity, an officer or equivalent person or a promoter of the entity or proposed entity must not authorise or permit —

(*a*) the offer of those securities or securities-based derivatives contracts; or

(*b*) the allotment, issue or sale of those securities or securities-based derivatives contracts,

on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[4/2017]

(3) The period under subsection (1) or (2) is —

(*a*) in a case where the securities or securities-based derivatives contracts are debentures or units of debentures issued under a debenture issuance programme under section 240A, 24 months from the date of registration by the Authority of the base prospectus in relation to such offer, allotment, issue or sale; or

(*b*) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[4/2017]

(4) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or a proposed entity, every officer or equivalent person or promoter of the entity or proposed entity shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(5) An allotment, an issue or a sale of securities or securities-based derivatives contracts that is made in contravention of subsection (1) or (2) is not, by reason only of that fact, voidable or void.

[4/2017]

Restrictions on advertisements, etc.

251.—(1) If a prospectus is required for an offer or intended offer of securities or securities-based derivatives contracts, a person must not —

(*a*) advertise the offer or intended offer; or

(*b*) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts,

unless the advertisement or publication is authorised by this section. *[4/2017]*

(2) In determining whether a statement —

(*a*) indirectly refers to an offer or intended offer of securities or securities-based derivatives contracts; or

(*b*) is reasonably likely to induce persons to subscribe for or purchase securities or securities-based derivatives contracts,

regard must be had to whether the statement —

(*c*) forms part of the normal advertising —

(i) of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; or

(ii) by a trustee-manager of a business trust on behalf of the business trust in respect of the products or services offered by the trustee-manager on behalf of the business trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services;

(*d*) communicates information that materially deals with the affairs of the entity or the business trust; and

(*e*) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

[4/2017]

(3) Despite subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made without contravening subsection (1), if —

(*a*) the front page of the preliminary document contains —

(i) the following statement:

"This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.";

(ii) a statement that a person to whom a copy of the preliminary document has been issued must not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or agreement may be made on the basis of the preliminary document to purchase or subscribe for any securities or securities-based derivatives contracts to which the preliminary document relates;

(*b*) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the securities or securities-based derivatives contracts to which the preliminary document relates, or the acceptance of such an offer by any person; and

(*c*) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

[4/2017]

(4) Despite subsection (6), a person does not contravene subsection (1) —

(*a*) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made; or

(*b*) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of securities or securities-based derivatives contracts, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the securities or securities-based derivatives contracts in order to enable the person to carry on the regulated activity of dealing in capital markets products that are securities or securities-based derivatives contracts, or to provide any financial advisory service in relation to the securities or securities-based derivatives contracts:

(i) a person licensed under this Act in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person;

(iii) a person who is a representative in respect of dealing in capital markets products that are securities or securities-based derivatives contracts under this Act;

(iv) a representative of an exempt person;

(v) a person licensed under the Financial Advisers Act 2001 in respect of advising on any investment product;

(vi) an exempt financial adviser;

(vii) a person who is a representative in respect of advising on any investment product under the Financial Advisers Act 2001;

(viii) a representative of an exempt financial adviser.

[34/2012; 4/2017]

(5) To avoid doubt, a person may disseminate any of the following without contravening subsection (1):

(*a*) a prospectus or profile statement that has been registered by the Authority under section 240;

(*b*) a product highlights sheet in respect of which section 240AA(1)(*a*) and (*b*) has been complied with and which is disseminated with a prospectus or profile statement that has been registered by the Authority under section 240.

[4/2017]

(6) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

(*a*) a statement that identifies —

(i) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, the units or derivatives of units, the person making the offer, the issuer, the business trust and the trustee-manager of the business trust; and

(ii) in any other case, the securities, securities-based derivatives contracts, the person making the offer, the issuer and, where applicable, the underlying entity;

(*b*) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(*c*) a statement that anyone wishing to acquire the securities or securities-based derivatives contracts will need to make an application in the manner set out in the prospectus or profile statement;

(*d*) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[4/2017]

(7) To satisfy subsection (6), the advertisement or publication must include all of the statements referred to in paragraphs (*a*), (*b*) and (*c*) of that subsection, and may include the statement referred to in paragraph (*d*) of that subsection.

(8) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if —

(*a*) it includes a statement that the prospectus or profile statement in respect of the offer of securities or securities-based derivatives contracts is available for collection at the times and places specified in the statement;

(*b*) it includes a statement that anyone wishing to acquire the securities or securities-based derivatives contracts will need to make an application in the manner set out in the prospectus or profile statement;

(*c*) it does not contain any information that is not included in the prospectus or profile statement; and

(*d*) it complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(9) An advertisement or a publication does not contravene subsection (1) if it —

(*a*) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange made by any person;

(*b*) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee-manager of the business trust, the underlying entity, the unitholders of the business trust or any entity, or a presentation of oral or written material on

matters so contained in the notice or report at the general meeting;

(*c*) consists solely of a report about the issuer, the business trust or the underlying entity that is published by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity (as the case may be), which —

(i) does not contain information that materially affects the affairs of the issuer, the business trust or the underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report mentioned in paragraph (*a*) or (*b*); and

(ii) does not refer (directly or indirectly) to the offer or intended offer;

(*d*) consists solely of a statement made by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;

(*e*) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (*f*)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —

(i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;

(ii) a disclosure, notice or report referred to in paragraph (*a*);

(iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (*b*);

(iv) a report referred to in paragraph (*c*); or

(v) a product highlights sheet;

(*f*) is a report about the securities or securities-based derivatives contracts which are the subject of the offer or intended offer, published by someone who is not —

(i) the person making the offer, the issuer, the underlying entity or (where the securities or securities-based derivatives contracts are units or derivatives of units in a business trust) the trustee-manager of the business trust;

(ii) a director or an equivalent person of the person making the offer, the issuer, the underlying entity or (where the securities or securities-based derivatives contracts are units or derivatives of units in a business trust) the trustee-manager of the business trust;

(iii) a person who has an interest in the success of the issue or sale of the securities or securities-based derivatives contracts; or

(iv) a person acting at the instigation of, or by arrangement with, any person mentioned in sub-paragraph (i), (ii) or (iii);

(*g*) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or

(*h*) is a publication made by the person making the offer, the issuer, the underlying entity or (where the offer is of units or derivatives of units in a business trust) the trustee-manager of the business trust solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —

(i) an earlier news report or a genuine comment referred to in paragraph (*e*); or

(ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (10),

provided that the firstmentioned publication does not contain any material information that is not included in the prospectus.

[2/2009; 34/2012; 4/2017]

(10) A person does not contravene subsection (1) if —

(*a*) the person publishes any advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or

(ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

(*b*) the person did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9)(*e*) and (*f*) does not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(12) Any person who —

(*a*) contravenes subsection (1); or

(*b*) knowingly authorises or permits the publication or dissemination of any advertisement or statement mentioned in subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(13) This section does not affect any liability that a person has under any other law.

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as the Authority may determine.

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(16) For the purposes of this section, any reference to publishing a statement includes a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(17) For the purposes of subsections (1) and (2), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(18) For the purposes of subsection (2)(*d*), the reference to affairs of the entity or the business trust —

(*a*) in the case where the entity is a corporation, includes a reference to the matters referred to in section 2(2); and

(*b*) in any other case, is a reference to such matters as the Authority may prescribe.

[4/2017]

(18A) In subsection (4) —

"exempt financial adviser" and "financial advisory service" have the meanings given by section 2(1) of the Financial Advisers Act 2001;

"representative" —

(*a*) in relation to dealing in capital markets products that are securities or securities-based derivatives contracts under this Act or an exempt person, has the meaning given by section 2(1); or

(*b*) in relation to advising on any investment product under the Financial Advisers Act 2001 or an exempt financial adviser, has the meaning given by section 2(1) of that Act.

[34/2012; 4/2017]

(19) For the purposes of subsection (9)(*c*)(i), the reference to affairs of the issuer, underlying entity or business trust —

(*a*) in the case where the issuer or underlying entity is a corporation, includes a reference to the matters referred to in section 2(2); and

(*b*) in any other case, is a reference to such matters as the Authority may prescribe.

[4/2017]

Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies

252.—(1) A person referred to in section 254(3) (other than paragraph (*a*)) must notify in writing the person making the offer of securities or securities-based derivatives contracts, as soon as practicable, if the firstmentioned person becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —

(*a*) a statement in the prospectus or the profile statement is false or misleading;

(*b*) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(*c*) a new circumstance —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246

(as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(3) For the purposes of subsection (1)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Criminal liability for false or misleading statements

253.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(*a*) a false or misleading statement is contained in —

(i) the prospectus or the profile statement; or

(ii) any application form for the securities or securities-based derivatives contracts;

(*b*) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(*c*) there is an omission to state a new circumstance that —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246

(as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(3) A person does not contravene subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

(4) The persons guilty of the offence are —

(*a*) the person making the offer;

(*b*) where the person making the offer is an entity —

(i) each director or equivalent person of the entity; and

(ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

(*c*) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of that person's related parties —

(i) the issuer;

(ii) each director or equivalent person of the issuer; and

(iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;

(*d*) an issue manager to the offer of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or profile statement, if —

(i) the issue manager intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;

(ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, the issue manager fails to take such remedial action as is appropriate in the circumstances without delay; or

(iii) the issue manager is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

(*e*) an underwriter (but not a sub-underwriter) to the issue or sale of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or profile statement, if —

(i) the underwriter intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;

(ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, the underwriter fails to take such remedial action as is appropriate in the circumstances without delay; or

(iii) the underwriter is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

(*f*) a person named in the prospectus or the profile statement with the person's consent as having made —

(i) the statement that is false or misleading, if the person intentionally or recklessly makes that statement; or

(ii) a statement on which the false or misleading statement is based, if the person knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw the person's consent,

but only in respect of the inclusion of the false or misleading statement; and

(*g*) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance (as the case may be) but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

[4/2017]

(5) For the purposes of subsection (4) and this subsection —

(*a*) remedial action includes any of the following:

(i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;

(ii) procuring the lodgment of a supplementary or replacement prospectus under section 241; and

(*b*) a person is reckless as to the matter referred to in subsection (4)(*d*)(iii) or (*e*)(iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or

circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, the person fails to —

(i) make all inquiries as are reasonable in the circumstances to verify this; and

(ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.

(6) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Civil liability for false or misleading statements

254.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(*a*) a false or misleading statement is contained in —

(i) the prospectus or the profile statement; or

(ii) any application form for the securities or securities-based derivatives contracts;

(*b*) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(*c*) there is an omission to state a new circumstance that —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required by section 243 to be included in the prospectus, or required to be included in the profile statement under section 246 (as the case

may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (3) are liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.

[4/2017]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

(3) The persons liable are —

(*a*) the person making the offer;

(*b*) where the person making the offer is an entity —

(i) each director or equivalent person of the entity; and

(ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

(*c*) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of that person's related parties —

(i) the issuer;

(ii) each director or equivalent person of the issuer; and

(iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;

(*d*) an issue manager to the offer of the securities or securities-based derivatives contracts who is, and who

has consented to be, named in the prospectus or the profile statement;

(*da*) an underwriter (but not a sub-underwriter) to the issue or sale of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or the profile statement;

(*e*) a person named in the prospectus or the profile statement with the person's consent as having made a statement —

(i) that is included in the prospectus or the profile statement; or

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

but only in respect of the inclusion of that statement; and

(*f*) any other person who made the false or misleading statement or omitted to state the information or circumstance (as the case may be) but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

[4/2017]

(4) A person who acquires securities or securities-based derivatives contracts as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the securities or securities-based derivatives contracts in reliance on both the profile statement and the prospectus for the offer.

[4/2017]

(4A) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(5) No action under subsection (1) may be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

Defences

255.—(1) A person referred to in section 253(4)(*a*), (*b*) or (*c*) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of a false or misleading statement in a prospectus or a profile statement if the person proves that the person —

(*a*) made all inquiries (if any) that were reasonable in the circumstances; and

(*b*) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person referred to in section 253(4)(*a*), (*b*) or (*c*) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that the person —

(*a*) made all inquiries (if any) that were reasonable in the circumstances; and

(*b*) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.

(3) A person is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that the person placed reasonable reliance on information given to the person by —

(*a*) if the person is an entity, someone other than —

(i) a director or an equivalent person; or

(ii) an employee or agent,

of the entity; or

(*b*) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because that person performs a

particular professional or advisory function for the entity or individual.

(5) A person who is named in a prospectus or a profile statement as —

(*a*) a proposed director or an equivalent person of the issuer, or an issue manager or underwriter;

(*b*) having made a statement included in the prospectus or the profile statement; or

(*c*) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that the person publicly withdrew the person's consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 253(1) or 254(1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that the person was not aware of the matter.

(7) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

256. [*Repealed by Act 1 of 2005*]

Document containing offer of securities or securities-based derivatives contracts for sale deemed prospectus

257.—(1) Subsection (2) applies where —

(*a*) an entity allots or agrees to allot to any person any securities or securities-based derivatives contracts of the entity or a business trust (as the case may be) with a view to all or any of them being subsequently offered for sale to another person; and

(*b*) such offer (called in this section a subsequent offer) does not qualify for an exemption under Subdivision (4) of this Division (other than section 280).

[4/2017]

(2) Any document by which the subsequent offer is made is for all purposes deemed to be a prospectus issued by the entity, and the entity is for all purposes deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly as if —

(*a*) an offer of securities or securities-based derivatives contracts has been made; and

(*b*) persons accepting the subsequent offer in respect of any securities or securities-based derivatives contracts were subscribers therefor,

but without affecting the liability (if any) of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

[4/2017]

(3) For the purposes of this Act, unless the contrary is proved, it is sufficient evidence that an allotment of, or an agreement to allot, securities or securities-based derivatives contracts was made with a view to the securities or securities-based derivatives contracts being subsequently offered for sale if it is shown —

(*a*) that an offer of the securities or securities-based derivatives contracts or of any of them for sale was made within 6 months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the entity in respect of the securities or securities-based derivatives contracts had not been so received.

[4/2017]

(4) The requirements of this Division as to prospectuses have effect as though the persons making the subsequent offer were persons

named in the prospectus as directors or equivalent persons of the entity.

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer must state —

(*a*) the net amount of the consideration received or to be received by the entity in respect of the securities or securities-based derivatives contracts being offered; and

(*b*) the place and time at which a copy of the contract under which the securities or securities-based derivatives contracts have been or are to be allotted may be inspected.

[4/2017]

Application and moneys to be held in trust in separate bank account until allotment

258.—(1) All application and other moneys paid prior to allotment by any applicant on account of securities or securities-based derivatives contracts offered to the applicant must, until the allotment of the securities or securities-based derivatives contracts, be held by the person making the offer of the securities or securities-based derivatives contracts upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those securities or securities-based derivatives contracts.

[4/2017]

(2) There is no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Allotment of securities or securities-based derivatives contracts where prospectus indicates application to list on approved exchange

259.—(1) Where a prospectus states or implies that application has been or will be made for permission for the securities or securities-based derivatives contracts offered thereby to be listed for quotation on any approved exchange, and —

(*a*) the permission is not applied for in the form required by the approved exchange within 3 days from the date of the issue of the prospectus; or

(*b*) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved exchange,

then —

(*c*) any allotment whenever made of securities or securities-based derivatives contracts made on an application pursuant to the prospectus is, subject to subsection (3), void; and

(*d*) any person who continues to allot such securities or securities-based derivatives contracts after the period specified in paragraph (*a*) or (*b*), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer must, subject to subsection (3), immediately repay without interest all moneys received from applicants pursuant to the prospectus, and if any such moneys is not repaid within 14 days

after the person making the offer so becomes liable to repay them, then —

(*a*) the person making the offer is liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and

(*b*) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity are jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

(3) Where in relation to any securities or securities-based derivatives contracts —

(*a*) permission is not applied for as mentioned in subsection (1)(*a*); or

(*b*) permission is not granted as mentioned in subsection (1)(*b*),

the Authority may, on the application of the issuer made before any of the securities or securities-based derivatives contracts is purported to be allotted, exempt the allotment of the securities or securities-based derivatives contracts from the provisions of this section, and the Authority must give notice of such exemption in the *Gazette*.

[4/2017]

(4) A director or an equivalent person is not liable under subsection (2) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

(5) Any condition requiring or binding any applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section or purporting to do so is void.

[4/2017]

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

(*a*) in relation to any securities or securities-based derivatives contracts agreed to be taken by a person underwriting an

offer thereof contained in a prospectus as if the person had applied therefor pursuant to the prospectus; and

(*b*) in relation to a prospectus offering securities or securities-based derivatives contracts for sale as if a reference to sale were substituted for a reference to allotment.

[4/2017]

(7) All moneys received from applicants pursuant to the prospectus must be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(9) Where the approved exchange has within the time specified in subsection (1)(*b*) granted permission subject to compliance with any requirements specified by the approved exchange, permission is deemed to have been granted by the approved exchange if the directors or equivalent persons have given to the approved exchange an undertaking in writing to comply with the requirements of the approved exchange.

[4/2017]

(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(11) A person must not issue a prospectus inviting persons to subscribe for securities or securities-based derivatives contracts of an entity if it includes —

(*a*) a false or misleading statement that permission has been granted for those securities or securities-based derivatives

contracts to be listed for quotation on, dealt in or quoted on any approved exchange; or

(*b*) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the securities or securities-based derivatives contracts on any approved exchange, or to any requirement of an approved exchange, unless —

(i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the approved exchange within 3 days after the date of the issue of the prospectus; or

(ii) that statement has been approved by the Authority for inclusion in the prospectus.

[4/2017]

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any approved exchange, the prospectus is, unless the contrary intention appears from the prospectus, deemed for the purposes of this section to imply that application has been, or will be, made for permission for the securities or securities-based derivatives contracts to which the prospectus relates to be listed for quotation on the approved exchange.

[4/2017]

Prohibition of allotment unless minimum subscription received

260.—(1) A person must not make an allotment of any securities or securities-based derivatives contracts of a company or business trust unless —

(*a*) the minimum subscription has been subscribed; and

(*b*) the sum payable on application for the securities or securities-based derivatives contracts so subscribed has been received by the company or the trustee-manager, as the case may be.

[4/2017]

(1A) Despite subsection (1), if a cheque for the sum payable mentioned in subsection (1) has been received by the company or the trustee-manager of the business trust (as the case may be), the sum is treated as not having been received by the company or the trustee-manager (as the case may be) until the cheque is paid by the bank on which the cheque is drawn.

[4/2017]

(2) The minimum subscription must —

(*a*) be calculated based on the price at which each share or debenture, each unit of share or debenture, or each unit or derivative of a unit in a business trust, is or will be offered; and

(*b*) be reckoned exclusively of any amount payable otherwise than in cash.

[4/2017]

(3) The amount payable on application on each share or debenture, or each unit of share or debenture, or each unit or derivative of a unit in a business trust, offered must not be less than 5% of the price at which the share or debenture, or unit of share or debenture, or unit or derivative of a unit in a business trust, is or will be offered.

[4/2017]

(4) If the conditions referred to in subsection (1)(*a*) and (*b*) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for securities or securities-based derivatives contracts must be immediately repaid to them without interest.

[4/2017]

(5) If any money mentioned in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the company or the directors of the trustee-manager of the business trust

(as the case may be) are jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months.

[4/2017]

(6) A director is not liable under subsection (5) if the director proves that the default in the repayment of the money was not due to any misconduct or negligence on the part of the director.

[4/2017]

(7) An allotment made by a company or a trustee-manager of a business trust to an applicant in contravention of this section is voidable at the option of the applicant, which option may be exercised by written notice served —

(*a*) if the allotment is made by a company, on the company —

(i) within one month after the holding of the statutory meeting of the company; or

(ii) where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment; or

(*b*) if the allotment is made by a trustee-manager of a business trust, on the trustee-manager of the business trust within one month after the date of the allotment.

[4/2017]

(7A) The allotment mentioned in subsection (7) is voidable even if the company or business trust is in the course of being wound up.

[4/2017]

(7B) A trustee-manager of a business trust which contravenes any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

(*a*) to pay into the trust property of the business trust any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) has sustained or incurred as a consequence of such contravention; and

(*b*) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(7C) Every director of a trustee-manager of a business trust who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

(*a*) to pay into the trust property of the business trust any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) has sustained or incurred as a consequence of such contravention; and

(*b*) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(7D) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

(*a*) to compensate the company for any loss, damages or costs which the company has sustained or incurred as a consequence of such contravention; and

(*b*) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(8) No proceedings for the recovery of any compensation under subsection (7) may be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section is void.

[4/2017]

Subdivision (3) — Debentures

Preliminary provisions

261.—(1) Subject to subsection (1A), this Subdivision applies where an entity makes an offer of debentures.

(1A) Sections 268, 269 and 270 do not apply if the borrowing entity is a prescribed entity.

(1B) In subsections (1A) and (1C), "prescribed entity" means —

(*a*) any bank licensed under the Banking Act 1970; or

(*b*) any entity or entity of a class which has been declared by the Authority, by order in the *Gazette*, to be a prescribed entity for the purposes of this section.

(1C) The Authority may, by written notice —

(*a*) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

(*b*) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity must comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

(1D) Any person who contravenes any condition or restriction imposed under subsection (1C)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(2) [*Deleted by Act 1 of 2005*]

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act 1967.

Offer of asset-backed securities

262.—(1) An offer of asset-backed securities is made only if they are issued by —

(*a*) a special purpose vehicle other than a trust; or

(*b*) the trustee of a trust that is a special purpose vehicle.

(2) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as the Authority may determine.

(3) In this section —

"asset-backed securities" means debentures or units of debentures issued pursuant to a securitisation transaction;

"securitisation transaction" means an arrangement that involves the sale, transfer or assignment of assets to a special purpose vehicle where —

(*a*) such sale, transfer or assignment is funded by the issue of debentures or units of debentures (whether by that special purpose vehicle or another special purpose vehicle); and

(*b*) payments in respect of such debentures or units of debentures are or will be principally derived, directly or indirectly, from the cash flows generated by the assets;

"special purpose vehicle" means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

(*a*) hold (whether as a legal or equitable owner) the assets from which payments to holders of any asset-backed securities are or will be primarily derived;

(*b*) issue any asset-backed securities.

263. [*Repealed by Act 16 of 2003*]

264. [*Repealed by Act 16 of 2003*]

Power of court in relation to certain irredeemable debentures

265.—(1) Despite anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable

only on the happening of a contingency is, if the court so orders, enforceable, immediately or at such other time as the court directs if, on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of any holder of the debentures, the court is satisfied that —

(*a*) at the time of the issue of the debentures the assets of the borrowing entity which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(*b*) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking pari passu, if any); and

(*c*) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing entity is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing entity and creditors.

Requirement for trustees

265A.—(1) Where an offer of debentures is made in or accompanied by a prospectus, the borrowing entity must appoint a trustee for the holders of debentures (called in this section the appointed trustee) for the entire tenure of the debentures.

[34/2012]

(2) The borrowing entity must ensure that —

(*a*) where the debentures are asset-backed securities or structured notes, the appointed trustee is any of the following persons:

(i) a holder of a trust business licence under the Trust Companies Act 2005 that is carrying on business in Singapore in that capacity;

(ii) a bank licensed under the Banking Act 1970 that is carrying on business in Singapore in that capacity;

(iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;

(iv) such other person as the Authority may prescribe by regulations made under section 341;

(*b*) where the debentures are not asset-backed securities or structured notes, the appointed trustee is any of the following persons:

(i) a holder of a trust business licence under the Trust Companies Act 2005 that is carrying on business in Singapore in that capacity;

(ii) a bank licensed under the Banking Act 1970 that is carrying on business in Singapore in that capacity;

(iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;

(iv) any other person whom the borrowing entity is satisfied, on reasonable grounds, is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed;

(v) such other person as the Authority may prescribe by regulations made under section 341;

(*c*) the appointed trustee is independent of the borrowing entity, guarantor entity, arranger and counterparty of the debentures; and

(*d*) the appointed trustee meets such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(3) For the purposes of subsection (2)(*b*)(iv), the borrowing entity must, before being satisfied that a person is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed, consider the following matters:

(*a*) whether the person is licensed or regulated in the jurisdiction —

(i) in which the person was incorporated or formed; or

(ii) of the person's principal place of business;

(*b*) the contractual arrangements between the borrowing entity and the person;

(*c*) whether, if the person is the appointed trustee, the duties which will be imposed on the person by way of the trust deed, or under the laws and practices of the jurisdiction referred to in paragraph (*a*), are at least equivalent to those imposed under section 266(1);

(*d*) such other matters as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) In this section —

"asset-backed securities" has the meaning given by section 262(3);

"structured notes" has the meaning given by section 240AA(5).

[34/2012]

Duties of trustees

266.—(1) A trustee for the holders of debentures must —

(*a*) at all times exercise due diligence and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of the holders of debentures;

(*b*) ensure that it has the ability and powers to perform all of its duties as set out in the trust deed;

(*c*) ensure that any trustee appointed for the holders of any collateral upon which the debentures are secured is subject to duties that are at least equivalent to those imposed under paragraphs (*a*) and (*b*); and

(*d*) comply with such other requirements as the Authority may prescribe by regulations made under section 341, or as the Authority may impose in respect of any particular offer or transaction relating to the debentures.

[34/2012]

(2) Where, after due inquiry, the trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

(3) The Authority, on such application —

(*a*) after giving the borrowing entity an opportunity of making representations in relation to that application, by written order served on the entity at its registered office in Singapore, may impose such restrictions on the activities of the borrowing entity, including restrictions on advertising for deposits or loans and on borrowing by the entity as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or

(*b*) may, and if the borrowing entity so requires, must direct the trustee to apply to the court for an order under subsection (5); and the trustee must apply accordingly.

(4) Where —

(*a*) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(*b*) the borrowing entity has contravened an order made by the Authority under subsection (2),

the trustee may, and where the borrowing entity has requested the trustee to do so, must apply to the court for an order under subsection (5).

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the borrowing entity an opportunity to be heard, by order, do all or any of the following things:

(*a*) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;

(*b*) stay all or any actions or proceedings before any court by or against the borrowing entity;

(*c*) restrain the payment of any moneys by the borrowing entity to the holders of debentures of the borrowing entity or to any class of such holders;

(*d*) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;

(*e*) give such further directions from time to time as may be necessary to protect the interests of the holders of the

debentures, the members of the borrowing entity or any of its guarantor entities or the public,

but in making any such order the court must have regard to the rights of all creditors of the borrowing entity.

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court must have regard to the nature and kind of the security given when the offer of the debentures was made, and if no security was given must have regard to the position of the holders of the debentures as unsecured creditors of the borrowing entity.

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing entity or guarantor entity if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

Powers of trustee to apply to court for directions, etc.

267.—(1) A trustee for the holders of debentures may apply to the court —

(*a*) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or

(*b*) to determine any question in relation to the interests of the holders of debentures.

(2) The court may —

(*a*) give such directions to the trustee as the court thinks fit; and

(*b*) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

(3) The court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to

consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting must be held and conducted in such manner as the court directs, by a chairperson nominated by the trustee or such other person as the meeting appoints.

Right of Authority, approved exchange and holders of debentures to apply to court for order

267A. Without affecting any other right of action or remedy in any written law or rule of law, a holder of debentures, the Authority or an approved exchange (in a case where the debentures are quoted or listed for quotation on that approved exchange) may apply to the court for an order to compel the trustee for the holders of such debentures to perform the trustee's duties as set out in the trust deed relating to those debentures, and the court may either make the order on such terms as it considers appropriate, or dismiss the application. *[4/2017]*

Obligations of borrowing entity

268.—(1) [*Deleted by Act 34 of 2012*]

(2) [*Deleted by Act 34 of 2012*]

(3) [*Deleted by Act 34 of 2012*]

(4) Where there is a trustee for the holders of any debentures issued by a borrowing entity, the borrowing entity and each of its guarantor entities which has guaranteed the repayment of the moneys raised by the issue of those debentures must, whether or not any demand therefor has been made —

(*a*) in writing provide the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the entity or the guarantor entity, as the case requires; and

(*b*) when the amount to be advanced on the security of the charge is indeterminate, in writing provide the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

(5) Where any such advance referred to in subsection (4)(*b*) is merged in a current account with bankers or trade creditors, it is sufficient for particulars of the net amount outstanding in respect of any such advance to be provided every 3 months.

(6) The directors or equivalent persons of every borrowing entity and of every guarantor entity must cause to be made out and lodged with the trustee for the holders of the debentures, if any —

(*a*) a profit and loss account for the first 6 months of every financial year of the entity and a balance sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and

(*b*) a profit and loss account for every financial year of the entity and a balance sheet as at the end of that period, not later than 5 months after the expiration of that financial year.

[34/2012]

(6A) Any person who provides any information contained in a profit and loss account or balance sheet required under subsection (6) must use due care to ensure that the information is not false or misleading in any material particular.

[34/2012]

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

(7A) Any person who contravenes subsection (6A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(8) Sections 201(8), (9), (10), (12), (13), (14), (15) and (16) and 207(1), (2) and (7) of the Companies Act 1967 are, with such adaptations as are necessary, applicable to every profit and loss account and balance sheet made out and lodged under subsection (6)

as if that profit and loss account and balance sheet were financial statements referred to in those sections.

[35/2014]

(9) Where the directors or equivalent persons of a borrowing entity, or the directors or equivalent persons of a guarantor entity, do not lodge with the trustee the profit and loss accounts and balance sheets as required under subsection (6) within the time prescribed under that subsection, the trustee must immediately lodge notice of that fact with the Authority.

[34/2012]

(10) Despite anything in subsection (8) —

(*a*) a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(*a*) need not be audited; and

(*b*) a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(*b*) need not be audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the debentures of the borrowing entity has, by written notice, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

[2/2009]

(11) Where the trustee has by written notice given the trustee's consent under subsection (10), the directors or equivalent persons of the borrowing entity, or the directors or equivalent persons of the guarantor entity, in respect of whose profit and loss account and balance sheet the notice was given, must lodge with the Authority a copy of the notice at the time when the profit and loss account and balance sheet to which the notice relates are lodged with the Authority.

(12) Despite anything in this section, a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6) may, unless the trustee for the holders of the debentures of the borrowing entity otherwise requires in writing, be based upon the value of the

stock in trade of the borrowing entity or the guarantor entity (as the case may be) as reasonably estimated by the directors or equivalent persons of the borrowing entity or guarantor entity.

(13) The estimation of the directors or equivalent persons referred to in subsection (12) must be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance sheet of that entity laid before the entity at its last preceding annual general meeting and certified in writing by the directors or equivalent persons as such.

Additional obligations of borrowing entity, where debentures are not listed on approved exchange

268A.—(1) A borrowing entity that issues any debentures which are not listed on an approved exchange (called in this section unlisted debentures) must, if the unlisted debentures have a tenure of 12 months or longer, prepare and make available to the holders of the debentures, in respect of the period of 6 months beginning on the date of issuance of the debentures and each subsequent period of 6 months, a report covering the period of 6 months (called in this section a semi-annual report), in accordance with this section and such other requirements as the Authority may prescribe by regulations made under section 341.

[34/2012; 4/2017]

(2) The borrowing entity must ensure that each semi-annual report covering a period of 6 months is lodged with the trustee for the holders of the unlisted debentures, not later than 2 months after the end of that period.

[34/2012]

(3) Where the borrowing entity does not lodge with the trustee for the holders of unlisted debentures a semi-annual report as required under subsection (2), the trustee must immediately lodge notice of that fact with the Authority.

[34/2012]

(4) A borrowing entity must immediately disclose, in such form and manner as the Authority may prescribe by regulations made under section 341, to holders of unlisted debentures any information which may materially affect —

(*a*) the risks and returns of the unlisted debentures; or

(*b*) the price or value of the unlisted debentures.

[34/2012]

(5) Any person who contravenes subsection (1), (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) Where the terms of any unlisted debentures provide for redemption at the option of the holder of the unlisted debentures, the borrowing entity must —

(*a*) make available bid or redemption prices of the unlisted debentures, at the frequency at which the borrowing entity has committed to buying back the unlisted debentures or once every fortnight, whichever is more frequent, in such form and manner as the Authority may prescribe by regulations made under section 341;

(*b*) if the published bid prices are indicative and may not be the actual bid prices, clearly state this fact, wherever the published bid prices appear, in such form and manner as the Authority may prescribe by regulations made under section 341; and

(*c*) ensure that the bid or redemption prices are determined in an independent and fair manner.

[34/2012]

(7) A borrowing entity must ensure that each profit and loss account or balance sheet that its directors or equivalent persons are required to lodge under section 268(6) is made available, in such form and manner as the Authority may prescribe by regulations made under section 341, to holders of unlisted debentures, on the day of lodgment of the profit and loss account or balance sheet (as the case may be) with the trustee for the holders of the unlisted debentures.

[34/2012]

(8) Any person who contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding $15,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(9) Any person who provides any information contained in a semi-annual report required under subsection (2) must use due care to ensure that the information is not false or misleading in any material particular.

[34/2012]

(10) Any person who contravenes subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

Obligation of guarantor entity to provide information

269.—(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors or equivalent persons, or persons approved by the Authority, of a borrowing entity or any of them, that borrowing entity may, by written notice, require any of its guarantor entities to provide it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

(2) The guarantor entity must provide the borrowing entity with the information required under subsection (1) before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(3) A guarantor entity which fails to comply with a requirement contained in a notice given under subsection (1) and every officer or equivalent person of that entity who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

Loans and deposits to be immediately repayable on certain events

270.—(1) Where there is, in any prospectus issued in connection with an offer of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing entity in response to the offer are to be applied, the borrowing entity must, where there is a trustee for the holders of those debentures, from time to time make reports to the trustee as to the progress that has been made towards achieving such purpose or completing such project.

(2) Each such report must be included in the report required to be provided to the trustee for the holders of the debentures under section 268(1).

(3) When it appears to the trustee for the holders of the debentures that such purpose or project has not been achieved or completed —

(*a*) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or

(*b*) where no such time was stated, within a reasonable time,

the trustee may and, if in the trustee's opinion it is necessary for the protection of the interests of the holders of the debentures, must give written notice to the borrowing entity requiring it to repay the moneys so received by the borrowing entity and, within one month after such notice is given, lodge with the Authority a copy thereof.

(4) The trustee must not give notice under subsection (3) if the trustee is satisfied —

(*a*) that the purpose or project has been substantially achieved or completed;

(*b*) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(*c*) that the failure to achieve the purpose or project was due to circumstances beyond the control of the borrowing entity that could not reasonably have been foreseen by the borrowing entity at the time that the prospectus was issued.

(5) Upon receipt by the borrowing entity of a notice referred to in subsection (3), the borrowing entity is liable to repay, and on demand in writing by a person entitled thereto must immediately repay to the person any moneys owing to the person as the result of a loan or deposit made in response to the offer unless —

(*a*) before the moneys were accepted by the borrowing entity, the borrowing entity had given written notice to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the borrowing entity accordingly; or

(*b*) the borrowing entity by written notice served on the holders of the debentures —

(i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing entity; and

(ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing entity repayment of the money.

(6) Where the borrowing entity has given written notice as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing entity, this section applies and has effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Liability of trustees for debenture holders

271.—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, is void insofar as it would have the effect of exempting a trustee thereof from or indemnifying the trustee against liability for breach of trust where the

trustee fails to show the degree of care and diligence required as trustee.

(2) Subsection (1) does not invalidate —

(*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(*b*) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on the trustee's ceasing to act.

(3) Subsection (1) does not operate —

(*a*) to invalidate any provision in force on 29 December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or

(*b*) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

Subdivision (4) — Exemptions

Issue or transfer of securities or securities-based derivatives contracts for no consideration

272.—(1) Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to an offer of securities being shares or debentures of an entity, or units in a business trust, if no consideration is or will be given for the issue or transfer of the shares or debentures, or units in a business trust (as the case may be).

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

(2) Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to an offer of securities-based derivatives contracts being units of shares or debentures of an entity, or derivatives of units in a business trust, if —

(*a*) no consideration is or will be given for the issue or transfer of the units of shares or debentures of the entity, or derivatives of units in the business trust; and

(*b*) no consideration is or will be given for the underlying shares or debentures of the entity, or units in the business trust (as the case may be) on the exercise or conversion of the units of shares or debentures of the entity, or derivatives of units in the business trust (as the case may be).

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

Small offers

272A.—(1) Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to personal offers of securities or securities-based derivatives contracts of an entity or a business trust by a person if —

(*a*) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) $5 million (or its equivalent in a foreign currency); or

(ii) such other amount as the Authority may prescribe in substitution for the amount specified in sub-paragraph (i);

(*b*) in respect of each offer, the person making the offer gives the person to whom the offer is made —

(i) a statement in writing that states —

(A) where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act 2004 —

"This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004."; and

(B) in any other case —

"This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore."; and

(ii) a notification in writing that the securities or securities-based derivatives contracts to which the offer (called in this sub-paragraph the initial offer) relates must not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (1A), (2) and (3) of this Division;

[Act 12 of 2024 wef 24/01/2025]

(B) in reliance on subsection (8)(*c*) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer, in reliance on the exemption under this subsection;

(*c*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*d*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iii) a person —

(A) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(B) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (A) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*e*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection.

[2/2009; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(2) For the purposes of subsection (1)(*b*), where any notice, circular, material, publication or other document is issued in

connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom the offer is made in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of securities or securities-based derivatives contracts is one that —

(*a*) may be accepted only by the person to whom it is made; and

(*b*) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to any of the following persons that that person is interested in offers of that kind:

(A) the person making the offer;

(B) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(C) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(D) a person licensed under the Financial Advisers Act 2001 in respect of the provision of financial advisory services concerning investment products;

(E) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;

(F) a person —

(FA) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(FB) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (FA) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(FC) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of the provision of financial advisory services concerning investment products; or

(FD) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (FC) in respect of the provision of financial advisory services concerning investment products.

[4/2017]

(4) In determining the amount raised by an offer, the following must be included:

(*a*) the amount payable for the securities or securities-based derivatives contracts at the time they are allotted, issued or sold;

(*b*) if the securities or securities-based derivatives contracts are issued partly-paid, any amount payable at a future time if a call is made;

(*c*) if the securities or securities-based derivatives contracts carry a right (by whatever name called) to be converted into other securities or securities-based derivatives contracts or to acquire other securities or securities-based derivatives contracts, any amount payable on the exercise of the right to convert them into, or to acquire, other securities or securities-based derivatives contracts.

[4/2017]

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount mentioned in subsection (1)(*a*), each amount raised —

(*a*) by that person from any offer of securities or securities-based derivatives contracts issued by the same entity; or

(*b*) by that person or another person from any offer of securities or securities-based derivatives contracts of an entity or a business trust, or units in a collective investment scheme, which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1) or section 302B(1) must be included.

[4/2017]

(6) Whether an offer is a closely related offer under subsection (5) is determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of securities or securities-based derivatives contracts made by a person acting as an agent of another person is treated as an offer made by that other person.

[4/2017]

(8) Where securities or securities-based derivatives contracts acquired through an offer made in reliance on the exemption under subsection (1) (called in this subsection an initial offer) are subsequently sold by the person who acquired the securities or

securities-based derivatives contracts to another person, Subdivisions (2) and (3) of this Division apply to the offer from the firstmentioned person to the second-mentioned person which resulted in that sale, unless —

(*a*) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(*b*) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer; or

(*c*) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to any of the following persons that that person is interested in offers of that kind:

(CA) the person making the initial offer;

(CB) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(CC) an exempt person in respect of dealing in capital markets products that are

securities or securities-based derivatives contracts;

(CD) a person licensed under the Financial Advisers Act 2001 in respect of the provision of financial advisory services concerning investment products;

(CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;

(CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(CG) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (CF) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(CH) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of the provision of financial advisory services concerning investment products;

(CI) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (CH) in respect of the provision of financial advisory services concerning investment products;

(iii) in respect of which the firstmentioned person has given the second-mentioned person —

(A) a statement in writing that states —

(AA) where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act 2004 —

"This offer is made in reliance on the exemption under section 272A(8)(*c*) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004."; and

(AB) in any other case —

"This offer is made in reliance on the exemption under section 272A(8)(*c*) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.";

(B) a notification in writing that the securities or securities-based derivatives contracts being offered must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of

this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(A) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(B) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(D) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (C) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts.

[4/2017]

(9) Subsection (2) applies, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(*c*)(iii).

(10) In subsections (1)(*c*) and (8)(*c*)(iv), "advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer of securities or securities-based derivatives contracts, but does not include —

(*d*) a document —

(i) purporting to describe the securities or securities-based derivatives contracts being offered, or the business and affairs of the person making the offer, the issuer or (where applicable) the underlying entity, or (where the securities or securities-based derivatives contracts being offered are units or derivatives of units in a business trust) the business trust; and

(ii) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the securities or securities-based derivatives contracts being offered;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the unitholders of the business trust, the underlying entity or any entity, or a presentation

of oral or written material on matters so contained in the notice or report at the general meeting.

[2/2009; 4/2017]

(11) In subsection (10)(*d*)(i), the reference to the affairs of the person making the offer, the issuer, the underlying entity or the business trust includes —

(*a*) in the case where the person making the offer, the issuer or the underlying entity is a corporation, a reference to the matters mentioned in section 2(2);

(*b*) in any other case, a reference to such matters as may be prescribed by regulations made under section 341.

[4/2017]

Private placement

272B.—(1) Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to offers of securities or securities-based derivatives contracts of an entity or of a business trust that are made by a person if —

(*a*) the offers are made to no more than 50 persons within any period of 12 months;

(*b*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*c*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other

requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*d*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(*a*).

(3) In determining whether offers of securities or securities-based derivatives contracts by a person are made to no more than the applicable number of persons specified in subsection (1)(*a*) within a period of 12 months, the following persons must be included:

(*a*) each person to whom an offer of securities or securities-based derivatives contracts issued by the same entity is made by the firstmentioned person within that period in reliance on the exemption under this section;

(*b*) each person to whom an offer of securities or securities-based derivatives contracts of an entity or a business trust, or units in a collective investment scheme, is made by the firstmentioned person or another person where such offer is a closely related offer, within that period in reliance on the exemption under this section or section 302C.

[4/2017]

(4) Whether an offer is a closely related offer under subsection (3) is determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(*a*) an offer of securities or securities-based derivatives contracts to an entity or to a trustee is treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the securities or securities-based derivatives contracts which are the subject of the offer;

(*b*) an offer of securities or securities-based derivatives contracts to an entity or to a trustee is treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust (as the case may be) if the entity or trust is formed primarily for the purpose of acquiring the securities or securities-based derivatives contracts which are the subject of the offer;

(*c*) an offer of securities or securities-based derivatives contracts to 2 or more persons who will own the securities or securities-based derivatives contracts acquired as joint owners is treated as an offer to a single person;

(*d*) an offer of securities or securities-based derivatives contracts to a person acting on behalf of another person (whether as an agent or otherwise) is treated as an offer made to that other person;

(*e*) offers of securities or securities-based derivatives contracts made by a person as an agent of another person is treated as offers made by that other person;

(*f*) where an offer is made to a person with a view to another person acquiring an interest in those securities or securities-based derivatives contracts by virtue of section 4, only the second-mentioned person is counted for the purposes of determining whether offers of the securities or securities-based derivatives contracts are made to no more than the applicable number of persons specified in subsection (1)(*a*); and

(*g*) where —

(i) an offer of securities or securities-based derivatives contracts is made to a person in reliance on the exemption under subsection (1) with a view to those securities or securities-based derivatives contracts being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 280,

both persons are counted for the purposes of determining whether offers of the securities or securities-based derivatives contracts are made to no more than the applicable number of persons specified in subsection (1)(*a*).

[4/2017]

(6) In subsection (1)(*b*), "advertisement" has the meaning given by section 272A(10).

Offer made under certain circumstances

273.—(1) Subject to subsection (5), Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts if —

(*a*) it is made in connection with a take-over offer which is in compliance with the Take-over Code;

(*b*) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation was incorporated;

(*c*) it is made in connection with a proposed compromise or arrangement between —

(i) an unlisted corporation and its creditors or a class of them; or

(ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

(*ca*) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a

corporation or some or all of the shares of a particular class in a corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(*cb*) it is made in connection with a proposed compromise or arrangement between —

(i) a corporation and its creditors or a class of them; or

(ii) a corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(*cc*) it is an offer to enter into an underwriting agreement relating to securities or securities-based derivatives contracts;

(*cd*) it is an offer of securities or securities-based derivatives contracts of an entity —

(i) being an entity which is formed or constituted in Singapore or otherwise, whose securities or securities-based derivatives contracts are not listed for quotation on an approved exchange; or

(ii) being an entity which is not formed or constituted in Singapore, whose securities or securities-based derivatives contracts are listed for quotation on an approved exchange and such listing is not a primary listing,

that is made to existing members or debenture holders of that entity (whether or not it is renounceable in favour of persons other than existing members or debenture holders);

(*ce*) it is an offer of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on an approved exchange;

(*cf*) it is an offer of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed for quotation on an approved exchange;

(*cg*) it is an offer of units of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on an approved exchange, where such units may only be exercised or converted by any existing member or debenture holder into shares or debentures (as the case may be) of the entity;

(*ch*) it is an offer of units of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed on an approved exchange, where such units may only be exercised or converted by any existing debenture holder into debentures of the entity;

(*ci*) it is an offer of securities or securities-based derivatives contracts of a corporation made in the circumstances specified under section 178 of the Insolvency, Restructuring and Dissolution Act 2018;

(*cj*) it is an offer of units in a business trust, whose units are listed for quotation on an approved exchange, made to —

(i) any existing unitholder of the business trust; or

(ii) any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust;

(*ck*) it is an offer of derivatives of units in a business trust, whose units are listed for quotation on an approved exchange, made to —

(i) any existing unitholder of the business trust, where such derivatives of units may only be exercised or converted by the existing unitholder into units of the business trust; or

(ii) any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust, where such derivatives of units may only be exercised or converted by the holder of debentures into units of the business trust;

(*cl*) it is an offer of units or derivatives of units in a business trust —

(i) being a business trust which is registered in Singapore or otherwise, whose units or derivatives of units are not listed for quotation on an approved exchange; or

(ii) being a business trust which is not registered in Singapore, whose units or derivatives of units are listed for quotation on an approved exchange and such listing is not a primary listing,

that is made to any existing unitholder of the business trust or any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust (whether or not the offer is renounceable in favour of persons other than existing unitholders or holders of debentures);

[Act 12 of 2024 wef 24/01/2025]

(*d*) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as the Authority may prescribe) that have been previously issued, are listed

for quotation or quoted on an approved exchange, and are traded on the exchange;

(*da*) it is an offer of units in a business trust (not being such excluded units in a business trust as may be prescribed by regulations made under section 341) that —

(i) have been previously issued;

(ii) are listed for quotation or quoted on an approved exchange; and

(iii) are traded on the approved exchange;

(*e*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) that —

(i) have been previously issued;

(ii) are listed for quotation or quoted on an approved exchange; and

(iii) are traded on the approved exchange;

(*f*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —

(i) the discharge of the obligations under, or the value of, the securities-based derivatives contracts is determined wholly (whether directly or indirectly) by reference to, is derived from, or varies by reference to the value or amount of one or more securities indices; and

(ii) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;

(*g*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts

as may be prescribed by regulations made under section 341) where —

(i) the obligations under the securities-based derivatives contracts are to be discharged by one party to the other at some future time by cash settlement only;

(ii) all underlying securities of the securities-based derivatives contracts have been previously issued and are listed for quotation on an organised market (not being such excluded organised market as may be prescribed by regulations made under section 341); and

(iii) either of the following is satisfied:

(A) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;

(B) the offer complies with such disclosure requirements prescribed by regulations made under section 341;

(*h*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —

(i) the obligations under the securities-based derivatives contracts are to be discharged by one party to the other at some future time other than by cash settlement only;

(ii) all underlying securities of the securities-based derivatives contracts have been previously issued and are listed for quotation on an approved exchange or a recognised securities exchange; and

(iii) an application has been or will be made for permission for the securities-based derivatives

contracts to be listed for quotation or quoted on an approved exchange;

(*i*) it is made (whether or not in relation to securities or securities-based derivatives contracts that have been previously issued) by an entity to a qualifying person, where the securities or securities-based derivatives contracts are to be held by or for the benefit of the qualifying person and are the securities or securities-based derivatives contracts of the entity or any of its related parties; or

(*j*) it is made (whether or not in relation to securities or securities-based derivatives contracts that have been previously issued) by a trustee-manager of a business trust to a qualifying person, where the securities or securities-based derivatives contracts are to be held by or for the benefit of the qualifying person and are the securities or securities-based derivatives contracts of the business trust or any of its related parties.

[2/2009; 4/2017; 40/2018]

(1A) An offer of securities or securities-based derivatives contracts does not come within subsection (1)(*d*), (*da*), (*e*) or (*h*) if —

(*a*) the securities or securities-based derivatives contracts being offered are borrowed by the issuer from any of the following persons solely for the purpose of facilitating the offer of securities or securities-based derivatives contracts by the issuer:

(i) an existing shareholder of the issuer;

(ii) a holder of a debenture of the issuer;

(iii) (where the securities or securities-based derivatives contracts offered are units or derivatives of units in a business trust) an existing holder of units or holder of derivatives of units in the business trust;

(iv) a holder of units of shares or debentures of the issuer;

[Act 12 of 2024 wef 24/01/2025]

(*b*) such borrowing is made under an agreement or arrangement between the issuer and the person mentioned in paragraph (*a*) which promises the issue or allotment of securities or securities-based derivatives contracts by the issuer to the person at the same time or shortly after the offer; and

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

(*c*) in the case of an offer of securities-based derivatives contracts, the obligations under the contracts are not obligations to be discharged by one party to the other at some future time by cash settlement only.

[Act 12 of 2024 wef 24/01/2025]

(1B) Subdivision (1A) of this Division does not apply to any offer of units in a business trust or derivatives of units in a business trust of a kind described in subsection (1)(*b*), (*c*), (*cc*), (*cl*) or (*j*).

[Act 12 of 2024 wef 24/01/2025]

(2) An offer of securities or securities-based derivatives contracts comes within subsection (1)(*i*) or (*j*) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred —

(*a*) for administrative or professional services; or

(*b*) by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts.

[4/2017]

(3) [*Deleted by Act 1 of 2005*]

(4) For the purposes of subsection (1)(*i*) and (*j*) —

(*a*) a person is a qualifying person in relation to an entity if the person is —

(i) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the entity or a related corporation of that entity (being a corporation); or

(ii) the spouse, widow, widower or a child, adopted child or stepchild below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee; and

(*b*) a person is a qualifying person in relation to a business trust if the person is —

(i) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the trustee-manager of the business trust or a related corporation of that trustee-manager (being a corporation); or

(ii) the spouse, widow, widower or a child, adopted child or stepchild below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[4/2017]

(5) Where, on the application of any person interested, the Authority declares that circumstances exist whereby —

(*a*) the cost of providing a prospectus for an offer of securities or securities-based derivatives contracts outweighs the resulting protection to investors; or

(*b*) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of securities or securities-based derivatives contracts,

then Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to such an offer for a period of 6 months from the date of the declaration.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

(6) The Authority may, on making a declaration under subsection (5), impose such conditions or restrictions on the offer as it may determine.

(7) A declaration made under subsection (5) is final.

(8) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(8A) A person must not —

(*a*) advertise an offer or intended offer of any securities or securities-based derivatives contracts mentioned in subsection (1)(*d*), (*da*), (*e*), (*f*), (*g*) or (*h*); or

[Act 12 of 2024 wef 24/01/2025]

(*b*) publish a statement that —

(i) directly or indirectly, refers to an offer or intended offer of any securities or securities-based derivatives contracts mentioned in subsection (1)(*d*), (*da*), (*e*), (*f*), (*g*) or (*h*); or

[Act 12 of 2024 wef 24/01/2025]

(ii) is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts to which the offer relates,

unless the advertisement or publication complies with such requirements as may be prescribed by regulations made under section 341.

[4/2017]

(8B) Any person who contravenes subsection (8A), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(9) In subsection (1)(*b*) and (*c*), "unlisted corporation" means a corporation —

(*a*) that is not a company; and

(*b*) the shares or debentures, or units of shares or debentures, of which are not listed for quotation on any approved exchange.

[4/2017]

(10) In subsection (1)(*ca*) and (*cb*), "corporation" means a corporation that is not a company.

Offer made to institutional investors

274. Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts (whether or not they have been previously issued) made to an institutional investor.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

Offer made to accredited investors and certain other persons

275.—(1) Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts, whether or not they have been previously issued, where the offer is made to a relevant person, if —

(*a*) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*b*) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*c*) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer

is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(1A) Subdivisions (1A), (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts to a person who acquires the securities or securities-based derivatives contracts as principal, whether or not the securities or securities-based derivatives contracts have been previously issued, if —

(*a*) the offer is on terms that the securities or securities-based derivatives contracts may only be acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities, securities-based derivatives contracts or other assets;

(*b*) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*c*) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*d*) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(2) In this section —

"advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer in respect of securities or securities-based derivatives contracts, but does not include —

(*d*) an information memorandum;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing

rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

"information memorandum" means a document —

(*a*) purporting to describe —

(i) the securities or securities-based derivatives contracts being offered; or

(ii) the business and affairs of the person making the offer, the issuer or (where applicable) the underlying entity, or (where the securities or securities-based derivatives contracts being offered are units or derivatives of units in a business trust) the trustee-manager of the business trust or the business trust; and

(*b*) purporting to have been prepared for delivery to, and review by, relevant persons and persons to whom an offer mentioned in subsection (1A) is to be made, so as to assist them in making an investment decision in respect of the securities or securities-based derivatives contracts being offered;

"relevant person" means —

(*a*) an accredited investor;

(*b*) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(*c*) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(*d*) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(*e*) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[4/2017]

(2A) In the definition of "information memorandum" in subsection (2), the reference to the affairs of the person making the offer, the issuer, the underlying entity, the trustee-manager of the business trust or the business trust includes —

(*a*) where the person making the offer, the issuer, the underlying entity or the trustee-manager is a corporation, a reference to the matters mentioned in section 2(2); and

(*b*) in any other case, a reference to such matters as may be prescribed by regulations made under section 341.

[4/2017]

(3) Despite any condition in section 99 or any regulation made for the purposes of that section that a person has to deal in capital markets products that are securities or securities-based derivatives contracts for the person's own account with or through a person prescribed by the Authority so that the firstmentioned person can qualify as an exempt person, a person who acquires securities or securities-based derivatives contracts under an offer made in reliance on an exemption under section 274 or subsection (1) or (1A) for the person's own account is treated as an exempt person even though the person does not comply with that condition.

[4/2017]

(4) The Authority may, by order in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A)(*a*).

Offer of securities acquired pursuant to section 274 or 275

276.—(1) Despite sections 272A, 272B, 273(1)(*d*), (*da*), (*e*), (*f*), (*g*), (*h*), (*i*) and (*j*), 277, 278 and 279 but subject to subsection (7), where securities or securities-based derivatives contracts initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than —

(*a*) an institutional investor;

(*b*) a relevant person as defined in section 275(2); or

(*c*) any person pursuant to an offer referred to in section 275(1A),

then Subdivisions (1A), (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(1A) The reference to the sale of securities or securities-based derivatives contracts under subsection (1) includes —

(*a*) where the securities or securities-based derivatives contracts initially acquired are debentures, or units of shares or debentures, with an attached right of conversion into shares or debentures, a reference to the sale of the converted shares or debentures; and

(*b*) where the securities or securities-based derivatives contracts initially acquired are derivatives of units in a business trust, with an attached right of conversion into units in the business trust, a reference to the sale of the units in the business trust.

[4/2017]

(2) Where securities or securities-based derivatives contracts initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold to —

(*a*) an institutional investor;

(*b*) a relevant person as defined in section 275(2); or

(*c*) any person pursuant to an offer referred to in section 275(1A),

Subdivisions (1A), (2) and (3) of this Division do not apply to the offer resulting in that sale.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

(3) Subject to subsection (7), securities or securities-based derivatives contracts of a corporation (other than a corporation that is an accredited investor) —

(*a*) the sole business of which is to hold investments; and

(*b*) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

must not be transferred within 6 months after the corporation has acquired any securities or securities-based derivatives contracts pursuant to an offer made in reliance on an exemption under section 275 unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 275(2); or

(ii) arises from an offer referred to in section 275(1A);

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009; 4/2017]

(4) Subject to subsection (7), where —

(*a*) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

(*b*) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust must not be transferred within 6 months after securities or securities-based derivatives contracts are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 275(2); or

(ii) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or securities-based derivatives contracts or other assets;

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009; 4/2017]

(5) To avoid doubt, the reference to beneficiaries in subsection (4) includes a reference to unitholders of a business trust and participants of a collective investment scheme.

(6) To avoid doubt, where any securities or securities-based derivatives contracts are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those securities or securities-based derivatives contracts may be made in reliance on an exemption under section 273(1)(*d*) or (*e*) after 6 months have elapsed from the date of the firstmentioned offer.

[4/2017]

(7) Subsections (1), (3) and (4) do not apply where the securities or securities-based derivatives contracts that are acquired are —

(*a*) securities or securities-based derivatives contracts of a corporation that are of the same class as other securities or securities-based derivatives contracts of the corporation, and —

(i) those other securities or securities-based derivatives contracts are listed for quotation on an approved exchange; and

(ii) a prospectus, offer information statement, introductory document, shareholders' circular for a reverse take-over, document issued for the purposes

of a scheme of arrangement, or any other similar document approved by an approved exchange, had earlier been issued in connection with —

(A) an offer of those other securities or securities-based derivatives contracts; or

(B) the listing for quotation of those other securities or securities-based derivatives contracts; or

(*b*) units in a business trust or derivatives of units in a business trust that are of the same class as other units in the business trust or derivatives of units in the business trust, and —

(i) those other units or derivatives of units are listed for quotation on an approved exchange; and

(ii) a prospectus, offer information statement, introductory document, shareholders' circular for a reverse take-over, document issued for the purposes of a scheme of arrangement, or any other similar document approved by an approved exchange, had earlier been issued in connection with —

(A) an offer of those other units or derivatives of units; or

(B) the listing for quotation of those other units or derivatives of units.

[Act 12 of 2024 wef 24/01/2025]

Offer made using offer information statement

277.—(1) Subject to subsection (1A), Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts (not being such securities or securities-based derivatives contracts as may be prescribed by regulations made under section 341), whether by means of a rights issue or otherwise, if the following conditions are satisfied:

(*a*) the securities or securities-based derivatives contracts are —

(i) units or derivatives of units in a business trust, issued by a trustee-manager in its capacity as trustee-manager of the business trust, and the units of that business trust are listed for quotation on an approved exchange; or

(ii) securities or securities-based derivatives contracts other than those mentioned in sub-paragraph (i) issued by a corporation the shares of which are listed for quotation on an approved exchange;

[Act 12 of 2024 wef 24/01/2025]

(*aa*) if the securities or securities-based derivatives contracts are units of shares or units of debentures, the issuer of the units is the issuer of those shares or debentures, as the case may be;

[Act 12 of 2024 wef 24/01/2025]

(*ab*) if the securities or securities-based derivatives contracts are derivatives of units in a business trust, the issuer of the derivatives is the issuer of those units in the business trust;

[Act 12 of 2024 wef 24/01/2025]

(*b*) an offer information statement relating to the offer which complies with such requirements as to form and content as may be prescribed by regulations made under section 341 is lodged with the Authority;

(*c*) either —

(i) the offer is made in, or accompanied by, the offer information statement mentioned in paragraph (*b*); or

(ii) all the conditions in subsection (1B) are satisfied.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

(1A) Subsection (1) only applies to an offer of securities or securities-based derivatives contracts referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

[2/2009; 4/2017]

(1AB) In relation to an offer of securities —

(*a*) where the securities are issued, whether by means of a rights issue or otherwise, by a subsidiary (called in this section the subsidiary) of an entity whose shares are listed for quotation on an approved exchange (called in this section the listed entity); and

(*b*) where the listed entity has guaranteed, or has agreed to guarantee, unconditionally and irrevocably, all payment obligations (whether in cash, in kind or otherwise) of the subsidiary arising from the securities,

the Authority may, on the application of the subsidiary or the listed entity, declare by written notice to the applicant that the provision of an offer information statement in lieu of a prospectus relating to an offer of securities would not be prejudicial to investors of such securities.

[4/2017]

(1AC) Where the Authority makes a declaration mentioned in subsection (1AB) in relation to an offer of securities, Subdivisions (2) and (3) of this Division (other than section 257) do not apply to the offer of securities for a period of 6 months starting on the date of the declaration if all of the following conditions are satisfied:

(*a*) the offer information statement relating to the offer of securities —

(i) complies with such requirements as to form and content as may be prescribed by regulations made under section 341;

(ii) is signed by every director, or equivalent person, of the subsidiary and the listed entity; and

(iii) is lodged by the subsidiary or the listed entity, with the Authority;

(*b*) either —

(i) the offer of securities is made in, or accompanied by, the offer information statement mentioned in paragraph (*a*); or

(ii) all the conditions in subsection (1B) are satisfied.

[4/2017]

(1AD) The Authority may, on making a declaration under subsection (1AB), provide that the offer of securities may only be made subject to such conditions or restrictions as the Authority may impose.

[4/2017]

(1B) The conditions mentioned in subsections (1)(*c*)(ii) and (1AC)(*b*)(ii) are —

(*a*) the offer is made using any automated teller machine or such other electronic means as the Authority may prescribe;

(*b*) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that the prospective subscriber or buyer should read the offer information statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase securities or securities-based derivatives contracts; and

(*c*) the person making the offer complies with such other requirements as the Authority may prescribe.

[4/2017]

(2) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as the Authority may determine.

(3) Sections 249, 249A, 253, 254 and 255 apply in relation to an offer information statement referred to in subsection (1) or (1AC) as they apply in relation to a prospectus.

[4/2017]

(4) For the purposes of subsection (3) —

(*a*) a reference in section 249 or 249A to the registration of the prospectus is to be read as a reference to the lodgment of the offer information statement;

(*b*) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 is to be read as a reference to any information prescribed under subsection (1)(*b*); and

(*c*) in relation to an offer information statement mentioned in subsection (1AC), a reference in section 253(4)(*a*), (*b*) or (*c*) or 254(3)(*a*), (*b*) or (*c*) to the person making the offer is to be read as a reference to the subsidiary and the listed entity.

[4/2017]

(5) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (3)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(6) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (3)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(7) A person must not advertise an offer or intended offer of any securities or securities-based derivatives contracts referred to in subsection (1) or (1AC), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(8) Any person who contravenes subsection (7), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be

guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Offer in respect of international debentures

278.—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of debentures, or units of debentures, by a body incorporated in a country outside Singapore where the offer —

(*a*) is made by the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts or an exempt person under section 99(1)(*a*) or (*b*), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or selling those debentures, or units of debentures (whether as principal or agent); and

(*b*) complies with the conditions specified in subsection (2).

[4/2017]

(2) The conditions referred to in subsection (1)(*b*) are that —

(*a*) the debentures, or units of debentures, are denominated in a currency, other than the Singapore dollar, and each debenture, or each unit of debenture, has a face value of at least US$5,000 or its equivalent in another currency; and

(*b*) the shares of the issuing corporation are listed on a recognised securities exchange or the offer is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

Offer of debentures made by Government or international financial institutions

279. Subdivisions (2) and (3) of this Division do not apply to an offer of debentures, or units of debentures, made by or guaranteed by —

(*a*) the Government; or

(*b*) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

Making offer using automated teller machine or electronic means

280.—(1) Subject to subsection (3) and such requirements as the Authority may prescribe, a person making an offer of securities or securities-based derivatives contracts using —

(*a*) any automated teller machine; or

(*b*) such other electronic means as the Authority may prescribe,

is exempted from the requirement under section 240(1)(*a*) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 240(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

[4/2017]

(2) To avoid doubt, a prospectus which complies with all other requirements of section 240(1)(*a*) or, where applicable, a profile statement which complies with all other requirements of section 240(4) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) does not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(*a*) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and

(*b*) that the prospective subscriber or buyer should read the prospectus or, where applicable, profile statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase securities or securities-based derivatives contracts.

[4/2017]

Information relating to certain offers

280A. The Authority may, by regulations made under section 341, require any person or class of persons to provide the Authority with such information relating to an offer of securities or securities-based derivatives contracts made or proposed to be made in reliance on an exemption under any provision of this Subdivision.

[4/2017]

Revocation of exemption

281.—(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 273(6), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation remains in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section is final and there is no appeal from the revocation.

Transactions under exempted offers subject to Division 2 of Part 12 of Companies Act 1967 and Part 12 of this Act

282. To avoid doubt, it is declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part limits or diminishes any liability which any person may incur in

respect of any relevant offence under Division 2 of Part 12 of the Companies Act 1967 or Part 12 of this Act or any penalty, award of compensation or punishment in respect of any such offence.

Subdivision (5) — General

Power of Authority to issue directions

282AA.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions, whether of a general or specific nature, by written notice —

(*a*) to a person making an offer of securities, being an offer made in or accompanied by a prospectus or profile statement or an offer referred to in section 280, on matters in connection with the offer;

(*b*) to a person referred to in paragraph (*a*) who is a borrowing entity, on matters in connection with the requirements and obligations under Subdivision (3) of this Division, in addition to the matters referred to in paragraph (*a*); or

(*c*) to a trustee appointed under section 265A(1).

[34/2012]

(2) Any person to whom a notice is given under subsection (1) must comply with every direction contained in the notice.

[34/2012]

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(4) Any person who contravenes a direction issued to the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) No criminal or civil liability shall be incurred by a trustee appointed under section 265A(1), or by any person acting on behalf of such a trustee, for any thing done (including any statement made)

or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the compliance or purported compliance with a direction issued to the trustee under subsection (1).
[34/2012]

Division 2 — Collective Investment Schemes

Subdivision (1) — Interpretation

Interpretation of this Division

283.—(1) In this Division, unless the context otherwise requires —

"authorised real estate investment trust" means a real estate investment trust that is a collective investment scheme authorised under section 286;

"control", in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

(*a*) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and

(*b*) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

"immediate family", in relation to an individual, means the individual's spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

"preliminary document" means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the

number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296(1)(*a*)(i), except for such information as the Authority may prescribe;

"product highlights sheet" means a product highlights sheet referred to in section 296A(1);

"profile statement" means a profile statement referred to in section 296(2);

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units in a collective investment scheme or proposed collective investment scheme, but does not include —

(*a*) a profile statement;

(*b*) any material, advertisement or publication which is authorised by section 300 (other than subsection (3)); or

(*c*) a product highlights sheet;

"recognised real estate investment trust" means a real estate investment trust that is a collective investment scheme recognised under section 287;

"recognised securities exchange" means a corporation which has been declared by the Authority, by order in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

"related party" means —

(*a*) in relation to an entity —

(i) a director or an equivalent person of the entity;

(ii) the chief executive officer or an equivalent person of the entity;

(iii) a person who controls the entity;

(iv) a related corporation;

(v) any other entity controlled by it;

(vi) any other entity controlled by the person referred to in sub-paragraph (iii); and

(vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(*b*) in relation to an individual —

(i) his or her immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual's immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which the individual and his or her immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

"replacement document" means a replacement prospectus or a replacement profile statement referred to in section 298(1), as the case may be;

"supplementary document" means a supplementary prospectus or a supplementary profile statement referred to in section 298(1), as the case may be;

"unit trust" means a collective investment scheme under which the property is held on trust for the participants.

[2/2009; 34/2012; 4/2017]

(2) For the purposes of this Division, a statement is deemed to be included in a prospectus or profile statement if it is contained in any

report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal —

(*a*) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those units by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or

(*b*) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those units by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

(4) In subsection (3), "sale" includes any disposal for valuable consideration.

Use of term "real estate investment trust"

283A.—(1) A person must not, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term "real estate investment trust" or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

(*a*) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;

(*b*) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or

(*c*) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a

class of persons declared by the Authority by order in the *Gazette* as persons who may use such term or derivative.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(3) To avoid doubt, in subsection (1) —

(*a*) "offer" or "intended offer", in relation to any rights or interests in an arrangement, includes an offer or intended offer in relation to any such rights or interests that have previously been issued; and

(*b*) "representation", in relation to an arrangement, includes a representation of the arrangement in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

Code on Collective Investment Schemes

284.—(1) For the more effective administration, supervision and control of collective investment schemes, the Authority may, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes is deemed not to be subsidiary legislation.

Authority may disapply this Division to certain offers and invitations

284A. Despite any provision to the contrary in this Division, where —

(*a*) an offer of units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and

(*b*) the Authority has by order in the *Gazette* declared that this Division does not apply to that offer or a class of offers to which that offer belongs,

then this Division (other than section 283A) does not apply to that offer.

[2/2009]

Division not to apply to certain collective investment schemes which are business trusts

284B. This Division (other than section 283A) does not apply to an offer of units in a collective investment scheme, where —

(*a*) the collective investment scheme is also a registered business trust; or

(*b*) the collective investment scheme is also a business trust and the offer is made in reliance on an exemption under Subdivision (4) of Division 1.

[2/2009]

[Act 12 of 2024 wef 24/01/2025]

Modification of provisions to certain offers

284C. The Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of units in a collective investment scheme as may be prescribed, and the provisions of this Division apply to such offer subject to such modifications or adaptations.

[2/2009]

Subdivision (2) — Authorisation and recognition

Requirement for authorisation or recognition

285.—(1) A person must not make an offer of units in a collective investment scheme if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

[2/2009]

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

$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

Authorised schemes

286.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, authorise a collective investment scheme constituted in Singapore, subject to —

(*a*) subsection (2) or (2A), as the case may be;

(*b*) the conditions specified in subsection (3); and

(*c*) such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012; 44/2018]

(1A) The Authority may, at any time, by written notice to the responsible person for a collective investment scheme authorised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(*c*) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

(*a*) there is a manager for the scheme which satisfies the requirements in subsection (3);

(*b*) there is a trustee for the scheme approved under section 289;

(*c*) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and

(*d*) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(2A) The Authority may authorise under subsection (1) a collective investment scheme constituted as a VCC or a sub-fund, if and only if the Authority is satisfied that —

(*a*) there is a manager for the scheme that satisfies the requirements in subsection (3);

(*b*) there is a custodian for the scheme that is a trustee approved under section 289;

(*c*) the constitution of the VCC and contractual arrangements in respect of the scheme comply with prescribed requirements and the Variable Capital Companies Act 2018;

(*d*) there are at least 3 directors of the VCC, at least one of whom is independent in accordance with the criteria set out in the Code on Collective Investment Schemes; and

(*e*) the VCC, the scheme, the manager for the scheme and the custodian for the scheme comply with this Act and the Code on Collective Investment Schemes.

[44/2018]

(3) It is a condition for the authorisation of a collective investment scheme under subsection (1) that —

(*a*) the manager of the scheme is —

(i) in the case of a collective investment scheme —

(A) that is a trust;

(B) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(C) all or any units of which are listed for quotation on an approved exchange,

the holder of a capital markets services licence for real estate investment trust management; and

(ii) in all other cases, the holder of a capital markets services licence for fund management or a person

exempted under section 99(1)(*a*), (*b*), (*c*) or (*d*) in respect of fund management; and

(*b*) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.

[2/2009; 4/2017; S 376/2008]

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust, a VCC or a sub-fund if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

[44/2018]

(5) Without affecting subsection (2) or (2A), the Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

[2/2009; 44/2018]

(6) The Authority must not refuse to authorise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to authorise the collective investment scheme on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(7) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority has refused to authorise that scheme under subsection (1), appeal to the Minister whose decision is final.

(8) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and either —

(*a*) the approved trustee for the scheme if it is one constituted as a unit trust; or

(*b*) the custodian for the scheme if it is one constituted as a VCC or sub-fund,

to the extent applicable, must ensure that —

(*c*) every condition or requirement set out in subsection (2) or (2A) (as the case may be), and subsections (3) and (4); and

(*d*) every condition or restriction imposed by the Authority under subsection (1)(*c*) or (1A),

as applicable to that scheme, continue to be satisfied.

[44/2018]

(10A) The manager of an authorised real estate investment trust must —

(*a*) act in the best interests of all the participants of the authorised real estate investment trust as a whole; and

(*b*) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the manager's own interests and the interests of the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the manager's own interests or the interests of the shareholders of the manager.

[4/2017]

(10B) A director of the manager of an authorised real estate investment trust must —

(*a*) take all reasonable steps to ensure that the manager discharges its duties under subsection (10A); and

(*b*) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

[4/2017]

(10C) The duty of a director of the manager mentioned in subsection (10B) overrides any conflicting duty of such director under section 157 of the Companies Act 1967.

[4/2017]

(10D) Civil or criminal proceedings may not be brought against a director of the manager of an authorised real estate investment trust for a breach of section 157 of the Companies Act 1967, any fiduciary duty or any other duty under common law, in relation to any act or omission if such act or omission was required by subsection (10B).

[4/2017]

(10E) To avoid doubt, no action or proceedings of any kind may be brought by or on behalf of all or any of the participants of an authorised real estate investment trust against a director of the manager of that authorised real estate investment trust for any breach

or alleged breach of the duties imposed by subsection (10B) except to the extent and in the manner provided for under section 295C.

[4/2017]

(11) Despite subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes does not of itself render that person liable to criminal proceedings but such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may, in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) must provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(14A) Where the manager for a collective investment scheme that is constituted as a VCC or a sub-fund, and authorised under subsection (1), fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the VCC to remove that person and appoint a new manager for the scheme.

[44/2018]

(15) Any person who contravenes subsection (10) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(16) A manager of an authorised real estate investment trust which contravenes subsection (10A) —

(*a*) shall be liable to all the participants of the authorised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the manager or any of its related corporations; or

(ii) for any damage suffered by all the participants of the authorised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(17) A director of the manager of an authorised real estate investment trust who contravenes subsection (10B) —

(*a*) shall be liable to all the participants of the authorised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the director or the manager or any related corporation of the manager; or

(ii) for any damage suffered by all the participants of the authorised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

Recognised schemes

287.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, recognise a collective investment scheme constituted outside Singapore, subject to —

(*a*) subsection (2);

(*b*) the conditions specified in subsection (3); and

(*c*) such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012]

(1A) The Authority may, at any time, by written notice to the responsible person for a collective investment scheme recognised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(*c*) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) In determining whether to recognise a collective investment scheme under subsection (1), the Authority may have regard to the following factors:

(*a*) whether the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;

(*b*) such other criteria as may be prescribed by regulations made under section 341.

[4/2017]

(3) Unless otherwise notified in writing by the Authority to the responsible person of the collective investment scheme, the following conditions must be satisfied for the recognition of every collective investment scheme under subsection (1):

(*a*) there is a manager for the scheme that —

(i) is licensed or regulated in the jurisdiction of its principal place of business; and

(ii) is a fit and proper person in the opinion of the Authority, and in considering if a person is a fit and proper person, the Authority may take into account any matter relating to —

(A) any person who is or will be employed by or associated with the manager;

(B) any person exercising influence over the manager; or

(C) any person exercising influence over a related corporation of the manager;

(*b*) there is a representative for the scheme for the functions set out in subsection (13) who is —

(i) an individual resident in Singapore; or

(ii) a company, or a foreign company registered under Division 2 of Part 11 of the Companies Act 1967;

(*c*) the scheme, the manager for the scheme and (where applicable) the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes; and

(*d*) the responsible person for the collective investment scheme furnishes to the Authority —

(i) the name of the representative mentioned in paragraph (*b*) and the representative's address (where such representative is a corporation) or contact particulars (where such representative is an individual); and

(ii) any information prescribed by regulations made under section 341.

[4/2017]

(4) Without affecting subsection (2), the Authority may refuse to recognise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

[2/2009]

(5) The Authority must not refuse to recognise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the collective investment scheme on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme

itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(6) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority has refused to recognise that scheme under subsection (1), appeal to the Minister whose decision is final.

(7) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

(9) The responsible person for a collective investment scheme recognised under subsection (1) must ensure that the conditions set out in subsection (3), and every condition or restriction imposed by the Authority under subsection (1)(*c*) or (1A), as applicable to that scheme continues to be satisfied.

[4/2017]

[Act 12 of 2024 wef 30/08/2024]

(9A) The manager of a recognised real estate investment trust must —

(*a*) act in the best interests of all the participants of the recognised real estate investment trust as a whole; and

(*b*) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the manager's own interests and the interests of the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and

the manager's own interests or the interests of the shareholders of the manager.

[4/2017]

(9B) A director of the manager of a recognised real estate investment trust must —

(*a*) take all reasonable steps to ensure that the manager discharges its duties under subsection (9A); and

(*b*) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

[4/2017]

(9C) A duty of a director of the manager under subsection (9B) overrides any conflicting duty of such director under section 157 of the Companies Act 1967.

[4/2017]

(9D) Civil or criminal proceedings may not be brought against a director of the manager of a recognised real estate investment trust for a breach of section 157 of the Companies Act 1967, any fiduciary duty or any other duty under common law, in relation to any act or omission if such act or omission was required by subsection (9B).

[4/2017]

(9E) To avoid doubt, no action or proceedings whatsoever may be brought by or on behalf of all or any of the participants of a recognised real estate investment trust against a director of the manager of that recognised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (9B) except to the extent and in the manner provided for under section 295C.

[4/2017]

(10) Despite subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes does not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) must provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) must carry out, or procure the carrying out of the following functions:

(*a*) facilitate —

(i) the issuing and redeeming of units in the scheme;

(ii) the publishing of sale and purchase prices of units in the scheme;

(iii) the sending of reports of the scheme to participants;

(iv) the provision of such books relating to the sale and redemption of units as the Authority may require; and

(v) the inspection of the instruments constituting the scheme;

(*b*) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;

(*c*) within 14 days after any change in the particulars referred to in subsection (3)(*d*), give written notice of such change to the Authority;

(*d*) provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act;

(*e*) such other functions as the Authority may prescribe.

[4/2017]

(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative must ensure that —

(*a*) for the purposes of subsection (13)(*a*)(ii), the sale and purchase prices of units in the collective investment scheme are published in the language of the prospectus;

(*b*) for the purposes of subsection (13)(*a*)(iii), the reports of the scheme sent to participants are prepared in the language of the prospectus, except in relation to any participant who has consented to being sent a report in a language other than the language of the prospectus;

(*c*) for the purposes of subsection (13)(*a*)(v), if the instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the language of the prospectus is made available to a participant for inspection, unless the participant has consented to the making available to that participant for inspection of the instruments in a language other than the language of the prospectus; and

(*d*) for the purposes of subsection (13)(*b*), if the subsidiary register of participants or equivalent information is not in the language of the prospectus, an accurate translation of the register or equivalent information in the language of the prospectus is made available to a participant for inspection or extraction, unless the participant has consented to the making available to that participant for inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

(13B) In subsection (13A), "language of the prospectus" means the language of the prospectus accompanying or making the offer of units in the collective investment scheme.

(13C) Section 318A(2) does not apply to the instruments constituting the scheme referred to in subsection (13)(*a*)(v) or to the subsidiary register of participants or equivalent information referred to in subsection (13)(*b*).

(14) Any person who contravenes subsection (9), (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(15) A manager of a recognised real estate investment trust which contravenes subsection (9A) —

(*a*) shall be liable to all the participants of the recognised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the manager or any of its related corporations; or

(ii) for any damage suffered by all the participants of the recognised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(16) A director of the manager of a recognised real estate investment trust who contravenes subsection (9B) —

(*a*) shall be liable to all the participants of the recognised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the director or the manager or any related corporation of the manager; or

(ii) for any damage suffered by all the participants of the recognised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

Revocation, suspension or withdrawal of authorisation or recognition

288.—(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

(*a*) the application for authorisation or recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the authorisation or recognition;

(*aa*) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;

(*b*) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants;

(*ba*) in the case of a scheme recognised under section 287, the Authority is of the opinion that it is necessary to revoke the recognition of the scheme to give effect to the provisions of any arrangement relating to cross-border offers of collective investment schemes to which Singapore or the Authority is a party; or

(*c*) in the case of —

(i) a scheme authorised under section 286 that is constituted as a unit trust, the responsible person for the scheme or the trustee for the scheme (where applicable) fails to comply with section 286(10) or (13);

(i*a*) a scheme authorised under section 286 that is constituted as a VCC or as a sub-fund, the responsible person for the scheme, the manager for

the scheme, or the custodian for the scheme (where applicable), fails to comply with section 286(10) or (13); or

(ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287(9), (12) or (13).

[4/2017; 44/2018]

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority may issue such directions as it deems fit to the responsible person for the scheme, including a direction that the responsible person —

(*a*) refund all moneys contributed by the participants of the scheme; or

(*b*) provide the participants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority must consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

(*a*) whether a significant amount of the moneys contributed by the participants has been invested;

(*b*) the liquidity of the property of the scheme; and

(*c*) the penalties (if any) payable for liquidating the property.

(4) A responsible person who contravenes any of the directions issued by the Authority to the responsible person under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(5) Despite subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it must notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

(*a*) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or

(*b*) the withdrawal of the authorisation or recognition would not be in the public interest.

(8A) The Authority must not —

(*a*) revoke the authorisation or recognition of a collective investment scheme under subsection (1);

(*b*) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or

(*c*) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued authorisation or recognition of the scheme is against the public interest on the basis of any of the following circumstances:

(*d*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*e*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*f*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(8B) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority —

(*a*) has revoked the authorisation or recognition of that scheme under subsection (1);

(*b*) has suspended the authorisation or recognition of that scheme under subsection (5); or

(*c*) has refused to withdraw the authorisation or recognition of that scheme under subsection (8),

appeal to the Minister whose decision is final.

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

(*a*) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and

(*b*) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

Approval of trustees

289.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (called in this Subdivision an approved trustee), subject to such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012]

(1A) The Authority may, at any time, by written notice to the approved trustee, vary or revoke any condition or restriction imposed by the Authority under subsection (1) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) The Authority must not approve a public company to act as trustee under subsection (1) unless the company satisfies such financial requirements and other criteria as the Authority may prescribe.

(3) An approved trustee must continue to satisfy the financial requirements and other criteria prescribed under subsection (2) and every condition or restriction imposed by the Authority under subsection (1) or (1A).

[34/2012]

(4) Where the Authority is of the opinion that an approved trustee —

(*a*) has failed to satisfy a financial requirement or other criterion prescribed under subsection (2), or any condition or restriction imposed by the Authority under subsection (1) or (1A);

(*b*) has not carried out its duties with due care and diligence;

(*c*) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or

(*d*) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

(*e*) revoke an approval granted under this section and may direct the manager for the collective investment scheme or schemes which such approved trustee was acting for, to appoint a new trustee for the scheme or schemes;

(*f*) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or

(*g*) issue such direction as it deems fit.

[34/2012]

(4A) Where, upon the Authority exercising any power under section 292D(2) or the Minister exercising any power under Division 2, 4, 5 or 6 of Part 8 of the Financial Services and Markets Act 2022 in relation to an approved trustee, the Authority considers that it is in the public interest to do so, the Authority may —

(*a*) revoke the approval granted to the approved trustee under this section; and

(*b*) direct the manager for the collective investment scheme or schemes, which the approved trustee was acting for, to appoint a new trustee for the scheme or schemes.

[10/2013; 31/2017]

[Act 18 of 2022 wef 10/05/2024]

(5) An approved trustee must comply with any direction issued to it under subsection (4).

(6) It is not necessary to publish any direction issued under subsection (4) in the *Gazette*.

[34/2012]

(7) Any approved trustee who contravenes subsection (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

Chief executive officer, director and key persons, etc., of approved trustee

290.—(1) An approved trustee must not appoint a person as its chief executive officer or director unless the approved trustee has obtained the approval of the Authority.

(2) The Authority may, by written notice, require an approved trustee to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved trustee, and the approved trustee must comply with the notice.

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may specify.

(4) The Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe by regulations made under section 341 or notify the approved trustee in writing, or to any other matter that the Authority may consider relevant.

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the approved trustee an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved trustee an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 78 of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) An approved trustee must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer or director, or of any person mentioned in any notice issued by the Authority to the approved trustee under subsection (2).

(9) Without affecting the Authority's power to impose conditions or restrictions under section 289(1) or (1A), the Authority may, at any time by written notice to an approved trustee, impose on the approved trustee a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

(10) Any approved trustee which contravenes subsection (1), (2) or (8), or any condition imposed under subsection (9), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[Act 12 of 2024 wef 24/01/2025]

Duty of trustees to furnish Authority with such return and information as Authority requires

291. An approved trustee must furnish such returns and provide such information relating to its business as the Authority may require.

Liability of trustees

292.—(1) Subject to subsection (2), any provision in a trust deed required under section 286(2)(*c*) or in any contract with the participants of a collective investment scheme to which such a trust deed relates, is void insofar as it would have the effect of exempting a trustee under the trust deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee.

(2) Subsection (1) does not invalidate —

(*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(*b*) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three-fourths of the participants in a collective investment scheme voting in person or by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Disqualification or removal of director or executive officer

292A.—(1) Despite the provisions of any other written law —

(*a*) an approved trustee must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) an approved trustee which is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 18 April 2013, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that the person had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against the person in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the person's

creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) has had a related Acts prohibition order, a section 101A prohibition order, a section 123ZZC prohibition order or an FSMA prohibition order made against him or her that remains in force; or

[Act 12 of 2024 wef 24/01/2025]

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked (without any application by the regulated financial institution for withdrawal, cancellation or revocation) by the Authority or, in the case of a regulated financial institution in a foreign country or jurisdiction, by the regulatory authority in that foreign country or jurisdiction.

[10/2013; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an approved trustee which is incorporated in Singapore, or an executive officer of an approved trustee, is not a fit and proper person to be a director or executive officer (as the case may be) of the approved trustee, the Authority may, by notice in writing to the approved trustee, direct the approved trustee to remove the director or executive officer from his or her office or employment within such period as the Authority may specify in the notice, and the approved trustee must comply with the notice.

[Act 12 of 2024 wef 24/01/2025]

(3) For the purpose of subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

(*a*) the individual has wilfully contravened or wilfully caused the approved trustee to contravene any provision of this Act;

(*b*) the individual has, without reasonable excuse, failed to secure the compliance of the approved trustee with this Act, the Monetary Authority of Singapore Act 1970, or any of the written laws set out in the Schedule to that Act;

(*c*) the individual has failed to discharge any of the duties of his or her office or employment;

(*d*) the individual's removal is necessary in the public interest or for the protection of investors; or

(*e*) the individual comes within any of the grounds mentioned in subsection (1).

[Act 12 of 2024 wef 24/01/2025]

(4) The Authority must, in determining whether an individual has failed to discharge the duties of his or her office or employment for the purposes of subsection (3)(*c*), have regard to such criteria as may be prescribed.

[Act 12 of 2024 wef 24/01/2025]

(5) The Authority must not direct an approved trustee to remove an individual from his or her office or employment under subsection (2) without giving the approved trustee and that individual an opportunity to be heard, except in any of the following circumstances:

(*a*) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a section 101A prohibition order or an FSMA prohibition order against the individual has been made that remains in force;

(*c*) the individual has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of section 79(*c*) of the Financial Institutions (Miscellaneous Amendments) Act 2024 —

(i) involving fraud or dishonesty or the conviction for which involved a finding that the individual had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[Act 12 of 2024 wef 24/01/2025]

(6) An approved trustee must, as soon as practicable after receiving a direction under subsection (2), notify the affected director or executive officer of the direction.

[Act 12 of 2024 wef 24/01/2025]

(7) An approved trustee who receives a direction under subsection (2), or any director or executive officer of an approved trustee in relation to whom a direction under subsection (2) is given, may, within 30 days after the approved trustee receives the direction, appeal to the Minister whose decision is final.

[Act 12 of 2024 wef 24/01/2025]

(8) Despite the lodging of an appeal under subsection (7), any direction under subsection (2) continues to have effect pending the Minister's decision.

[Act 12 of 2024 wef 24/01/2025]

(8A) The Minister may, when deciding an appeal under subsection (7), modify the direction under subsection (2), and such modified action has effect starting on the date of the Minister's decision.

[Act 12 of 2024 wef 24/01/2025]

(8B) Any approved trustee which, without reasonable excuse, contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[Act 12 of 2024 wef 24/01/2025]

(8C) No criminal or civil liability is incurred by —

(*a*) an approved trustee; or

(*b*) any person acting on behalf of an approved trustee,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[Act 12 of 2024 wef 24/01/2025]

(9) [*Deleted by Act 12 of 2024 wef 24/01/2025*]

Control of take-over of approved trustee

292AA.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) A person must not obtain effective control of an approved trustee that is a company, unless the person has obtained the prior approval of the Authority.

(3) An application for the Authority's approval under subsection (2) must be made in writing, and the Authority may approve the application if the Authority is satisfied that —

(*a*) the applicant is a fit and proper person to have effective control of the approved trustee;

(*b*) having regard to the applicant's likely influence, the approved trustee is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and

(*c*) the applicant satisfies such other criteria as may be prescribed.

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

(*a*) restricting the applicant's disposal or further acquisition of shares or voting power in an approved trustee; or

(*b*) restricting the applicant's exercise of voting power in the approved trustee,

and the applicant must comply with such conditions.

(5) The Authority may at any time add to or vary any condition imposed under subsection (4) and the applicant must comply with the condition so added to or varied.

(6) The Authority may at any time revoke any condition imposed under subsection (4) (including a condition that has been added to or varied under subsection (5)).

(7) Any condition imposed under subsection (4) (including a condition that has been added to or varied under subsection (5)) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the approved trustee.

(8) For the purposes of this section and section 292AB —

(*a*) a person has effective control of the approved trustee —

(i) if the person, alone or acting together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the approved trustee;

(ii) if the person, alone or acting together with any connected person, controls, directly or indirectly, 20% or more of the voting power in the approved trustee;

(iii) if the approved trustee or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether conveyed by the person alone or together with any other person, and whether with or without holding shares or controlling voting power in the approved trustee); or

(iv) if the person (whether alone or acting together with any other person, and whether with or without holding shares or controlling voting power in the approved trustee) is able to determine the policy of the approved trustee; and

(*b*) a reference to the voting power of an approved trustee is a reference to the total number of votes that may be cast in a general meeting of the approved trustee.

(9) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

(10) Any person who fails to comply with a condition imposed under subsection (4) (including a condition added to or varied under subsection (5)) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[Act 12 of 2024 wef 24/01/2025]

Objection to control of approved trustee

292AB.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 292AA; or

(*b*) any person who has effective control of an approved trustee,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 292AA(4) (including a condition that has been added to or varied under section 292AA(5)) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the approved trustee;

(*e*) having regard to the likely influence of the person, the approved trustee is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 292AA; or

(*h*) the Authority would not have granted its approval under section 292AA had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a section 101A prohibition order or an FSMA prohibition order has been made, and remains in force, against the person;

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

(*a*) take such steps as are necessary to ensure that the person ceases to have effective control of an approved trustee; or

(*b*) comply with such other requirements as the Authority may specify.

(4) Any person served with a notice of objection under this section must comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[Act 12 of 2024 wef 24/01/2025]

Information of insolvency, etc.

292B.—(1) Any approved trustee which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any approved trustee which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Interpretation of sections 292C to 292H

292C. In this section and sections 292D, 292E, 292F, 292G and 292H, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved trustee, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved trustee, or acting in an equivalent capacity in relation to the approved trustee;

"relevant business" means any business of an approved trustee —

(*a*) which the Authority has assumed control of under section 292D; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 292D;

"statutory adviser" means a statutory adviser appointed under section 292D;

"statutory manager" means a statutory manager appointed under section 292D.

[10/2013]

Action by Authority if approved trustee unable to meet obligations, etc.

292D.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) an approved trustee informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) an approved trustee becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved trustee —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 289(1) or (1A); or

(*d*) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved trustee immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved trustee on the proper management of

such of the business of the approved trustee as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved trustee as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) Where the Authority appoints 2 or more persons as the statutory manager of an approved trustee, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(4) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 289(4A), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(5) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[10/2013]

(6) Any approved trustee that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 292D

292E.—(1) Upon assuming control of the relevant business of an approved trustee, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved trustee in the name of and on behalf of the approved trustee; and

(*b*) is deemed to be an agent of the approved trustee.

[10/2013]

(3) In managing the relevant business of an approved trustee, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 292D(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved trustee (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved trustee, including powers of delegation, in relation to the relevant business of the approved trustee; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of

the approved trustee under the Companies Act 1967 or the constitution of the approved trustee.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved trustee by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved trustee, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved trustee, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved trustee.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved trustee, the Authority may at any time, by written notice to the person and the approved trustee, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved trustee is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved trustee in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved trustee,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the approved trustee in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $10,000

for every day or part of a day during which the offence continues after conviction.

[10/2013]

(11) In this section, "constitution", in relation to an approved trustee, means the memorandum of association and articles of association of the approved trustee.

[10/2013]

Duration of control

292F.—(1) The Authority must cease to be in control of the relevant business of an approved trustee when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved trustee on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved trustee may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved trustee.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved trustee;

(*b*) the cessation of the Authority's control of the relevant business of an approved trustee;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved trustee; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved trustee.

[10/2013]

Responsibilities of officers, member, etc., of approved trustee

292G.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved trustee which is comprised in, forms part of or relates to the relevant business of the approved trustee, and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee must give to the Authority

or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved trustee, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

292H.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved trustee —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved trustee, whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved trustee, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved trustee must reimburse the Authority any remuneration and expenses payable by the approved trustee to a statutory manager or statutory adviser.

[10/2013]

Authority may issue directions

293.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions by written notice either of a general or specific nature to —

(*a*) where a collective investment scheme is constituted as a corporation, VCC or sub-fund of a VCC, the corporation or VCC, as the case may be;

(*b*) the manager, trustee, custodian or representative for a collective investment scheme; or

(*c*) any class of such persons referred to in paragraph (*a*) or (*b*).

[34/2012; 44/2018]

(2) Any person to whom a notice is given under subsection (1) must comply with such direction as may be contained in the notice.

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(4) Any person who contravenes any of the directions issued to the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Service

294.—(1) Where a collective investment scheme is authorised under section 286 and constituted as a unit trust, any document relating to the scheme is sufficiently served —

(*a*) if served on the responsible person for the scheme at the responsible person's last known address;

(*b*) if delivered to the secretary or other similar officer of the responsible person at its registered office or principal place of business;

(*c*) if sent by registered post addressed to the responsible person at its registered office or principal place of business; or

(*d*) if sent by email to the last email address of the responsible person.

[Act 12 of 2024 wef 24/01/2025]

(1A) Where a collective investment scheme is authorised under section 286 and constituted as a VCC or sub-fund, any document relating to the scheme is sufficiently served if served on the VCC in accordance with section 149 of the Variable Capital Companies Act 2018.

[Act 12 of 2024 wef 24/01/2025]

(1B) Where a collective investment scheme is recognised under section 287, any document relating to the scheme is sufficiently served —

(*a*) if served on the responsible person for the scheme or the representative for the scheme at the person's last known address;

(*b*) if, in the case of a responsible person who is an individual —

(i) the document is delivered to the individual or to some adult member or employee of his or her family or household at his or her last known place of residence;

(ii) the document is left at the individual's usual or last known place of residence or business in an envelope addressed to the individual;

(iii) the document is sent by registered post addressed to the individual at his or her usual or last known place of residence or business; or

(iv) the document is sent by email to the individual's last email address; or

(*c*) if, in the case of a responsible person who is a body corporate or body of persons —

(i) the document is delivered to the secretary or other similar officer of the body corporate or body of persons at its registered office or principal place of business;

(ii) the document is left at the registered office or principal place of business of the body corporate or body of persons in an envelope addressed to the body corporate or body of persons;

(iii) the document is sent by registered post addressed to the body corporate or body of persons at its registered office or principal place of business; or

(iv) the document is sent by email to the last email address of the body corporate or body of persons.

[Act 12 of 2024 wef 24/01/2025]

(1C) To avoid doubt, a reference in subsection (1)(*a*), (1A) or (1B)(*a*) to service of any document relating to the scheme includes the service of any process in relation to the scheme.

[Act 12 of 2024 wef 24/01/2025]

(2) Any notice, order or direction to be given or served by the Authority on —

(*a*) in a case where a collective investment scheme is constituted as a corporation other than a VCC — the corporation;

[Act 12 of 2024 wef 24/01/2025]

(*b*) in a case where a collective investment scheme is constituted as a VCC or a sub-fund — the VCC;

(*c*) the manager for a collective investment scheme;

(*d*) the trustee or custodian for a collective investment scheme; or

(*e*) the representative for a collective investment scheme,

is for all purposes regarded as duly given or served if it has been —

(*f*) in the case of an individual —

(i) delivered to the individual or to some adult member or employee of his or her family or household at his or her last known place of residence;

(ii) left at the individual's usual or last known place of residence or business in an envelope addressed to him or her;

(iii) sent by registered post addressed to the individual at his or her usual or last known place of residence or business; or

(iv) sent by email to the individual's last email address; or

[Act 12 of 2024 wef 24/01/2025]

(*g*) in the case of a body corporate or body of persons —

(i) delivered to the secretary or other similar officer of the body corporate or body of persons at its registered office or principal place of business;

(ii) left at the registered office or principal place of business of the body corporate or body of persons in an envelope addressed to the body corporate or body of persons;

(iii) sent by registered post addressed to the body corporate or body of persons at its registered office or principal place of business; or

(iv) sent by email to the last email address of the body corporate or body of persons.

[44/2018]

[Act 12 of 2024 wef 24/01/2025]

(3) In subsection (1)(*a*) or (1B)(*a*), the last known address of a responsible person that is a company or foreign company is —

(*a*) if the responsible person is a company, the address of its registered office in Singapore; or

(*b*) if the responsible person is a foreign company, the address of its registered office in Singapore or the registered address of its authorised representative mentioned in section 366(1) of the Companies Act 1967 or, if the responsible person does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

[Act 12 of 2024 wef 24/01/2025]

(4) A document, notice, order or direction may be served on a person under this section by email only with that person's prior written consent.

[Act 12 of 2024 wef 24/01/2025]

(5) Subsections (1)(*b*), (*c*) and (*d*) and (1B)(*b*) and (*c*) and (2) do not apply to documents to be served in proceedings in court.

[Act 12 of 2024 wef 24/01/2025]

(6) Any document, notice, order or direction sent by registered post to any person in accordance with subsection (1), (1A), (1B) or (2) is deemed to be duly served on the person at the time when the document, notice, order or direction (as the case may be) would in the ordinary course of post be delivered.

[Act 12 of 2024 wef 24/01/2025]

(7) When proving service of the document, notice, order or direction under subsection (6), it is sufficient to prove that the envelope containing the document, notice, order or direction (as the case may be) was properly addressed, stamped and posted by registered post.

[Act 12 of 2024 wef 24/01/2025]

(8) Service of a document, notice, order or direction under subsection (1)(*d*), (1B)(*b*)(iv) or (*c*)(iv) or (2)(*f*)(iv) or (*g*)(iv) takes effect at the time the email becomes capable of being retrieved by the person to whom the document is sent.

[Act 12 of 2024 wef 24/01/2025]

(9) In this section, "last email address" means —

(*a*) the last email address given by the addressee concerned to the person giving or serving the document, notice, order or direction as the email address for the service of the document, notice, order or direction under this Act; or

(*b*) the last email address of the addressee concerned known to the person giving or serving the document, notice, order or direction.

[Act 12 of 2024 wef 24/01/2025]

Winding up

295.—(1) Where a collective investment scheme (other than one constituted as a VCC or sub-fund) is to be wound up, whether under this section or otherwise, the responsible person for the scheme must give written notice of the proposed winding up to the Authority at least 7 days before the winding up.

[44/2018]

(1A) Where a collective investment scheme constituted as a VCC or sub-fund is being wound up under the Variable Capital Companies Act 2018, the VCC must give written notice to the Authority of the winding up within 3 days after the commencement of the winding up.

[44/2018]

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee must take the necessary steps to wind up the scheme.

(3) Where —

(*a*) the responsible person for a collective investment scheme authorised under section 286 which is constituted as a unit trust is in liquidation; or

(*b*) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee must summon a meeting of the participants for the purpose of determining an appropriate course of action.

[44/2018]

(4) A meeting under subsection (3) must be summoned —

(*a*) by giving written notice of the proposed meeting at least 21 days before the proposed meeting to each participant or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and

[Act 12 of 2024 wef 24/01/2025]

(*b*) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(4A) For the purposes of subsection (4)(*a*), written notice is to be given to a participant —

(*a*) in the case of a participant who is an individual —

(i) by delivering a written notice to the individual or to some adult member or employee of his or her family or household at his or her last known place of residence;

(ii) by leaving a written notice at the individual's usual or last known place of residence or business in an envelope addressed to him or her; or

(iii) by sending a written notice by post addressed to the individual at his or her usual or last known place of residence or business; or

(*b*) in the case of a body corporate or body of persons —

(i) by delivering a written notice to the secretary or other similar officer of the body corporate or body of persons at its registered office or principal place of business;

(ii) by leaving a written notice at the registered office or principal place of business of the body corporate or body of persons in an envelope addressed to the body corporate or body of persons; or

(iii) by sending a written notice by post addressed to the body corporate or body of persons at its registered office or principal place of business.

[Act 12 of 2024 wef 24/01/2025]

(4B) Any written notice sent by post to any person in accordance with subsection (4A) is deemed to be duly served on the person at the time when the notice would in the ordinary course of post be delivered.

[Act 12 of 2024 wef 24/01/2025]

(4C) When proving service of the notice mentioned in subsection (4B), it is sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted.

[Act 12 of 2024 wef 24/01/2025]

(5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee must take the necessary steps to wind up the scheme.

(6) Any responsible person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(6A) Any VCC that without reasonable excuse contravenes subsection (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[44/2018]

(7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

Power to acquire units of participants of real estate investment trust in certain circumstances

295A.—(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a real estate investment trust (called in this section the subject trust), to —

(*a*) the trustee of another trust (including the trustee-manager of a business trust and the trustee of another real estate investment trust); or

(*b*) a corporation,

(called in this section the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by participants of the subject trust holding no less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting participant of the subject trust that it desires to acquire the dissenting participant's units.

[2/2009]

(2) When a notice referred to in subsection (1) is given, the transferee, unless on an application made by a dissenting participant within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting participant under subsection (3) (whichever is the later) a court thinks fit to order otherwise, is entitled and bound to acquire those units —

(*a*) on the terms which under the arrangement or contract the units of the approving participants are to be transferred to the transferee; or

(*b*) if the offer contained 2 or more alternative sets of terms, on the terms which were specified in the offer as being applicable to dissenting participants.

[2/2009]

(3) Where a transferee has given notice to any dissenting participant of the subject trust that it desires to acquire the dissenting participant's units, the dissenting participant is entitled to require the transferee by a demand in writing served on the transferee, within one month from the date on which the notice was given, to supply the dissenting participant with a statement in writing of the names and addresses of all other dissenting participants as shown in the register of participants of the subject trust; and the transferee is not entitled or bound to acquire the units of the dissenting participants until 14 days after the posting of the statement of such names and addresses to the dissenting participant.

[2/2009]

(4) Where, pursuant to any such arrangement or contract, units in the subject trust are transferred to the transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

(*a*) the transferee must within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the participants of the subject trust holding the remaining units in, or the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and

(*b*) any such participant may within 3 months from receiving the notice require the transferee to acquire the participant's units.

[2/2009]

(5) Where a participant has given notice under subsection (4)(*b*) with respect to any units, the transferee is entitled and bound to acquire those units —

(*a*) on the terms on which under the arrangement or contract the units of the approving participants were transferred to it; or

(*b*) on such other terms as are agreed or as the court on the application of either the transferee or the participant thinks fit to order.

[2/2009]

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting participant, ordered to the contrary, the transferee must —

(*a*) after the expiration of one month after the date on which the notice has been given;

(*b*) after 14 days after a statement has been supplied to a dissenting participant under subsection (3); or

(*c*) if an application to the court by the dissenting participant is then pending, after that application has been disposed of,

transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the participant by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust must thereupon register the transferee as the holder of those units.

[2/2009]

(7) Any sums received by the trustee of the subject trust under this section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

[2/2009]

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and must, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to the trustee, transfer such consideration to the Official Receiver.

[2/2009]

(9) The Official Receiver must sell or dispose of any consideration so received in such manner as he or she thinks fit and must deal with the proceeds of such sale or disposal in accordance with section 295B.

[2/2009]

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

(*a*) by a nominee on behalf of the transferee;

(*b*) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;

(*c*) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —

(i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;

(ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or

(iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or

(*d*) where the transferee is the trustee of a trust that is not a business trust or real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation,

are treated as held or acquired by the transferee.

[2/2009]

(11) To avoid doubt, in this section —

(*a*) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to the transferee's doing any of these as trustee of the firstmentioned trust; and

(*b*) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to the transferee as trustee of that other trust.

[2/2009]

(12) The reference in subsection (1) to units already held by the transferee —

(*a*) includes a reference to units which the transferee has contracted to acquire; but

(*b*) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

[2/2009]

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

(*a*) the consideration for which the units are acquired or contracted to be acquired (called in this subsection the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (*a*), no longer exceeds the consideration specified in those terms.

[2/2009]

(14) In this section and sections 295B and 295C —

"dissenting participant" includes a participant who has not assented to the arrangement or contract and any participant who has failed or refused to transfer the participant's units to the transferee in accordance with the arrangement or contract;

"Official Receiver" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018.

[2/2009; 4/2017; 40/2018]

Unclaimed money to be paid to Official Receiver

295B.—(1) The Official Receiver who receives moneys arising from the proceeds of a sale or disposal under section 295A must place the moneys to the credit of a separate account to be entitled the Compulsory Acquisition of Scheme Account.

[2/2009]

(2) The interest arising from the investment of the moneys standing to the credit of the Compulsory Acquisition of Scheme Account must be paid into the Consolidated Fund.

[2/2009]

(3) If any person makes any demand for any money placed to the credit of the Compulsory Acquisition of Scheme Account, the Official Receiver, upon being satisfied that that person is entitled to the money, must authorise payment thereof to be made to that person out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to that person out of moneys made available by Parliament for the purpose.

[2/2009]

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made pursuant to subsection (3) may appeal to a court which may confirm, disallow or vary the decision.

[2/2009]

(5) Where any unclaimed moneys paid to a person pursuant to subsection (3) are afterwards claimed by any other person, that other person is not entitled to any payment out of the Compulsory Acquisition of Scheme Account or out of the Consolidated Fund but

such other person may have recourse against the firstmentioned person to whom the unclaimed moneys have been paid.

[2/2009]

(6) Any unclaimed moneys paid to the credit of the Compulsory Acquisition of Scheme Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account must, upon the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

[2/2009]

Remedies in cases of oppression or injustice

295C.—(1) Any participant of a real estate investment trust may apply to a court for an order under this section on the ground —

(*a*) that the affairs of the trust are being conducted by the manager or trustee for the trust, or the powers of the directors of the manager or directors of the trustee for the trust are being exercised, in a manner oppressive to one or more of the participants of the trust including the applicant or in disregard of the applicant's or their interests as participants of the trust; or

(*b*) that some act of the manager or trustee for the trust, carried out in its capacity as manager or trustee for the trust (as the case may be) has been done or is threatened or that some resolution of the participants of the trust or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the participants of the trust including the applicant.

[2/2009]

(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 limiting 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 manager or trustee for the trust in relation to the trust in future;

(*c*) authorise civil proceedings against the directors of the manager or directors of the trustee for the trust to be brought in the name of or on behalf of all the participants of the trust as a whole by such person or persons and on such terms as the court may direct;

(*d*) provide for the purchase of the units in the trust by other participants of the trust;

(*e*) provide that the 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 property of the trust or to be borne and paid in such manner and by such persons as the court deems fit.

[2/2009]

(3) Where an order under this section makes any alteration in or addition to the trust deed of any trust, then, despite anything in any other provision of this Act but subject to the provisions of the order, the manager or trustee of the trust concerned does not have power, without the permission of the court, to make any further alteration in or addition to the trust deed that is inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection, the alterations or additions made by the order have the same effect as if duly made by special resolution of the participants of the trust.

[2/2009]

[Act 25 of 2021 wef 01/04/2022]

(4) A copy of any order made under this section must be lodged by the applicant with the Authority within 7 days after the making of the order.

[2/2009]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) This section applies to a person who is not a participant of a trust but to whom units in the trust have been transmitted by operation of law as it applies to the participants of a trust; and references to a participant or participants are to be construed accordingly.

[2/2009]

Subdivision (2A) — Voluntary transfer of business of approved trustee

Interpretation of this Subdivision

295D. In this Subdivision, unless the context otherwise requires —

"approved trustee" means a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts;

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved trustee, or a public company which has applied or will be applying for the Authority's approval under section 289(1) to act as an approved trustee, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Subdivision;

"transferor" means an approved trustee the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Subdivision.

[10/2013; 40/2019]

Voluntary transfer of business

295E.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved trustee) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved trustee; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved trustee to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Subdivision.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the

discharge of its duties or functions, or the exercise of its powers, under this Subdivision.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

295F.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Subdivision.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 295E(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on the participants of their respective collective investment schemes a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on the participants of their respective collective investment schemes affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 295E(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee does not have the Authority's approval under section 289(1) to act as an approved trustee, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee obtaining the Authority's approval under section 289(1) to act as an approved trustee.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection,

shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction. *[10/2013]*

Subdivision (3) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

296.—(1) A person must not make an offer of units in a collective investment scheme unless the offer —

(*a*) is made in or accompanied by a prospectus in respect of the offer —

(i) that is prepared in accordance with such requirements as the Authority may prescribe;

(ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and

(iii) that is registered by the Authority; and

(*b*) complies with such requirements as the Authority may prescribe.

(1A) A person who lodges a preliminary document with the Authority is deemed to have lodged a prospectus with the Authority.

(1B) A preliminary document referred to in subsection (1A) must contain all information to be included in a prospectus other than such information as the Authority may prescribe.

(2) Despite subsection (1), an offer of units in a collective investment scheme may be made in or accompanied by an extract from, or an abridged version of, a prospectus (called in this Subdivision a profile statement), instead of a prospectus, if —

(*a*) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1)(*a*)(i) and the profile statement is prepared

in accordance with such requirements as may be prescribed;

(*b*) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (2A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;

(*c*) the prospectus and profile statement are registered by the Authority;

(*d*) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and

(*e*) the offer complies with such other requirements as may be prescribed.

(2A) The copy of a prospectus or profile statement lodged with the Authority must be signed —

(*a*) where the person making the offer of units in a collective investment scheme is the responsible person for the scheme, by every director or equivalent person of the responsible person and every person who is named therein as a proposed director or an equivalent person of the responsible person; and

(*b*) where the person making the offer of units in a collective investment scheme is not the responsible person for the scheme —

(i) where the responsible person is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of that person's related parties,

by the persons referred to in paragraph (*a*) and the persons referred to in sub-paragraph (ii)(A) or (B), as the case may be; and

(ii) in any other case —

(A) where that person is an entity, by every director or equivalent person of that entity; or

(B) where that person is an individual, by the individual or a person authorised by him or her in writing.

(2B) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(*a*) by that director or equivalent person; or

(*b*) by a person who is authorised in writing by that director or equivalent person to sign on his or her behalf.

(2C) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(*a*) by that proposed director or equivalent person; or

(*b*) by a person who is authorised in writing by that proposed director or equivalent person to sign on his or her behalf.

(3) A person must not make an offer of units in a collective investment scheme if that scheme has not been formed or does not exist.

(4) [*Deleted by Act 1 of 2005*]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(6) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

(*a*) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (12);

(*b*) the Authority gives a notice to the person making the offer of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (12);

(*c*) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, in which case the Authority may, at any time up to and including the date on which the extended period ends —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (12); or

(*d*) the person making the offer gives a written notice to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority must not register the prospectus or profile statement.

[2/2009]

(6A) Where, after a notice of an opportunity to be heard has been given under subsection (6)(*a*), (*b*)(ii) or (*c*)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date must not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

[2/2009]

(6AA) For the purposes of subsections (6) and (6A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

[2/2009]

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority must not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (2A) and which contains the information required to be included in a prospectus as prescribed under subsection (1)(*a*)(i), including such information which could be omitted from the preliminary document by virtue of subsection (1B), has been lodged with the Authority.

(6C) A person making an offer of units in a collective investment scheme may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

(7) Subject to subsection (8) —

(*a*) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged is deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged; and

(*b*) where any amendment to a profile statement is lodged, the profile statement is deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged.

(8) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended is deemed, for the purposes of subsection (6), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(8A) An amendment to a prospectus or profile statement that is lodged is treated as part of the original prospectus or profile statement.

(9) The Authority may, for public information, publish —

(*a*) a prospectus or profile statement lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and for the purposes of this subsection, the person making the offer must provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(10) The Authority must refuse to register a prospectus if —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under subsection (1)(*a*);

(*c*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;

(*d*) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (2A);

(*e*) any written consent of an expert to the issue of the prospectus required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*ea*) any written consent of an issue manager to the issue of the prospectus required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*eb*) any written consent of an underwriter to the issue of the prospectus required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(11) The Authority must refuse to register a profile statement if —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under subsection (2)(*a*);

(*c*) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (2A);

(*ca*) any written consent of an expert to the issue of the profile statement required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cb*) any written consent of an issue manager to the issue of the profile statement required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cc*) any written consent of an underwriter to the issue of the profile statement required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*d*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;

(*e*) the prospectus has not been registered by the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(12) The Authority must not refuse to register a prospectus under subsection (10) or a profile statement under subsection (11) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(13) Any person making an offer may, within 30 days after the person is notified that the Authority has refused to register a prospectus or profile statement to which that person's offer relates under subsection (10) or (11), appeal to the Minister whose decision is final.

(14) If —

(*a*) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or

(*b*) an application to subscribe for or purchase units in a collective investment scheme is accepted, or units in a collective investment scheme are issued or sold, before a prospectus and, where applicable, profile statement, in respect of the units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

(*c*) the issue, circulation or distribution of the prospectus or profile statement;

(*d*) the acceptance of the application to subscribe for or purchase the units; or

(*e*) the issue or sale of the units,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(14A) For the purposes of subsections (10)(*a*) and (11)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(15) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide for penalties not exceeding a fine of $50,000.

Requirement for product highlights sheet, where relevant

296A.—(1) A person must not make an offer of units in a collective investment scheme, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(*a*) that complies with such requirements as the Authority may prescribe by regulations made under section 341; and

(*b*) a copy of which is lodged with the Authority.

[34/2012]

(2) A person must not publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of units in a collective investment scheme or proposed collective investment scheme, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 296, if the document resembles or may

otherwise be confused with a product highlights sheet, unless the person is required to do so —

(*a*) under any written law or rule of law, or by any court, in Singapore;

(*b*) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(*c*) by any listing rules or other requirements of any approved exchange or overseas exchange.

[34/2012; 4/2017]

(3) The Authority may, for public information, publish —

(*a*) a product highlights sheet lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

[34/2012]

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) Without affecting section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons, any prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(6) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any person, prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(7) It is not necessary to publish any exemption granted under subsection (6) in the *Gazette*.

[34/2012]

(8) Every person who is granted an exemption under subsection (5), or who wishes to rely on an exemption granted under that subsection, must satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

[34/2012]

(9) Every person who is granted an exemption under subsection (6), or who wishes to rely on an exemption granted under that subsection, must, for the duration of the exemption, satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

[34/2012]

(10) Any person who contravenes subsection (8) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Stop order for prospectus and profile statement

297.—(1) If a prospectus has been registered and —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;

(*c*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of units in a collective

investment scheme to which the prospectus relates, direct that no or no further units in the scheme be issued or sold.

(2) If a profile statement has been registered and —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under section 296;

(*c*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of units in a collective investment scheme to which the profile statement relates, direct that no or no further units in the scheme be issued or sold.

(2A) If —

(*a*) a prospectus or a profile statement has been registered;

(*b*) the prospectus or profile statement relates to units in a collective investment scheme recognised under section 287; and

(*c*) the Authority is of the opinion that it is necessary to stop the person making the offer of units in the scheme from issuing or selling units in the scheme to give effect to an arrangement relating to cross-border offers of collective investment schemes to which Singapore or the Authority is a party,

the Authority may serve a written order (called in this section a stop order) on the person making the offer of units in the scheme directing that no or no further units in the scheme be issued or sold.

[4/2017]

(2B) The Authority must not serve a stop order under subsection (1), (2) or (2A) if —

(*a*) any of the units in a collective investment scheme to which the prospectus or profile statement relates —

(i) has been issued or sold; and

(ii) has been listed for quotation on an approved exchange; and

(*b*) trading in any of the units in the collective investment scheme mentioned in paragraph (*a*) has commenced.

[4/2017]

(3) The Authority must not serve a stop order under subsection (1), (2) or (2A) without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

[4/2017]

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

(*a*) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) where units in the scheme have not been issued to the applicants, the applications are deemed to have been withdrawn and cancelled; or

(ii) where units in the scheme have been issued to the applicants, the issue of the units is deemed to be void,

and the person making the offer of units in the scheme must, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to that person, its agent, or any person through whom the applicant has applied for the units; or

(*b*) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by written notice issue such directions to the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve, to obtain from that person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(5) In determining whether to issue a direction under subsection (4) to the person making the offer of units in the collective investment scheme to refund the contributions of the applicants, the Authority must consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(*a*) whether a significant amount of the contributions of the participants has been invested;

(*b*) the liquidity of the property of the scheme; and

(*c*) the penalties (if any) payable for liquidating the property.

(6) It is not necessary to publish any direction issued under subsection (4) in the *Gazette*.

[34/2012]

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, serve an interim stop order on such person directing that no or no further units in a collective investment scheme to which the prospectus or profile statement relates be issued or sold.

(8) An interim stop order, unless revoked, is in force —

(*a*) in a case where —

(i) it is served during a hearing under subsection (3); or

(ii) a hearing under subsection (3) is commenced while it is in force,

until the Authority makes an order under subsection (1), (2) or (2A); or

(*b*) in any other case, for a period of 14 days from the day on which the interim stop order is served.

[4/2017]

(9) Subsection (4) does not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1), (2) or (2A) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Any person who contravenes subsection (4), or any direction issued to the person under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(12) For the purposes of subsections (1)(*a*) and (2)(*a*), any reference to a statement includes a reference to any information

presented, regardless of whether such information is in text or otherwise.

Lodging supplementary document or replacement document

298.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, the person making that offer becomes aware of —

(*a*) a false or misleading statement in the prospectus or profile statement;

(*b*) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; or

(*c*) a new circumstance that —

(i) has arisen since the prospectus or profile statement was lodged with the Authority; and

(ii) would have been required under this Act to be included in the prospectus or profile statement,

if it had arisen before the prospectus or the profile statement (as the case may be) was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (called in this section a supplementary or replacement document, as the case may be), with the Authority.

(2) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, the person making that offer wishes to update any information in a prospectus or profile statement and the person declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, the person may lodge a supplementary or replacement document with the Authority.

(3) At the beginning of a supplementary document, there must be —

(*a*) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;

(*b*) an identification of the prospectus or profile statement it supplements;

(*c*) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and

(*d*) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

(4) At the beginning of a replacement document, there must be —

(*a*) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and

(*b*) an identification of the prospectus or profile statement it replaces.

(5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(6) The person making the offer of units in a collective investment scheme must take reasonable steps —

(*a*) to inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and

(*b*) to make available to them the supplementary document or replacement document.

(7) For the purposes of the application of this Division to events that occur after the lodgment of a supplementary document —

(*a*) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer is taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and

(*b*) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer is taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(8) [*Deleted by Act 1 of 2005*]

(9) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

(*a*) where the replacement document is a replacement prospectus, the prospectus in relation to the offer is taken to be the replacement prospectus; and

(*b*) where the replacement document is a replacement profile statement, the profile statement in relation to the offer is taken to be the replacement profile statement.

(10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme —

(*a*) must —

(i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; and

(ii) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document; or

(*b*) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be.

(11) Any person who contravenes subsection (3), (4), (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(13) For the purposes of subsection (1)(*a*), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Duration of validity of prospectus and profile statement

299.—(1) A person must not make an offer of units in a collective investment scheme, or issue or sell any units in a collective investment scheme, on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration by the Authority of the prospectus in relation to such offer, issue or sale.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(3) An issue or a sale of units in a collective investment scheme that is made in contravention of subsection (1) is not, by reason only of that fact, voidable or void.

Restrictions on advertisements, etc.

300.—(1) If a prospectus is required for an offer, or intended offer of units in a collective investment scheme or proposed collective investment scheme, a person must not —

(*a*) advertise the offer or intended offer; or

(*b*) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

(*a*) indirectly refers to an offer or intended offer; or

(*b*) is reasonably likely to induce people to subscribe for or purchase units in a collective investment scheme,

regard must be had to whether the statement —

(*c*) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and

(*d*) is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(2A) Despite subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 305(5) and persons to whom an offer referred to in section 305(2) is to be made without contravening subsection (1), if —

(*a*) the front page of the preliminary document contains —

(i) the following statement:

"This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.";

(ii) a statement that a person to whom a copy of the preliminary document has been issued must not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or agreement may be made on the basis of the preliminary document to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;

(*b*) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and

(*c*) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(2B) Despite subsection (3A), a person does not contravene subsection (1) —

(*a*) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305(5) or persons to whom an offer referred to in section 305(2) is to be made; or

(*b*) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of units in a collective investment scheme, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme in order to enable the person to carry on the regulated activity of dealing in capital markets products that are units in a collective investment scheme, or to provide any financial advisory service, in relation to the units in the collective investment scheme:

(i) a person licensed under this Act in respect of dealing in capital markets products that are units in a collective investment scheme;

(ii) an exempt person;

(iii) a person who is a representative in respect of dealing in capital markets products that are units in a collective investment scheme under this Act;

(iv) a representative of an exempt person;

(v) a person licensed under the Financial Advisers Act 2001 in respect of marketing of collective investment schemes;

(vi) an exempt financial adviser;

(vii) a person who is a representative in respect of marketing of collective investment schemes under the Financial Advisers Act 2001;

(viii) a representative of an exempt financial adviser.

[34/2012; 4/2017]

(2C) [*Deleted by Act 34 of 2012*]

(3) To avoid doubt, a person may disseminate either or both of the following without contravening subsection (1):

(*a*) a prospectus or profile statement that has been registered by the Authority under section 296;

(*b*) a product highlights sheet in respect of which section 296A(1)(*a*) and (*b*) has been complied with, and which is disseminated with a prospectus or profile statement that has been registered by the Authority under section 296.

[34/2012; 4/2017]

(3A) Before a prospectus or profile statement is registered, an advertisement or a publication does not contravene subsection (1) if it contains only the following:

(*a*) a statement that identifies the person making the offer, the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the collective investment scheme;

(*b*) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(*c*) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;

(*d*) a statement on how to obtain, or arrange to receive, a copy of the prospectus or profile statement; and

(*e*) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication must include all of the statements referred to in paragraphs (*a*), (*b*) and (*c*) of that subsection, and may include the information referred to in paragraphs (*d*) and (*e*).

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if it complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) An advertisement or publication does not contravene subsection (1) if it —

(*a*) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of

an approved exchange or overseas exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as the Authority may prescribe;

(*aa*) consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, provided that the notice or report complies with such requirements as the Authority may prescribe, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

(*b*) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is issued pursuant to this Act and the Code on Collective Investment Schemes;

(*ba*) consists solely of a statement made by the person making the offer or the responsible person that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;

(*c*) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (*d*)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —

(i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;

(ii) a disclosure, notice or report referred to in paragraph (*a*);

(iii) a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (*aa*);

(iv) a report referred to in paragraph (*b*); or

(v) a product highlights sheet;

(*d*) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published by someone who is not —

(i) the person making the offer, the responsible person for the scheme, its agent or distributor;

(ii) a director or an equivalent person of the person making the offer or the responsible person for the scheme;

(iii) a person who has an interest in the success of the issue or sale of the units; or

(iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);

(*e*) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or

(*f*) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —

(i) an earlier news report or a genuine comment referred to in paragraph (*c*); or

(ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (5),

provided that the firstmentioned publication does not contain any material information that is not included in the prospectus.

[2/2009; 34/2012; 4/2017]

(5) A person does not contravene subsection (1) if —

(*a*) the person publishes an advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or

(ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

(*b*) the person did not know, and had no reason to suspect, that its publication would constitute a contravention of subsection (1).

(6) Subsection (4)(*c*) and (*d*) does not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(7) Any person who contravenes subsection (1) or who knowingly authorises or permits the publication or dissemination of any advertisement or statement mentioned in that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(8) This section does not affect any liability that a person has under any other law.

(9) The Authority may exempt any person or class of persons from this section, subject to such conditions as the Authority may determine.

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement includes a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(12) For the purposes of subsections (1) and (2), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(13) In subsection (2B) —

"exempt financial adviser" and "financial advisory service" have the meanings given by section 2(1) of the Financial Advisers Act 2001;

"representative" —

(*a*) in relation to dealing in capital markets products that are units in a collective investment scheme under this Act or an exempt person, has the meaning given by section 2(1); or

(*b*) in relation to marketing of collective investment schemes under the Financial Advisers Act 2001 or an exempt financial adviser, has the meaning given by section 2(1) of that Act.

[34/2012; 4/2017]

Issue of units where prospectus indicates application to list on approved exchange

301.—(1) Where a prospectus states or implies that application has been or will be made for permission for the units in a collective investment scheme offered thereby to be listed for quotation on any approved exchange, and —

(*a*) the permission is not applied for in the form required by the approved exchange within 3 days from the date of the issue of the prospectus; or

(*b*) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved exchange,

then —

(*c*) any issue whenever made of units made on an application pursuant to the prospectus is void; and

(*d*) any person who continues to issue such units after the period specified in paragraph (*a*) or (*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), applications for units in the collective investment scheme have been made and —

(*a*) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) in a case where units in the scheme have not been issued to the applicants, the responsible person for the scheme must treat such applications as having been withdrawn; or

(ii) in a case where units in the scheme have been issued to the applicants, the issue of the units is deemed to be void,

and the responsible person must within 7 days after the period specified in subsection (1)(*a*) or (*b*), whichever is applicable, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

(*b*) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by written notice issue such directions to the responsible person for the scheme as it deems fit, including a direction

that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2)(*b*) to the responsible person to refund the contributions of the applicants, the Authority must consider whether the responsible person for the collective investment scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(*a*) whether a significant amount of the contributions of the participants has been invested;

(*b*) the liquidity of the property of the scheme; and

(*c*) the penalties (if any) payable for liquidating the property.

(4) Any responsible person who contravenes subsection (2) or any of the directions issued under that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(5) Any responsible person to whom a notice is given under subsection (2) must comply with such direction as may be contained in the notice.

(6) It is not necessary to publish any direction issued under subsection (2) in the *Gazette*.

[34/2012]

(7) All moneys received from applicants as payment for the units, including contributions to the scheme and charges which the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units, must be kept in a separate bank account so long as the responsible person for

the collective investment scheme may become liable to repay it under subsection (2).

(8) Any responsible person for a scheme which is not in compliance with subsection (7) and, where the scheme is a corporation, every officer thereof, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(9) Where the approved exchange has, within the period specified in subsection (1)(*b*), granted permission subject to compliance with such requirements as may be specified by the approved exchange, permission is deemed to have been granted by the approved exchange if —

(*a*) in a case where the responsible person for the scheme is a corporation, the directors of the corporation; or

(*b*) in a case where the responsible person for the scheme is not a corporation, such persons as may be required by the approved exchange,

have given to the approved exchange an undertaking in writing to comply with the requirements of the approved exchange.

[4/2017]

(10) Any person who fails to comply with any undertaking given to an approved exchange under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) A person must not issue a prospectus inviting persons to subscribe for or purchase units in a collective investment scheme if it includes —

(*a*) a false or misleading statement that permission has been granted for those units to be listed for quotation on, dealt in or quoted on any approved exchange; or

(*b*) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation on, dealing in or quoting the units on any approved exchange, or to any requirements of an approved exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the approved exchange within 3 days from the date of issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

[4/2017]

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the constituent documents for the collective investment scheme comply, or have been drawn so as to comply, with the requirements of any approved exchange, the prospectus is, unless the contrary intention appears from the prospectus, deemed for the purposes of subsection (11)(*b*) to be a prospectus that includes a statement that application has been, or will be, made for permission for the units to which the prospectus relates, to be listed for quotation on the approved exchange.

[4/2017]

Application of provisions relating to securities and securities-based derivatives contracts

302.—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 apply, with the necessary modifications, in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of

securities or securities-based derivatives contracts in Division 1 of this Part.

[4/2017]

(2) For the purposes of subsection (1) —

(*a*) references in those sections to securities or securities-based derivatives contracts are to be read as references to units in a collective investment scheme; and

(*b*) references in those sections to a person subscribing for, purchasing or acquiring securities or securities-based derivatives contracts are to be read as a person subscribing for, purchasing or acquiring units in a collective investment scheme.

[4/2017]

(3) For the purposes of subsection (1), any reference in sections 253 and 254 to an offer referred to in section 280 is to be read as a reference to an offer referred to in section 305C.

(4) For the purposes of subsection (1), any reference in sections 249, 249A, 253 and 254 to the issuer is to be read as a reference to the responsible person.

Subdivision (4) — Exemptions

Issue or transfer for no consideration

302A.—(1) Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

(2) Subdivisions (2) and (3) of this Division do not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if —

(*a*) no consideration is or will be given for the issue or transfer of the option; and

(*b*) no consideration is or will be given for the underlying units on the exercise of the option.

Small offers

302B.—(1) Subdivisions (2) and (3) of this Division do not apply to personal offers of units in a collective investment scheme by a person if —

(*a*) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) $5 million (or its equivalent in a foreign currency); or

(ii) such other amount as the Authority may prescribe in substitution for the amount specified in sub-paragraph (i);

(*b*) in respect of each offer, the person making the offer gives the person to whom the offer is made —

(i) the following statement in writing:

"This offer is made in reliance on the exemption under section 302B(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority."; and

(ii) a notification in writing that the units to which the offer (called in this sub-paragraph the initial offer) relates must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (2) and (3) of this Division;

(B) in reliance on subsection (8)(*c*) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under this subsection;

(*c*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*d*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the following persons:

(i) the holder of a capital markets services licence to deal in capital markets products that are units in a collective investment scheme;

(ii) an exempt person in respect of dealing in capital markets products that are units in a collective investment scheme;

(iii) a person licensed under the Financial Advisers Act 2001 in respect of marketing of collective investment schemes;

(iv) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;

(v) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are units in a collective investment scheme or marketing of collective investment schemes; or

(vi) a person who is exempt from the laws, codes or other requirements mentioned in sub-paragraph (v) in respect of units in a collective investment scheme or marketing of collective investment schemes; and

(*e*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) For the purposes of subsection (1)(*b*), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom the offer is made in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of units in a collective investment scheme is one that —

(*a*) may only be accepted by the person to whom it is made; and

(*b*) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the offer or any of the persons specified in subsection (1)(*d*)(i), (ii), (iii), (iv), (v) and (vi) that that person is interested in offers of that kind.

[Act 12 of 2024 wef 30/08/2024]

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following must be included:

(*a*) the amount payable for the units at the time when they are issued or sold;

(*b*) if the units are issued partly-paid, any amount payable at a future time if a call is made;

(*c*) if the units carry a right (by whatever name called) to be converted into other units or to acquire other units in a collective investment scheme, any amount payable on the exercise of the right to convert them into, or to acquire, other units in a collective investment scheme.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1)(*a*), each amount raised —

(*a*) by that person from any offer of units in the same collective investment scheme; or

(*b*) by that person or another person from any offer of units in a collective investment scheme, securities or securities-based derivatives contracts, which is a closely related offer,

(if any) within that period in reliance on the exemption under subsection (1) or section 272A(1) must be included.

[4/2017]

(6) Whether an offer is a closely related offer under subsection (5) is determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of units in a collective investment scheme made by a person acting as an agent of another person is treated as an offer made by that other person.

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (called in this subsection an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division apply to the offer from the firstmentioned person to the second-mentioned person which resulted in that sale, unless —

(*a*) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(*b*) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units were acquired under the initial offer; or

(*c*) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the initial offer or any of the persons specified in subsection (1)(*d*)(i), (ii), (iii), (iv), (v) and (vi) that that person is interested in offers of that kind;

[Act 12 of 2024 wef 30/08/2024]

(iii) in respect of which the firstmentioned person has given the second-mentioned person —

(A) the following statement in writing:

"This offer is made in reliance on the exemption under section 302B(8)(*c*) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority."; and

(B) a notification in writing that the units being offered must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in subsection (1)(*d*)(i), (ii), (iii), (iv), (v) and (vi).

[Act 12 of 2024 wef 30/08/2024]

(9) Subsection (2) applies, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(*c*)(iii).

(10) In subsections (1)(*c*) and (8)(*c*)(iv), "advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(*d*) a document —

(i) purporting to describe the units in a collective investment scheme being offered; and

(ii) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units being offered;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting.

[2/2009; 4/2017]

Private placement

302C.—(1) Subdivisions (2) and (3) of this Division do not apply to offers of units in a collective investment scheme that are made by a person if —

(*a*) the offers are made to no more than 50 persons within any period of 12 months;

(*b*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*c*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the

persons specified in section 302B(1)(*d*)(i), (ii), (iii), (iv), (v) and (vi); and

[Act 12 of 2024 wef 30/08/2024]

(*d*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(*a*).

(3) In determining whether offers of units in a collective investment scheme by a person are made to no more than the applicable number of persons specified in subsection (1)(*a*) within a period of 12 months, each person to whom —

(*a*) an offer of units in the same collective investment scheme is made by the firstmentioned person; or

(*b*) an offer of units in a collective investment scheme, securities or securities-based derivatives contracts is made by the firstmentioned person or another person where such offer is a closely related offer,

(if any) within that period in reliance on the exemption under this section or section 272B must be included.

[4/2017]

(4) Whether an offer is a closely related offer under subsection (3) is determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(*a*) an offer of units in a collective investment scheme to an entity or to a trustee is treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;

(*b*) an offer of units in a collective investment scheme to an entity or to a trustee is treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust (as the case may be) if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;

(*c*) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners is treated as an offer to a single person;

(*d*) an offer of units in a collective investment scheme to a person acting on behalf of another person (whether as an agent or otherwise) is treated as an offer made to that other person;

(*e*) offers of units in a collective investment scheme made by a person as an agent of another person are treated as offers made by that other person;

(*f*) where an offer of units in a collective investment scheme is made to a person with a view to another person acquiring an interest in those units by virtue of section 4, only the second-mentioned person is counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(*a*); and

(*g*) where —

(i) an offer of units in a collective investment scheme is made to a person in reliance on the exemption under subsection (1) with a view to those units being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 305C,

both persons are counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(*a*).

(6) In subsection (1)(*b*), "advertisement" has the meaning given by section 302B(10).

Offer or invitation made under certain circumstances

303.—(1) Subdivision (3) of this Division does not apply to an offer of units in a collective investment scheme if it is made in relation to units in a collective investment scheme (not being such excluded units in a scheme as the Authority may prescribe) that have been previously issued, are listed for quotation or quoted on an approved exchange, and are traded on the exchange.

[2/2009; 4/2017]

(2) Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme if it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

(3) A person must not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or

publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) Any person who contravenes subsection (3), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Offer made to institutional investors

304. Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (whether or not they have been previously issued) made to an institutional investor.

First sale of units acquired pursuant to section 304

304A.—(1) Despite sections 302B, 302C, 303(1) and 305B but subject to subsection (2), where units in a collective investment scheme acquired pursuant to an offer made in reliance on the exemption under section 304 are first sold to any person other than an institutional investor, then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009]

(2) Subsection (1) does not apply where the units in a collective investment scheme acquired are of the same class as, or can be converted into units of the same class as, other units in the scheme —

(*a*) which are listed for quotation on an approved exchange; and

(*b*) in respect of which any prospectus, offer information statement, introductory document, unitholders' circular for a reverse take-over, document issued for the purposes of a trust scheme, or any other similar document approved by an approved exchange, was issued in connection with —

(i) an offer of those units in the scheme; or

(ii) the listing for quotation of those units in the scheme.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

Offer made to accredited investors and certain other persons

305.—(1) Except to such extent and with such modifications as the Authority may prescribe, Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (called in this section a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

(2) Except to such extent and with such modifications as the Authority may prescribe, Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (also called in this section a restricted scheme) to a person who acquires the units as principal if the offer is on terms that the units may only be acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of units in a collective investment scheme, securities, securities-based derivatives contracts or other assets, and if the conditions in subsection (3) are satisfied.

[4/2017]

(3) The conditions referred to in subsections (1) and (2) are —

(*a*) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*b*) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(*d*)(i), (ii), (iii), (iv), (v) and (vi); and

(*c*) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(4) [*Deleted by Act 2 of 2009*]

(5) In this section —

"advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(*d*) an information memorandum;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

"information memorandum" means a document —

(*a*) purporting to describe the units in a collective investment scheme being offered; and

(*b*) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units being offered;

"relevant person" means —

(*a*) an accredited investor;

(*b*) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(*c*) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(*d*) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(*e*) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[2/2009; 4/2017]

(6) Despite any requirement under section 99 or any regulations made thereunder that a person has to deal in capital markets products that are units in a collective investment scheme for the person's own account with or through a person prescribed by the Authority so that the firstmentioned person can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for the person's own account without complying with such requirement is considered an exempt person even though the person does not comply with that requirement.

[4/2017]

(7) The Authority may, by order in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

First sale of units acquired pursuant to section 305

305A.—(1) Despite sections 302B, 302C, 303(1) and 305B but subject to subsection (5), where units in a collective investment scheme acquired pursuant to an offer made in reliance on an exemption under section 305 are first sold to any person other than —

(*a*) an institutional investor;

(*b*) a relevant person as defined in section 305(5); or

(*c*) any person pursuant to an offer referred to in section 305(2),

then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009]

(2) Subject to subsection (5), securities of a corporation (other than a corporation that is an accredited investor) —

(*a*) the sole business of which is to hold investments; and

(*b*) the entire share capital of which is owned by one or more individuals each of whom is an accredited investor,

must not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme pursuant to an offer made in reliance on an exemption under section 305, unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 305(5); or

(ii) arises from an offer referred to in section 275(1A);

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009]

(3) Subject to subsection (5), where —

(*a*) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

(*b*) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust must not be transferred within 6 months after units in a collective investment scheme are acquired for the trust pursuant to an offer made in reliance on an exemption under section 305, unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 305(5); or

(ii) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of units in a collective investment scheme, securities, securities-based derivatives contracts or other assets;

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009; 4/2017]

(4) To avoid doubt, the reference to beneficiaries in subsection (3) includes a reference to unitholders of a business trust and participants of a collective investment scheme.

(5) Subsections (1), (2) and (3) do not apply where the units in a collective investment scheme acquired are of the same class as other units in the scheme —

(*a*) which are listed for quotation on an approved exchange; and

(*b*) in respect of which any prospectus, offer information statement, introductory document, unitholders' circular for a reverse take-over, document issued for the purposes of a

trust scheme, or any other similar document approved by an approved exchange, was issued in connection with —

(i) an offer of those units in the scheme; or

(ii) the listing for quotation of those units in the scheme.

[4/2017]

[Act 12 of 2024 wef 24/01/2025]

Offer made using offer information statement

305B.—(1) Subject to subsection (2), Subdivision (3) of this Division does not apply to an offer of units in a collective investment scheme whose units are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise, if —

(*a*) an offer information statement relating to the offer which complies with such form and content requirements as the Authority may prescribe is lodged with the Authority; and

(*b*) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph (*a*); or

(ii) all the conditions in subsection (2A) are satisfied.

[2/2009; 4/2017]

(2) Subsection (1) only applies to an offer of units referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

[2/2009]

(2A) The conditions referred to in subsection (1)(*b*)(ii) are —

(*a*) the offer is made using any automated teller machine or such other electronic means as the Authority may prescribe;

(*b*) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that the prospective subscriber or buyer should read the offer information statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase units in the collective investment scheme; and

(*c*) the person making the offer complies with such other requirements as the Authority may prescribe.

[2/2009]

(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as the Authority may prescribe.

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as the Authority may prescribe apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) —

(*a*) a reference in sections 249 and 249A to the registration of the prospectus is to be read as a reference to the lodgment of the offer information statement; and

(*b*) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus is to be read as a reference to any information prescribed under subsection (1)(*a*).

(6) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (4)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (4)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(8) A person must not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(9) Any person who contravenes subsection (8), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Making offer using automated teller machine or electronic means

305C.—(1) Subject to subsection (3) and such requirements as the Authority may prescribe, a person making an offer of units in a collective investment scheme using —

(*a*) any automated teller machine; or

(*b*) such other electronic means as the Authority may prescribe,

is exempted from the requirement under section 296(1)(*a*) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 296(2) that the offer be made in or accompanied by a profile statement in respect of the offer.

(2) To avoid doubt, a prospectus which complies with all other requirements of section 296(1)(*a*) or, where applicable, a profile statement which complies with all other requirements of section 296(2) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) does not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(*a*) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and

(*b*) that the prospective subscriber or buyer should read the prospectus or, where applicable, profile statement before submitting an application,

before enabling the prospective subscriber or buyer to submit an application to subscribe for or purchase units.

Power of Authority to exempt

306.—(1) The Authority may exempt any person or class of persons, subject to such conditions as the Authority may determine, from complying with all or any of the provisions of this Division or any regulations made thereunder in relation to an offer in respect of any unit or class of units.

(2) Any person who contravenes any of the conditions under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(3) This Division does not apply in the case of the sale of any unit in a collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of the realisation of assets for the purposes of the sale.

Revocation of exemption

307.—(1) Where the Authority considers that it is necessary in the interests of the public or for the protection of investors, it may revoke any exemption under this Subdivision (including an exemption granted under section 306(1)), subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation remains in effect unless it is withdrawn by the Authority.

(3) A revocation under this section is final and there is no appeal from the revocation.

Transactions under exempted offers subject to Division 2 of Part 12 of Companies Act 1967, Division 2 of Part 13 of the Variable Capital Companies Act 2018, and Part 12 of this Act

308. To avoid doubt, it is declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part limits or diminishes any liability which any person may incur in respect of any relevant offence under Division 2 of Part 12 of the Companies Act 1967, Division 2 of Part 13 of the Variable Capital Companies Act 2018, or Part 12 of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[44/2018]

Division 3 — Hawking of Securities, Securities-based Derivatives Contracts and Units in Collective Investment Scheme

[4/2017]

Securities hawking prohibited

309.—(1) A person must not —

(*a*) make an offer to any person of units in a collective investment scheme, securities or securities-based

derivatives contracts for subscription or purchase, in the course of, or arising from, an unsolicited meeting with that other person; or

(*b*) make an invitation to any person to subscribe for or purchase units in a collective investment scheme, securities or securities-based derivatives contracts, in the course of, or arising from, an unsolicited meeting with that other person.

[4/2017]

(2) Subsection (1) does not apply to any person who makes an offer or invitation in respect of units in a collective investment scheme, securities or securities-based derivatives contracts that does not need a prospectus by virtue of section 274, 275, 304 or 305.

[4/2017]

(3) The Authority may exempt —

(*a*) any person or class of persons; or

(*b*) any class or description of units in a collective investment scheme, securities or securities-based derivatives contracts,

from compliance with subsection (1), subject to such conditions as the Authority may determine.

[4/2017]

(4) Every person who acts, incites, causes or procures any person to act in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where any person is convicted of having made an offer or invitation in contravention of subsection (1), the court before which the person is convicted may order that any contract made as a result of the offer or invitation is void and may give such consequential directions as it thinks proper for the repayment of any money or the

retransfer of any units in a collective investment scheme, securities or securities-based derivatives contracts, as the case may be.

[4/2017]

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the General Division of the High Court.

[40/2019]

(7) In this section —

(*a*) "securities" has the meaning given by section 2 and also includes the securities of an entity or a business trust, whether the entity or business trust is in existence or is to be formed;

(*b*) "securities-based derivatives contracts" has the meaning given by section 2 and also includes securities-based derivatives contracts of an entity or a business trust, whether the entity or business trust is in existence or is to be formed;

(*c*) "unit", in relation to a collective investment scheme, has the meaning given by section 2 and also includes units in a collective investment scheme, whether the collective investment scheme is in existence or is to be formed;

(*d*) a reference to an offer or invitation in respect of securities, securities-based derivatives contracts or units in a collective investment scheme for subscription or purchase includes an offer or invitation in respect of securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) by way of barter or exchange.

[4/2017]

Division 4 — Capital Markets Products

Interpretation of this Division

309A.—(1) In this Division, unless the context otherwise requires —

"issuer" means —

(*a*) in relation to an offer of units in a collective investment scheme, the responsible person for the collective investment scheme; or

(*b*) [*Deleted by Act 4 of 2017*]

(*c*) in relation to an offer of any other capital markets products, the entity that issues or will issue the capital markets products being offered;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of any capital markets products;

"relevant person" means —

(*a*) a holder of a capital markets services licence;

(*b*) a person who is exempted under section 99(1)(*a*) or (*b*) from the requirement to hold a capital markets services licence;

(*c*) a person licensed under the Financial Advisers Act 2001 in respect of advising on any investment product;

(*d*) a person who is exempted under section 20(1)(*a*), (*b*), (*c*), (*d*) or (*e*) of the Financial Advisers Act 2001 from holding a financial adviser's licence;

(*e*) such other person as the Authority may prescribe by regulations made under section 341; or

(*f*) a representative of any person referred to in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*).

[34/2012; 4/2017]

(2) For the purposes of this Part, a person makes an offer of any capital markets products if, and only if, as principal —

(*a*) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by the firstmentioned person or another

person with whom the firstmentioned person has made arrangements for that issue or sale; or

(*b*) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

[34/2012]

(3) In subsection (2), "sale" includes any disposal for valuable consideration.

[34/2012]

(4) To avoid doubt, the obligations imposed by this Division in relation to any capital markets products are in addition to the obligations imposed under Divisions 1, 2 and 3 in relation to those capital markets products.

[34/2012]

Obligation of issuer to determine, and to notify approved exchange and relevant person of, classification of capital markets products

309B.—(1) An issuer must not make an offer of any capital markets products unless —

(*a*) the issuer has determined the classification of those capital markets products;

(*b*) where those capital markets products are or will be listed for quotation or quoted on a market operated by an approved exchange, the issuer has notified the approved exchange in writing of the classification of those capital markets products; and

(*c*) where those capital markets products are or will be offered through any relevant person, the issuer has notified that relevant person in writing of the classification of those capital markets products.

[34/2012]

(2) A relevant person must not make an offer of any capital markets products unless the relevant person has received a notification under subsection (1)(*c*) in respect of those capital markets products.

[34/2012]

(3) Where, after any notification has been given under subsection (1)(*b*) or (*c*) or this subsection in respect of any capital markets products, there is a change in the classification of those capital markets products, the issuer of those capital markets products must, within such time as the Authority may prescribe by regulations made under section 341 —

(*a*) if those capital markets products are or will be listed for quotation or quoted on an approved exchange, notify the approved exchange in writing of the new classification of those capital markets products; and

(*b*) if those capital markets products are or will be offered through any relevant person, notify that relevant person in writing of the new classification of those capital markets products.

[34/2012]

(4) Without affecting section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(5) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any person from any provision of this section, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(6) It is not necessary to publish any exemption granted under subsection (5) in the *Gazette.*

[34/2012]

(7) Every person who is granted an exemption under subsection (4) must satisfy every condition or restriction imposed on the person under that subsection.

[34/2012]

(8) Every person who is granted an exemption under subsection (5) must satisfy every condition or restriction imposed on the person under that subsection.

[34/2012]

(9) Any person who contravenes subsection (1), (2), (3), (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(10) In this section —

"classification", in relation to any capital markets products, means the classification of the capital markets products as either of the following:

(*a*) prescribed capital markets products;

(*b*) capital markets products other than prescribed capital markets products;

"prescribed capital markets products" means any capital markets products that belong to any class of capital markets products that is prescribed by the Authority, by regulations made under section 341, for the purposes of this definition.

[34/2012]

Use of term "capital protected" or "principal protected"

309C.—(1) A person must not, when describing or referring to any capital markets products which are, will be or have been the subject of an offer or intended offer, do either or both of the following:

(*a*) use the term "capital protected" or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products;

(*b*) use the term "principal protected" or any of its derivatives in any language in the name or description or any

representation of those capital markets products, or within any prospectus relating to those capital markets products.

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Use of term "product highlights sheet"

309D.—(1) A person must not, when describing or referring to any publication in respect of any offer or intended offer of any capital markets products, use the term "product highlights sheet" or any of its derivatives in any language in the name or description or any representation of that publication, unless —

(*a*) that publication is a product highlights sheet —

(i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240; and

(ii) in respect of which section 240AA(1)(*a*) and (*b*) has been complied with;

(*b*) that publication is a product highlights sheet —

(i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296; and

(ii) in respect of which section 296A(1)(*a*) and (*b*) has been complied with;

(*c*) that person belongs to any class of persons declared by the Authority, by order in the *Gazette*, to be a class of persons who may, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in the order, use that term or any of its derivatives in any language in the

name or description or any representation of that publication; or

(*d*) the Authority has given consent in writing to that person to use that term or any of its derivatives in any language, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in writing, in the name or description or any representation of that publication.

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

PART 14

APPEALS

Appeals to Minister

310.—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he or she thinks fit, and the decision of the Minister is final.

(2) Except for an appeal under Part 2, 2A, 3, 3A or 6AA, where an appeal is made to the Minister under this Act, the Minister must, within 28 days of his or her receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

[34/2012; 4/2017]

(3) The Appeal Advisory Committee must submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister must consider the report submitted under subsection (3) in making his or her decision under this section but he or she is not bound by the recommendations in the report.

Appeal Advisory Committees

311.—(1) To enable the Appeal Advisory Committees to be constituted under section 310, the Minister must appoint a panel (called in this Part the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel must be appointed for a term of not more than 2 years and is eligible for re-appointment.

(3) An Appeal Advisory Committee has the power, in the exercise of its functions, to inquire into any matter or thing relating to the securities and derivatives industry or to financial benchmarks and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

[34/2012; 4/2017]

(4) Nothing in subsection (3) compels the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of a document or material containing a privileged communication made by or to him or her in that capacity or authorise the taking of possession of any such document or material which is in his or her possession.

[34/2012]

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to produce any document or other material referred to in subsection (4) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

[34/2012]

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

(*a*) is deemed to be a public servant for the purposes of the Penal Code 1871; and

(*b*) in case of any suit or legal proceedings brought against him or her for any act done or omitted to be done in the execution of his or her duty under the provisions of this Act, has the like protection and privileges as are by law given to a Judge in the execution of his or her office.

(7) Every Appeal Advisory Committee must have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and is not bound by the rules of evidence.

Disclosure of information

312. Nothing in this Act requires the Minister or any public servant to disclose facts which he or she considers to be against the interest of the public to disclose.

Regulations for purposes of this Part

313.—(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

(2) Without limiting subsection (1), the Minister may make regulations for or with respect to —

(*a*) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;

(*b*) the form and manner in which an appeal to the Minister under this Act must be made;

(*c*) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;

(*d*) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and

(*e*) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

PART 15

MISCELLANEOUS

314. [*Repealed by Act 1 of 2005*]

315. [*Repealed by Act 1 of 2005*]

Opportunity to be heard

316. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person must be given an opportunity to be heard.

Records

317.—(1) Without affecting sections 94, 99C, 123U and 123ZQ, the Authority must keep such records as it considers necessary, in such form as it thinks fit.

[2/2009; 34/2012; 4/2017]

[Act 18 of 2022 wef 31/07/2024]

(2) Any person may, on payment in the manner specified by the Authority of the prescribed fee —

(*a*) inspect any records kept by the Authority under section 94, 99C, 123U or 123ZQ, any records kept or published by the Authority under section 101A(7) and (8) as in force immediately before the date of commencement of section 209(1)(*a*), (*c*) and (*d*), (4) to (14), (17) and (18) of the Financial Services and Markets Act 2022 or any prospectus or profile statement lodged with the Authority under Part 13; or

[Act 18 of 2022 wef 31/07/2024]

(*b*) require a copy of or extract from any such record to be given or certified by the Authority.

[2/2009; 34/2012; 4/2017]

[Act 12 of 2024 wef 24/01/2025]

(3) A copy of or extract from any record lodged with or kept by the Authority certified to be a true copy or extract by the Authority is in any proceedings admissible as evidence of equal validity as the original record.

(4) In any legal proceedings a certificate by the Authority that a requirement of this Act specified in the certificate —

(*a*) had or had not been complied with at a date or within a period specified in the certificate; or

(*b*) had been complied with upon a date specified in the certificate but not before that date,

is prima facie evidence of the matters specified in the certificate.

(5) If the Authority is of the opinion that any record submitted to it —

(*a*) contains any matter contrary to law;

(*b*) by reason of any omission or misdescription has not been duly completed;

(*c*) does not comply with the requirements of this Act; or

(*d*) contains any error, alteration or erasure,

the Authority may refuse to register or receive the record and request that the record be appropriately amended or completed and resubmitted or that a fresh record be submitted in its place.

(6) Any party that is aggrieved by the refusal of the Authority to register or receive any record under subsection (5) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

(7) The Authority may, if it is of the opinion that it is no longer necessary or desirable to retain any record which has been microfilmed or converted to electronic form, destroy such record

or otherwise arrange for such record to be disposed of in such manner as the Authority thinks fit.

Size, durability and legibility of records delivered to Authority

318.—(1) For the purposes of securing that the records provided to or lodged with the Authority under this Act are of a standard size, durable and easily legible, the Authority may prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as it considers appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) Where the Authority is of the opinion that any record (whether an original or copy thereof) delivered to the Authority does not comply with such requirements prescribed under this section, the Authority may serve on any person by whom under that provision the record was required to be delivered (or if there are 2 or more such persons, may serve on any of them) a notice —

(*a*) stating its opinion to that effect; and

(*b*) indicating the requirements so prescribed with which the record has failed to comply.

(3) Where the Authority serves a notice under subsection (2) with respect to a record delivered under this Act, then, for the purposes of any provision of this Act which enables a penalty to be imposed in respect of any omission to deliver to the Authority such record (and, in particular, for the purposes of any such provision whereby a penalty may be imposed by reference to each day during which the omission continues) —

(*a*) any duty imposed by that provision to deliver the record to the Authority is treated as not having been discharged; but

(*b*) no account is to be taken of any days falling within the period referred to in subsection (4).

(4) The period referred to in subsection (3)(*b*) is the period beginning on the day on which the record was delivered to the Authority as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2).

(5) For the purposes of this section, any reference to delivering a record includes a reference to sending, forwarding, producing, providing, lodging or (in the case of a notice) giving the record.

Translation of instruments

318A.—(1) Where a person submits or provides to or lodges with the Authority any book, application, return, report, prospectus, statement or other information or document under this Act (other than Subdivision (3) of Division 3 of Part 9) which is not in the English language, the person must, at the same time or at such other time as the Authority may permit, submit or provide or lodge with the Authority (as the case may be) an accurate translation thereof in the English language.

(2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person must, at the same time or at such other time as the Authority may permit, make available for such inspection an accurate translation thereof in the English language.

(3) Where a person is required to maintain or keep any book under this Act and the book or any part thereof is not maintained or kept in the English language, the person must —

(*a*) cause an accurate translation of that book or that part of the book in the English language to be made from time to time at intervals of not more than 7 days; and

(*b*) maintain or keep the translation with the book for so long as the book is required under this Act to be maintained or kept.

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made under this Act.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

(6) Where a person is charged with an offence under subsection (5), it is a defence for the person to prove that —

(*a*) the person had taken all reasonable steps to ensure that the translation that was submitted or provided or lodged with the Authority, made available for inspection, or maintained or kept (as the case may be) was accurate in the circumstances; and

(*b*) the person had believed on reasonable grounds that the translation was accurate.

(7) In subsections (1), (2) and (3), "Act" includes any direction made by the Authority under this Act.

Supply of magnetic tapes — exclusion of liability for errors or omissions

319. Where the Authority provides information, whether in bulk or otherwise, to any person by way of magnetic tapes or by any electronic means, neither the Authority nor any of its officers or authorised agents involved in the provision of such information shall be liable for any loss or damage suffered by that person by reason of any error or omission of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such officers or authorised agents.

Appointment of assistants

320.—(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(1A) The Authority may appoint one or more of its officers to exercise the power to grant an exemption to any person or in respect of any capital markets product, matter or transaction (not being an exemption granted to a class of persons or in respect of a class of capital markets products, matters or transactions) under a provision of this Act specified in the Fourth Schedule, or to revoke any such exemption.

(1B) An appointment under subsection (1A) must be published in the *Gazette*.

[Act 5 of 2025 wef 09/03/2025]

(2) Any person appointed by the Authority under subsection (1) is deemed to be a public servant for the purposes of the Penal Code 1871.

Codes, guidelines, etc., by Authority

321.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

(*a*) in furtherance of its regulatory objectives;

(*b*) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or

(*c*) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline, policy statement, practice note or no-action letter, and in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

(*a*) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and

(*b*) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter however expressed is, unless the context otherwise requires, a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) A failure by any person to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this

section that applies to the person does not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter does not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(7) Any code, guideline, policy statement or practice note issued under this section —

(*a*) may be of general or specific application; and

(*b*) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) To avoid doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section is deemed not to be subsidiary legislation.

(9) In this section, a "no-action" letter means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

Power of Authority to publish information

322.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or section of the public or for the protection of investors and in such form or manner as it thinks fit, publish —

(*a*) any information relating to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, a representative, or an approved trustee for a collective investment scheme as defined in section 289;

(*aa*) any information relating to an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, a representative of an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, or a person from whom any information or expression of opinion used in the determination of a designated benchmark was obtained; or

(*b*) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

[2/2009; 34/2012; 4/2017]

(2) Without limiting subsection (1), the Authority may publish information relating to —

(*a*) the lapsing, revocation or suspension of the approval, licence, authorisation or exemption granted, or designation issued, to any person mentioned in subsection (1);

(*b*) the making of a section 101A prohibition order or a section 123ZZC prohibition order against any person referred to in subsection (1);

[Act 18 of 2022 wef 31/07/2024]

(*c*) the reprimand of any relevant person under section 334;

(*d*) the removal of an officer of any person referred to in subsection (1);

(*e*) the composition of any offence —

(i) under this Act committed by any person; or

(ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);

(*f*) any civil or criminal proceedings brought —

(i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or

(ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;

(*g*) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority, an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house and the outcome of such proceedings; and

(*h*) any other action as may have been taken by the Minister, the Authority, an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house against any person referred to in subsection (1).

[34/2012; 4/2017]

323. [*Repealed by Act 24 of 2003*]

Power of court to prohibit payment or transfer of moneys, capital markets products, etc.

324.—(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (1A), where —

(*a*) an investigation is being carried out in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;

(*b*) a criminal proceeding has been instituted against a person for an offence under this Act; or

(*c*) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests

of any person to whom the person referred to in paragraph (*a*) or (*b*) or this paragraph (called in this section the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any capital markets products, or other property.

[34/2012; 4/2017]

(1A) The orders of court that may be made under subsection (1) are as follows:

(*a*) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;

(*b*) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, capital markets products, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying, transferring or otherwise parting with possession of all or any of the moneys, capital markets products, or other property, to the relevant person, or to another person at the direction or request of the relevant person;

(*c*) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;

(*d*) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of capital markets products, or documents of title to capital markets products, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of

capital markets products from a register in Singapore to a register outside Singapore);

(*e*) an order appointing —

(i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or

(ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;

(*f*) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his or her passport and such other documents as the court thinks fit;

(*g*) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.

[34/2012; 4/2017]

(2) Where an application is made to the court for any order referred to in subsection (1A), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

[34/2012]

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court is not to require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) does not affect the powers of the court in relation to the punishment for contempt of court.

Power of court to make certain orders

325.—(1) Where —

(*a*) on the application of the Authority, it appears to the court that a person —

(i) has committed an offence under this Act;

(ii) has contravened any condition or restriction of a licence, or the business rules of an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of an approved exchange; or

(iii) is about to do an act with respect to dealing in capital markets products, administering a designated benchmark, or providing information in relation to a designated benchmark, that, if done, would be such an offence or contravention;

(*b*) on the application of an approved exchange, it appears to the court that a person has contravened the business rules or listing rules of the approved exchange;

(*c*) [*Deleted by Act 4 of 2017*]

(*d*) on the application of an approved clearing house, it appears to the court that a person has contravened the business rules of the approved clearing house; or

(*e*) on the application of a licensed trade repository, it appears to the court that a person has contravened the business rules of the licensed trade repository,

the court may, without affecting any orders it would be entitled to make otherwise than under this section, make any one or more of the orders specified in subsection (1A).

[34/2012; 4/2017]

(1A) The orders that may be made under subsection (1) are —

(*a*) in the case of a persistent or continuing breach of this Act, of any condition or restriction of a licence, of any business rule of an approved exchange, a licensed trade repository or an approved clearing house, of any listing rule of an approved exchange, or of any condition or restriction imposed on an authorised benchmark administrator, an authorised benchmark submitter or a designated benchmark submitter, an order restraining a person —

(i) from carrying on a business of dealing in capital markets products;

(ii) from acting as a representative of a person carrying on a business of dealing in capital markets products;

(iii) from holding the person out as a person carrying on a business of dealing in capital markets products;

(iv) from carrying on a business of administering a designated benchmark;

(v) from providing information in relation to a designated benchmark;

(vi) from acting as a representative of an authorised benchmark administrator, an authorised benchmark submitter or a designated benchmark submitter;

(vii) from holding the person out as a person —

(A) carrying on a business of administering a designated benchmark; or

(B) providing information in relation to a designated benchmark; or

(viii) from otherwise acting in breach;

(*b*) an order restraining a person from acquiring, disposing of or otherwise dealing with any capital markets products that are specified in the order;

(*c*) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in capital markets products or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;

(*d*) an order declaring a contract relating to any dealing in capital markets products to be void or voidable;

(*e*) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(*f*) an order restraining the exercise of any voting or other rights attached to any capital markets products that are specified in the order; and

(*g*) any ancillary order deemed to be desirable in consequence of the making of any of the above orders.

[4/2017]

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of the holder of a capital markets services licence to deal in capital markets products —

(*a*) may require the holder to deliver to the receiver any property of which the person has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(*b*) may acquire and take possession of any property of which the person has been appointed receiver;

(*c*) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the holder might lawfully have dealt with the property; and

(*d*) has such other powers in respect of the property as the court may specify in the order.

[4/2017]

(4) For the purposes of subsections (1), (1A) and (3), "property", in relation to the holder of a capital markets services licence to deal in capital markets products, includes —

(*a*) moneys;

(*b*) capital markets products;

(*c*) documents of title to capital markets products; and

(*d*) other property,

entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in capital markets products carried on by the holder.

[4/2017]

(5) Any person who, without reasonable excuse, contravenes —

(*a*) an order made under subsection (1); or

(*b*) a requirement of a receiver appointed by order of the court under subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Subject to subsection (6A), subsection (5) does not affect the powers of the court in relation to the punishment for contempt of court.

[4/2017]

(6A) Where a person is convicted of an offence under subsection (5) in respect of any contravention of an order made under subsection (1), such contravention is not punishable as a contempt of court.

[4/2017]

(6B) A person must not be convicted of an offence under subsection (5) in respect of any contravention of an order made under subsection (1) that has been punished as a contempt of court. *[4/2017]*

(7) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Injunctions

326.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

(*a*) the Authority; or

(*b*) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the firstmentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that the person is required by this Act to do, the court may, on the application of —

(*a*) the Authority; or

(*b*) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the firstmentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

(*a*) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(*b*) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to

any person if the firstmentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(*a*) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(*b*) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(10) Where the Authority or any person referred to in subsection (1)(*b*) or (2)(*b*) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court is not to require the Authority or that person (as the case may be) or any other person, as a condition of granting the injunction, interim injunction, order or interim order, to give any undertaking as to damages.

[34/2012]

(11) Subsection (7) does not affect the powers of the court in relation to the punishment for contempt of court.

Criminal jurisdiction of District Court

327. Despite any provision to the contrary in the Criminal Procedure Code 2010, a District Court has jurisdiction to try any offence under this Act and has power to impose the full penalty or punishment in respect of any offence under this Act.

Falsification of records by officer, employee or agent of relevant person

328.—(1) Any officer, auditor, employee or agent of any relevant person who —

(*a*) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person;

(*b*) wilfully omits to make, or causes to be omitted, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person; or

(*c*) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1) —

"officer" includes a person purporting to act in the capacity of an officer;

"relevant person" means any —

(*a*) approved exchange;

(*b*) recognised market operator;

(*c*) licensed trade repository;

(*d*) licensed foreign trade repository;

(*e*) approved clearing house;

(*f*) recognised clearing house;

(*g*) approved holding company;

(*h*) holder of a capital markets services licence to carry on business in any regulated activity;

(*i*) exempt person;

(*j*) representative;

(*k*) approved trustee mentioned in section 289;

(*l*) authorised benchmark administrator;

(*m*) exempt benchmark administrator;

(*n*) authorised benchmark submitter;

(*o*) exempt benchmark submitter; or

(*p*) designated benchmark submitter.

[2/2009; 34/2012; 4/2017]

Duty not to provide false information to Authority

329.—(1) Any individual who provides the Authority with any information under this Act or relevant to the Authority's exercise of powers under this Act must use due care to ensure that the information is not false or misleading in any material particular.

(2) Any person, other than an individual, who provides the Authority with any information under this Act or relevant to the Authority's exercise of powers under this Act must use due care to ensure that the information is not false or misleading.

(3) Subsection (1) applies only if no other provision of this Act makes it an offence to do the act mentioned in that subsection.

(4) Subsection (2) applies only if no other provision of this Act makes it an offence to do the act mentioned in that subsection.

(5) Any individual who —

(*a*) signs any document lodged with the Authority; or

(*b*) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the individual by the Authority,

must use due care to ensure that the document is not false or misleading in any material particular.

(6) Any person, other than an individual, who —

(*a*) signs any document lodged with the Authority; or

(*b*) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the person by the Authority,

must use due care to ensure that the document is not false or misleading.

(7) Any individual who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Any person who contravenes subsection (2) or (6) shall be guilty of an offence and shall be liable on conviction —

(*a*) if the information or document is false or misleading in a material particular — to a fine not exceeding $50,000; or

(*b*) in any other case — to a fine not exceeding $25,000.

[Act 12 of 2024 wef 24/01/2025]

Duty not to provide false statements to approved exchange, licensed trade repository, approved clearing house, recognised clearing house, authorised benchmark administrator, exempt benchmark administrator and Securities Industry Council

330.—(1) Any person who, with intent to deceive, makes or provides, or knowingly and wilfully authorises or permits the making or provision of, any false or misleading statement or report to any approved exchange, licensed trade repository, approved clearing house, recognised clearing house, authorised benchmark administrator or exempt benchmark administrator, or to any officer of such persons —

(*a*) while carrying on the activity of dealing in capital markets products;

(*b*) relating to a financial instrument;

(*c*) relating to the enforcement of the business rules of an approved exchange, a licensed trade repository or an approved clearing house or the listing rules of an approved exchange;

(*d*) relating to the affairs of an entity or a business trust;

(*e*) relating to a collective investment scheme;

(*f*) relating to the affairs of the trustee-manager of a registered business trust;

(*g*) relating to a registered business trust which is managed and operated by the trustee-manager of the registered business trust; or

(*h*) while carrying on the activity of providing information in relation to a designated benchmark,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(2) Any person who, with intent to deceive, makes or provides or knowingly and wilfully authorises or permits the making or provision of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In subsection (1)(*d*), the reference to affairs of an entity or a business trust —

(*a*) in the case of an entity which is a corporation, includes a reference to the matters referred to in section 2(2); and

(*b*) in the case of —

(i) an entity which is not a corporation; or

(ii) a business trust,

refers to such matters as the Authority may prescribe.
[4/2017]

Corporate offenders and unincorporated associations

331.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

"body corporate" and "partnership" exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005;

"officer" —

(*a*) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(*b*) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

"partner", in relation to a partnership, includes a person purporting to act as a partner.

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Offences by officers

332.—(1) Any person, being an officer of an approved holding company, an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, a holder of a capital markets services licence to carry on business in any regulated activity, an authorised benchmark administrator or an authorised benchmark submitter, who fails to take all reasonable steps to secure —

(*a*) compliance with any provision of this Act; or

(*b*) the accuracy and correctness of any statement submitted under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012; 4/2017]

(2) In any proceedings against an officer under subsection (1), it is a defence for the defendant to prove that he or she had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate (as the case may be) and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he or she committed the offence wilfully.

Penalties for corporations

333.—(1) Subject to subsections (2) and (3), where a corporation is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that, but for this subsection, the court could impose as a fine for that offence.

(2) Subsection (1) does not apply to —

(*a*) offences under sections 7(4), (5) and (12), 9(13), 17(2), 22, 23(4), 27(13) and (14), 28(14), 29(4) and (7), 30(4), 35(2), 41(4) and (7), 41C(14), 42, 43(11), 45(3), 46(9), 46AA(9), 46AAB(7), 46AAC(10), 46AAI(8), 46C(2), 46E(14), 46P, 46Q(4), 46U(13) and (14), 46V(14), 46Y(8), 46Z(11), 46ZI, 46ZIB(7), 46ZIC(10), 46ZJ(2), 46ZK(4), 46ZN(8), 49(4), (5) and (12), 51(13), 59, 65, 66(4), 70(13) and (14), 71(14), 72(4), 81A, 81AC(14), 81P(11), 81R(3), 81S(9), 81SAA(7), 81SAB(10), 81SD(8), 81U(2) and (9), 81W(8), 81ZA(3), 81ZB(2), 81ZC(2), 81ZD(3), 81ZE(11) and (12), 81ZF(13), 81ZG(4), 81ZGA(2), 81ZGC(7), 81ZGD(10), 81ZJ(11), 81ZL(2), 81ZN(8), 103, 105, 107(3) and (4), 123D(3) and (4), 123F(11), 123K(7), 123O(8) and (9),

123W, 123X(9), 123Y(7), 123Z(7), 123ZA(5), 123ZC(2), 123ZV(8), 123ZW(5), 289(7) and 295(6); or

[Act 12 of 2024 wef 24/01/2025]

(*b*) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) does not apply to those offences.

[2/2009; 4/2017]

(3) Where an individual is convicted of an offence under this Act by virtue of section 331, he or she shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) does not apply.

Power of Authority to reprimand for misconduct

334.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, reprimand the relevant person.

(1A) The Authority may, under subsection (1), reprimand a person who has ceased to be a relevant person, if the person was a relevant person at the time of the misconduct.

[Act 12 of 2024 wef 30/08/2024]

(2) In this section —

"misconduct" means —

(*a*) the contravention of —

(i) any provision of this Act;

(ii) any condition or restriction imposed under this Act;

(ii*a*) any direction made by the Authority under this Act;

(iii) any code, guideline, policy statement or practice note issued under section 321; or

(iv) any business rules of an approved exchange, a licensed trade repository or an approved

clearing house, or the listing rules of an approved exchange;

(*b*) the failure by an officer of a relevant person to discharge any duty or function of his or her office; or

(*c*) the commission of an offence under section 331 or 332(1);

"officer" —

(*a*) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(*b*) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

"partner" includes a person purporting to act as a partner;

"relevant person" means —

(*a*) an approved exchange;

(*b*) a recognised market operator;

(*c*) a licensed trade repository;

(*d*) a licensed foreign trade repository;

(*e*) an approved clearing house;

(*f*) a recognised clearing house;

(*g*) an approved holding company;

(*h*) a holder of a capital markets services licence to carry on business in any regulated activity;

(*i*) an exempt person;

(*j*) an approved trustee mentioned in section 289;

(*k*) an authorised benchmark administrator;

(*l*) an exempt benchmark administrator;

(*m*) an authorised benchmark submitter;

(*n*) an exempt benchmark submitter;

(*o*) a designated benchmark submitter; or

(*p*) any employee, officer, partner or representative of any person mentioned in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*) and (*o*).

[2/2009; 34/2012; 4/2017]

General penalty

335. Any person who contravenes any provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable on conviction to a fine not exceeding $50,000.

Proceedings with consent of Public Prosecutor and power to compound offences

336.—(1) Proceedings for an offence against any provisions of Part 12 may be taken only with the consent of the Public Prosecutor.

[15/2010]

(2) The Authority may compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

[34/2012]

(3) The Authority may compound any offence under this Act (including an offence under a provision that has been repealed) which —

(*a*) was compoundable under this section at the time the offence was committed; but

(*b*) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

[34/2012]

(4) All sums collected by the Authority under subsection (2) or (3) must be paid into the Consolidated Fund.

[34/2012]

Exemption

337.—(1) The Authority may, by regulations, exempt any person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) Subject to any express provision to the contrary in this Act, an exemption granted to a person or in respect of any capital markets product, matter or transaction (other than an exemption granted to a class of persons, capital markets products, matters or transactions) under any provision of this Act other than subsections (1) and (3), or a revocation thereof, may be notified in writing to the person concerned, and need not be published in the *Gazette*.

[Act 12 of 2024 wef 30/08/2024]

(3) The Authority may, on the application of any person, by written notice exempt the person from —

(*a*) all or any of the provisions of this Act; or

(*b*) all or any of the requirements imposed by the Authority under this Act.

[Act 12 of 2024 wef 30/08/2024]

(4) An exemption granted under subsection (3) —

(*a*) may be granted subject to such conditions or restrictions as the Authority may specify by written notice; and

(*b*) for the avoidance of doubt, need not be published in the *Gazette* and may be revoked at any time by the Authority.

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (1) or (4)(*a*) (including any condition or restriction added or varied under subsection (4A)) shall be guilty of an offence.

[2/2009]

Service of documents, etc.

337A.—(1) Any notice, order or document required or authorised by this Act to be served on any person (other than a document relating to a collective investment scheme) may be served —

(*a*) in the case of an individual —

(i) by delivering it to the individual or to some adult member or employee of his or her family or household at his or her last known place of residence;

(ii) by leaving it at the individual's usual or last known place of residence or business in an envelope addressed to him or her;

(iii) by sending it by registered post addressed to the individual at his or her usual or last known place of residence or business; or

(iv) by sending it by email to the individual's last email address; or

(*b*) in the case of a body corporate or body of persons —

(i) by delivering it to the secretary or other similar officer of the body corporate or body of persons at its registered office or principal place of business;

(ii) by leaving it at the registered office or principal place of business of the body corporate or body of persons in an envelope addressed to the body corporate or body of persons;

(iii) by sending it by registered post addressed to the body corporate or body of persons at its registered office or principal place of business; or

(iv) by sending it by email to the last email address of the body corporate or body of persons.

(2) Any notice, order or document sent by registered post to any person in accordance with subsection (1) is deemed to be duly served on the person at the time when the notice, order or document (as the case may be) would in the ordinary course of post be delivered.

(3) When proving service of the notice, order or document mentioned in subsection (2), it is sufficient to prove that the envelope containing the notice, order or document (as the case may be) was properly addressed, stamped and posted by registered post.

(4) Service of a notice, order or document, under subsection (1)(*a*)(iv) or (*b*)(iv) takes effect at the time the email becomes capable of being retrieved by the person to whom the notice, order or document is sent.

(5) A notice, order or document may be served on a person under subsection (1)(*a*)(iv) or (*b*)(iv) by email only with that person's prior written consent.

(6) This section does not apply to documents to be served in proceedings in court.

(7) In this section, "last email address" means —

(*a*) the last email address given by the addressee concerned to the person giving or serving the notice, order or document as the email address for the service of notices, orders or documents under this Act; or

(*b*) the last email address of the addressee concerned known to the person giving or serving the notice, order or document.

[Act 12 of 2024 wef 24/01/2025]

Electronic service

337B.—(1) The Authority may provide an electronic service for the service of any document that is required or authorised by this Act to be given to or served on any person.

(2) For the purposes of the electronic service, the Authority may assign to any person —

(*a*) an authentication code; and

(*b*) an account with the electronic service.

(3) Despite sections 294 and 337A, where any person has given the person's consent for any document to be given to or served on the person through the electronic service, the Authority may give or serve the document on that person by transmitting an electronic record of the document to that person's account with the electronic service.

(4) Where a person has given the person's consent for a document to be given to or served on the person through the electronic service, the document is deemed to have been given or served at the time when an electronic record of the document enters the person's account with the electronic service.

(5) Despite any other written law, in any proceedings under this Act —

(*a*) an electronic record of any document that was given or served through the electronic service; or

(*b*) any copy or print-out of that electronic record,

is admissible as evidence of the facts stated or contained therein if that electronic record, copy or print-out —

(*c*) is certified by the Authority to contain all or any information given or served through the electronic service in accordance with this section; and

(*d*) is duly authenticated in the manner specified in subsection (7) or is otherwise authenticated in the manner provided in the Evidence Act 1893 for the authentication of computer output.

(6) To avoid doubt —

(*a*) an electronic record of any document that was given or served through the electronic service; or

(*b*) any copy or print-out of that electronic record,

is not inadmissible in evidence merely because the document was given or served without the delivery of any equivalent document or counterpart in paper form.

(7) For the purposes of this section, a certificate —

(*a*) giving the particulars of —

(i) any person whose authentication code was used to give or serve the document; and

(ii) any person or device involved in the production or transmission of the electronic record of the document, or the copy or print-out of the electronic record;

(*b*) identifying the nature of the electronic record or copy or print-out of the electronic record; and

(*c*) purporting to be signed by the Authority or by a person occupying a responsible position in relation to the operation of the electronic service at the relevant time,

is sufficient evidence that the electronic record, copy or print-out has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(8) Where the electronic record of any document, or a copy or print-out of that electronic record, is admissible under subsection (5), it is presumed, until the contrary is proved, that the electronic record, copy or print-out accurately reproduces the contents of that document.

(9) The Authority may make regulations which are necessary or expedient for carrying out the purposes of this section, including regulations prescribing the procedure for the use of the electronic service, including the procedure in circumstances where there is a breakdown or interruption of the electronic service.

(10) In this section —

"account with the electronic service", in relation to any person, means a computer account within the electronic service which is assigned by the Authority to that person for the storage and retrieval of electronic records relating to that person;

"authentication code", in relation to any person, means an identification or identifying code, a password or any other

authentication method or procedure which is assigned to that person for the purposes of identifying and authenticating the access to and use of the electronic service by that person;

"document" includes notice and order;

"electronic record" has the meaning given by section 2(1) of the Electronic Transactions Act 2010.

[Act 12 of 2024 wef 24/01/2025]

Power to make regulations giving effect to treaty, etc.

338.—(1) Without limiting section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the securities and derivatives industry or to financial benchmarks, to which Singapore or the Authority is a party.

[34/2012; 4/2017]

(2) Without limiting subsection (1), such regulations may provide for —

(*a*) exemptions from the requirements relating to licensing, approval or registration of any person, the recognition of recognised market operators or the lodgment or registration of any document under this Act;

(*b*) exemptions from any requirement in Part 13;

(*c*) the application of this Act with such modifications as may be necessary;

(*d*) the revocation or withdrawal of any exemption granted; and

(*e*) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

Extra-territoriality of Act

339.—(1) Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an

offence against any provision of this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

(2) Where —

(*a*) a person does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore; and

(*b*) that act would, if carried out in Singapore, constitute an offence under any provision of Part 2, 2A, 3, 4, 6AA, 8, 12, 13 or 15,

that person shall be guilty of that offence as if the act were carried out by that person in Singapore, and may be dealt with as if the offence were committed in Singapore.

[34/2012; 4/2017]

(2A) For the purposes of an action under section 232 or 234, where a person —

(*a*) does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute a contravention of any provision of Part 12; or

(*b*) does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore and that act, if carried out in Singapore, would constitute a contravention of any provision of Part 12,

the act is treated as being carried out by that person in Singapore.

(3) The Authority may, by regulations, specify the circumstances under which subsection (2) or (2A)(*b*) does not apply.

Amendment of Schedules

340.—(1) The Minister may by order in the *Gazette*, amend, add to or vary the First, Second, Third or Fourth Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

(3) Any order made under subsection (1) must be presented to Parliament as soon as possible after publication in the *Gazette*.

(4) The Authority may, by regulations, provide that the definitions in the Second Schedule do not apply to such person, capital markets product or class of persons or capital markets products as may be prescribed.

Regulations

341.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without limiting subsection (1), the Authority may make regulations for or with respect to —

(*a*) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees or representatives and the rights and obligations of the participants of the schemes;

(*b*) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;

(*c*) applications for capital markets services licences to carry on business in any regulated activity and matters incidental thereto;

(*d*) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives, including the manner, method and place of soliciting business by the holder of the licence and their representatives, the conduct of such solicitation and the risk management of the business;

(*e*) [*Deleted by Act 16 of 2003*]

(*f*) the conditions for the conduct of business on any approved exchange, recognised market operator, licensed trade

repository, licensed foreign trade repository, approved clearing house or recognised clearing house;

(*g*) the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;

(*h*) the particulars to be recorded in the profit and loss accounts and balance sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on business in any regulated activity;

(*i*) the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;

(*j*) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;

(*k*) the purchase or sale of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;

(*l*) the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;

(*la*) the maintenance by the holder of a capital markets services licence, and a representative of such a holder, of registers of their interests in specified products and their duties relating to the registers, and matters relating thereto;

(*m*) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of capital markets products;

(*n*) the regulation or prohibition of trading on the floor of an approved exchange or a recognised market operator by members of an approved exchange or a recognised market operator (as the case may be) or their representatives directly or indirectly for their own accounts and the prevention of such excessive trading on an approved exchange or a recognised market operator but off the floor of an approved exchange or a recognised market operator by members of an approved exchange or a recognised market operator (as the case may be) or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly organised market; and the exemption of such transactions as the Authority may decide to be necessary in the interests of the public or a section of the public or for the protection of investors;

(*o*) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interests of the public or a section of the public or for the protection of investors;

(*p*) the prohibition or regulation of dealing in capital markets products in circumstances where the person who deals in the capital markets products does not hold or have an interest in the capital markets products which are being or are proposed to be dealt with;

(*q*) the prohibition or restriction of securities-based derivatives contracts that are admitted to the official list of an approved exchange;

(*r*) the forms for the purposes of this Act;

(*s*) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required

under this Act and the refund and remission, whether in whole or in part, of such fees;

(*t*) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and

(*u*) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

[2/2009; 34/2012; 4/2017]

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

(*a*) may be of general or specific application;

(*aa*) may contain provisions of a saving or transitional nature;

(*b*) may provide that a contravention of any specified provision thereof shall be an offence; and

(*c*) may provide for penalties not exceeding a fine of $50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

(3A) For the purposes of paragraphs (*b*) and (*i*) of the definition of "derivatives contract" in section 2(1), the Authority may prescribe different contracts, arrangements, transactions and classes of contracts, arrangements or transactions for different purposes.

[34/2012; 4/2017]

(3B) For the purposes of the definition of "financial instrument" in section 2(1), the Authority may prescribe different things for different purposes.

[34/2012]

(3C) For the purposes of the definition of "underlying thing" in section 2(1), the Authority may prescribe different arrangements, events, indices, intangible properties, tangible properties, transactions and classes of arrangements, events, indices, intangible properties, tangible properties or transactions for different purposes.

[34/2012; 4/2017]

(4) Where a person is charged with an offence for contravening a regulation made under subsection (2)(*la*), it is a defence for the person to prove —

(*a*) that the person's contravention was due to the person not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(*b*) that —

(i) the person was not so aware on the date of the summons issued for the charge; or

(ii) the person became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

[2/2009]

(5) For the purposes of subsection (4), a person is, in the absence of proof to the contrary, conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her employer's or principal's interest or interests in the specified products concerned, was aware of at that time.

[2/2009; 4/2017]

FIRST SCHEDULE

Sections 2(1) and 340(1)

PART 1

MARKET

Definition of organised market

1.—(1) In this Act, "organised market" means —

(*a*) a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to exchange, sell or purchase

derivatives contracts, issued securities or issued units in collective investment schemes, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or purchase derivatives contracts, issued securities or issued units in collective investment schemes (whether through that place or facility or otherwise); or

[Act 12 of 2024 wef 24/01/2025]

(*b*) such other place or class of places, or facility or class of facilities, as the Authority may, by order, prescribe.

[Act 12 of 2024 wef 24/01/2025]

(2) Despite sub-paragraph (1), "organised market" does not include a place or facility used by only one person —

(*a*) to regularly make offers or invitations to sell, purchase or exchange derivatives contracts, issued securities or issued units in collective investment schemes; or

[Act 12 of 2024 wef 24/01/2025]

(*b*) to regularly accept offers to sell, purchase or exchange derivatives contracts, issued securities or issued units in collective investment schemes.

[Act 12 of 2024 wef 24/01/2025]

(3) In this paragraph —

"issued securities", in relation to an offer or invitation to exchange, sell or purchase those securities, means securities that have already been issued when the offer or invitation is made;

"issued units in collective investment schemes", in relation to an offer or invitation to exchange, sell or purchase those units, means units in collective investment schemes that have already been issued when the offer or invitation is made.

[Act 12 of 2024 wef 24/01/2025]

2. [*Deleted by Act 4 of 2017*]

3. [*Deleted by Act 4 of 2017*]

FIRST SCHEDULE — *continued*

PART 2

CLEARING FACILITY

Definition of clearing facility

4.—(1) In this Act —

"clearing facility" means —

(*a*) a facility for the clearing or settlement of transactions in derivatives contracts, securities or units in collective investment schemes; or

(*b*) such other facility or class of facilities for the clearing or settlement of transactions as the Authority may, by order, prescribe;

"clearing or settlement", in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which —

(*a*) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;

(*b*) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

(*c*) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or

(*d*) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds, the transfer of title to securities between the parties, or the transfer of interest in or title to derivatives contracts or units in a collective investment scheme between the parties.

[Act 12 of 2024 wef 24/01/2025]

(2) For the purposes of this Act, "clearing or settlement" does not include —

(*a*) the back office operations of a party to the transactions referred to in sub-paragraph (1);

(*b*) the services provided by a person who has, under an arrangement with another person (called in this sub-paragraph the customer), possession or control of securities, derivatives contracts or units in a collective

investment scheme of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or

[Act 12 of 2024 wef 24/01/2025]

(*c*) any other arrangement, process, mechanism or service which the Authority may prescribe.

[2/2009; 34/2012; 4/2017]

SECOND SCHEDULE

Sections 2(1) and 340(1) and (4)

REGULATED ACTIVITIES

PART 1

TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

(*a*) dealing in capital markets products;

(*b*) advising on corporate finance;

(*c*) fund management;

(*d*) real estate investment trust management;

(*e*) product financing;

(*f*) providing credit rating services;

(*g*) providing custodial services.

PART 2

INTERPRETATION

In this Schedule —

"agreement" includes arrangement;

"advising on corporate finance" means giving advice —

(*a*) to any person (whether as principal or agent, or as trustee of a trust) concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of an approved exchange) relating to the raising of funds by any entity, trustee of a trust on behalf of the trust or responsible person of a collective investment scheme on behalf of the collective investment scheme;

(*b*) to a person making an offer —

(i) to subscribe for or purchase specified products; or

(ii) to sell or otherwise dispose of specified products,

concerning that offer;

(*c*) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities; or

(*d*) concerning the take-over of a business trust or any of its assets or liabilities held by the trustee-manager on behalf of the business trust;

"credit rating" means an opinion expressed using an established and defined ranking system of rating categories, primarily regarding the creditworthiness of a rating target;

"dealing in capital markets products" means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting any capital markets products;

"financial institution" means —

(*a*) any bank licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970; or

(*c*) any finance company licensed under the Finance Companies Act 1967;

"fund management" means managing the property of, or operating, a collective investment scheme, or undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

(*a*) the management of a portfolio of capital markets products; or

(*b*) the entry into spot foreign exchange contracts for the purpose of managing the customer's funds,

but does not include real estate investment trust management;

"leveraged foreign exchange trading" means entering into a spot foreign exchange contract where one counterparty provides to the other counterparty or the counterparty's agent money, securities, property or other collateral which represents only a part of the value of the spot foreign exchange contract;

"offer" or "offering" includes invitation to treat;

"product financing" means providing any credit facility, advance or loan to facilitate (directly or indirectly) —

(*a*) the subscription of specified products listed or to be listed on an organised market;

(*b*) the purchase of specified products listed or to be listed on an organised market;

(*c*) the purchase of such specified products as the Authority may prescribe; or

(*d*) where applicable, the continued holding of specified products mentioned in paragraph (*a*), (*b*) or (*c*),

whether or not the specified products are pledged as security for the credit facility, advance or loan, but does not include the provision of —

(*e*) any credit facility, advance or loan that forms part of an arrangement to underwrite or sub-underwrite specified products;

(*f*) any credit facility, advance or loan to —

(i) a holder of a capital markets services licence to deal in capital markets products in respect of specified products;

(ii) a holder of capital markets services licence for product financing; or

(iii) a financial institution,

for the purposes of facilitating the acquisition or holding of specified products;

(*g*) any credit facility, advance or loan by a company to its directors or employees to facilitate the acquisition or holding of its own specified products;

(*h*) any credit facility, advance or loan by a member of a group of companies to another member of the group to facilitate the acquisition or holding of specified products by that other member; or

(*i*) any credit facility, advance or loan by an individual to a company in which he or she holds 10% or more of its issued share capital to facilitate the acquisition or holding of specified products;

"providing credit rating services" means preparing, whether wholly or partly in Singapore, credit ratings in relation to activities in the securities and futures industry for —

(*a*) dissemination, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so disseminated; or

(*b*) distribution by subscription, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so distributed,

but does not include —

(*c*) preparing a private credit rating pursuant to an individual order which is intended to be provided exclusively to the person who placed the order and not intended for public disclosure or distribution by subscription; or

(*d*) preparing credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;

"providing custodial services" means, in relation to specified products, providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of the specified products of the customer and carries out one or more of the following functions for the customer:

(*a*) settlement of transactions relating to the specified products;

(*b*) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the specified products;

(*c*) paying tax or other costs associated with the specified products;

(*d*) exercising rights, including without limitation voting rights, attached to or derived from the specified products;

(*e*) any other function necessary or incidental to the safeguarding or administration of the specified products,

but does not include —

(*f*) the activities of a corporation that is a Depository as defined in section 81SF;

(*g*) the provision of services to a related corporation or connected person, so long as none of the specified products in respect of which such services are provided is —

(i) held on trust for another person by the related corporation or connected person;

SECOND SCHEDULE — *continued*

(ii) held as a result of any custodial services provided by the related corporation or connected person to another person; or

(iii) beneficially owned by any person other than the related corporation or connected person;

(*h*) the provision of services by a nominee corporation that are solely incidental to the business of the nominee corporation; and

(*i*) any other conduct the Authority may, by order, prescribe;

"rating category" means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rating targets;

"rating target" means the subject of a credit rating which may be —

(*a*) a person other than an individual;

(*b*) the government of a sovereign country, including the Government of Singapore; or

(*c*) capital markets products;

"real estate investment trust management" means managing the property of, or operating, a real estate investment trust;

"spot foreign exchange contract" means a spot contract of which the underlying thing is a currency.

[2/2009; 35/2014; 4/2017;1/2020; S 376/2008; S 20/2012]

THIRD SCHEDULE

Sections 82(2) and 340(1)

SPECIFIED PERSONS

1. Any company licensed under the Trust Companies Act 2005 whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.

2. Any public statutory corporation established under any Act in Singapore.

3. Any —

(*a*) advocate and solicitor;

THIRD SCHEDULE — *continued*

(*aa*) Singapore law practice, Joint Law Venture, Formal Law Alliance or Qualifying Foreign Law Practice, as defined in section 2(1) of the Legal Profession Act 1966; or

(*b*) public accountant who is registered under the Accountants Act 2004 or accounting corporation which is approved under that Act,

whose carrying on of the business in that regulated activity is solely incidental to the practice of law or accounting, as the case may be.

4. The Official Assignee in exercising his or her powers under the Insolvency, Restructuring and Dissolution Act 2018.

5. The Public Trustee in exercising his or her powers under the Public Trustee Act 1915.

6. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

7. Any approved trustee for a collective investment scheme as defined in section 289 whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such approved trustee.

8. An approved trustee (as defined in section 289) who is a custodian of a VCC or a sub-fund and whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such custodian.

9. [*Deleted by S 791/2022 wef 09/10/2022*]

FOURTH SCHEDULE

Sections 320(1A) and 340(1)

SPECIFIED PROVISIONS

1. Section 7(7)

2. Section 27(11)

3. Section 28(12)

3A. Section 41A(10)

[Act 12 of 2024 wef 24/01/2025]

3B. Section 41C(12)

[Act 12 of 2024 wef 24/01/2025]

4. Section 46AAG(2)

5. Section 46U(11)

6. Section 46V(12)

FOURTH SCHEDULE — *continued*

7. Section 46ZL(2)
8. Section 49(7)
9. Section 57(3)
10. Section 70(11)
11. Section 71(12)
12. Section 75(3)

12A. Section 81AA(10)

[Act 12 of 2024 wef 24/01/2025]

12B. Section 81AC(12)

[Act 12 of 2024 wef 24/01/2025]

13. Section 81SB(2)
14. Section 81U(4)
15. Section 81ZE(10)
16. Section 81ZF(12)
17. Section 81ZI
18. Section 99(1)(*h*)
19. Section 99B(2)
20. Section 99I(1)
21. Section 123K(1)(*b*)
22. Section 123N(1)
23. Section 123ZH(4)
24. Section 129A(2)
25. Section 129H(2)
26. Section 129O(2)

26A. Section 240AB(2)

[Act 12 of 2024 wef 30/08/2024]

27. Section 247(1)
28. Section 248(2) and (5)
29. Section 249(3)
30. Section 251(14)
31. Section 259(3)

FOURTH SCHEDULE — *continued*

32. Section 262(2)

32A. Section 296A(6)

[Act 12 of 2024 wef 30/08/2024]

33. Section 300(9)

34. Section 302 (when applying section 247(1) or 249(3))

35. Section 306(1)

36. Section 309(3)(*a*)

37. Section 309B(5)

38. Section 337(3).

[4/2017]

LEGISLATIVE HISTORY

SECURITIES AND FUTURES ACT 2001

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

1. Act 42 of 2001 — Securities and Futures Act 2001

Date of First Reading	:	25 September 2001 (Bill No. 33/2001 published on 26 September 2001)
Date of Second and Third Readings	:	5 October 2001
Date of commencement	:	1 January 2002 1 July 2002 1 October 2002

2. G. N. No. S 674/2001 — Securities and Futures Act (Amendment of Second Schedule) Order 2001

Date of commencement	:	1 January 2002

3. Act 39 of 2002 — Payments and Settlement Systems (Finality and Netting) Act 2002

(Consequential amendments made to Act by)

Date of First Reading	:	31 October 2002 (Bill No. 41/2002 published on 1 November 2002)
Date of Second and Third Readings	:	25 November 2002
Date of commencement	:	9 December 2002

4. 2002 Revised Edition — Securities and Futures Act

Date of operation	:	31 December 2002

5. Act 16 of 2003 — Securities and Futures (Amendment) Act 2003

Date of First Reading	:	14 August 2003 (Bill No. 15/2003 published on 15 August 2003)
Date of Second and Third Readings	:	2 September 2003
Date of commencement	:	22 December 2003

6. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003

(Consequential amendments made to Act by)

Date of First Reading	:	16 October 2003 (Bill No. 21/2003 published on 17 October 2003)
Date of Second and Third Readings	:	10 November 2003
Date of commencement	:	1 January 2004

7. Act 5 of 2004 — Companies (Amendment) Act 2004

(Consequential amendments made to Act by)

Date of First Reading	:	5 January 2004 (Bill No. 3/2004 published on 6 January 2004)
Date of Second and Third Readings	:	6 February 2004
Date of commencement	:	1 April 2004

8. Act 31 of 2004 — Securities and Futures (Amendment) Act 2004

Date of First Reading	:	20 July 2004 (Bill No. 29/2004 published on 21 July 2004)
Date of Second and Third Readings	:	1 September 2004
Date of commencement	:	12 October 2004

9. Act 5 of 2005 — Limited Liability Partnerships Act 2005

(Consequential amendments made to Act by)

Date of First Reading	:	19 October 2004 (Bill No. 64/2004 published on 20 October 2004)
Date of Second and Third Readings	:	25 January 2005
Date of commencement	:	11 April 2005

10. Act 1 of 2005 — Securities and Futures (Amendment) Act 2005

Date of First Reading	:	19 October 2004 (Bill No. 46/2004 published on 20 October 2004)

Date of Second and Third Readings	:	25 January 2005
Date of commencement	:	1 July 2005 15 October 2005

11. Act 42 of 2005 — Statutes (Miscellaneous Amendment No. 2) Act 2005

Date of First Reading	:	17 October 2005 (Bill No. 30/2005 published on 18 October 2005)
Date of Second and Third Readings	:	21 November 2005
Date of commencement	:	1 July 2005 1 January 2006 30 January 2006 1 April 2006

12. Act 11 of 2005 — Trust Companies Act 2005
(Consequential amendments made to Act by)

Date of First Reading	:	25 January 2005 (Bill No. 1/2005 published on 26 January 2005)
Date of Second and Third Readings	:	18 February 2005
Date of commencement	:	1 February 2006

13. 2006 Revised Edition — Securities and Futures Act

Date of operation	:	1 April 2006

14. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007

Date of First Reading	:	8 November 2006 (Bill No. 14/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Date of commencement	:	1 March 2007

15. Act 35 of 2007 — Commodity Trading (Amendment) Act 2007
(Consequential amendments made to Act by)

Date of First Reading	:	21 May 2007 (Bill No. 23/2007 published on 22 May 2007)

Date of Second and Third Readings	:	17 July 2007
Date of commencement	:	27 August 2007 27 February 2008

16. G. N. No. S 376/2008 — Securities and Futures Act (Amendment of Second Schedule and Other Provisions to Act for REIT Management) Order 2008

Date of commencement	:	1 August 2008

17. Act 2 of 2009 — Securities and Futures (Amendment) Act 2009

Date of First Reading	:	15 September 2008 (Bill No. 23/2008 published on 16 September 2008)
Date of Second and Third Readings	:	19 January 2009
Date of commencement	:	20 April 2009 29 July 2009 29 March 2010 26 November 2010 1 October 2012 19 November 2012

18. Act 15 of 2010 — Criminal Procedure Code 2010
(Consequential amendments made to Act by)

Date of First Reading	:	26 April 2010 (Bill No. 11/2010 published on 26 April 2010)
Date of Second and Third Readings	:	19 May 2010
Date of commencement	:	2 January 2011

19. G. N. No. S 20/2012 — Securities and Futures Act (Amendment of Second Schedule and Other Provisions for Provision of Credit Rating Services) Order 2012

Date of commencement	:	17 January 2012

20. Act 34 of 2012 — Securities and Futures (Amendment) Act 2012

Date of First Reading	:	15 October 2012 (Bill No. 31/2012 published on 15 October 2012)

Date of Second and Third Readings	:	15 November 2012
Date of commencement	:	18 March 2013 1 August 2013 31 October 2013 1 May 2014 19 August 2016

21. Act 10 of 2013 — Financial Institutions (Miscellaneous Amendments) Act 2013

Date of First Reading	:	4 February 2013 (Bill No. 4/2013 published on 4 February 2013)
Date of Second and Third Readings	:	15 March 2013
Date of commencement	:	18 April 2013 2 August 2013 1 November 2013

22. Act 11 of 2013 — Insurance (Amendment) Act 2013
(Consequential amendments made to Act by)

Date of First Reading	:	4 February 2013 (Bill No. 5/2013 published on 4 February 2013)
Date of Second and Third Readings	:	15 March 2013
Date of commencement	:	18 April 2013

23. Act 35 of 2014 — Statutes (Miscellaneous Amendments) (No. 2) Act 2014

Date of First Reading	:	8 September 2014 (Bill No. 24/2014 published on 8 September 2014)
Date of Second and Third Readings	:	7 October 2014
Date of commencement	:	1 July 2015 3 January 2016

24. Act 29 of 2014 — Business Names Registration Act 2014
(Consequential amendments made to Act by)

Date of First Reading	:	8 September 2014 (Bill No. 26/2014)

Date of Second and Third Readings	:	8 October 2014
Date of commencement	:	3 January 2016

25. Act 36 of 2014 — Companies (Amendment) Act 2014

Date of First Reading	:	8 September 2014 (Bill No. 25/2014)
Date of Second and Third Readings	:	8 October 2015
Date of commencement	:	3 January 2016

26. G.N. No. S 446/2016 — Securities and Futures Act (Amendment of Third Schedule) Order 2016

Date of commencement	:	30 September 2016

27. Act 4 of 2017 — Securities and Futures (Amendment) Act 2017

Date of First Reading	:	7 November 2016 (Bill No. 35/2016)
Date of Second and Third Readings	:	9 January 2017
Date of commencement	:	1 October 2018 (Sections 55 to 59 and 74) 8 October 2018 (Sections 2 to 54, 60 to 73, 75 to 197, 199 to 202 and 204 to 212)

28. Act 31 of 2017 — Monetary Authority of Singapore (Amendment) Act 2017

Date of First Reading	:	(Bill No. 25/2017 published on 8 May 2017) 8 May 2017
Date of Second and Third Readings	:	4 July 2017
Date of commencement	:	5 June 2018 29 October 2018

29. Act 44 of 2018 — Variable Capital Companies Act 2018

Date of First Reading	:	10 September 2018 (Bill No. 40/2018)

Date of Second and Third Readings : 1 October 2018

Date of commencement : 14 January 2020

30. G.N. No. S 53/2020 — Securities and Futures Act (Amendment of Third Schedule) Order 2020

Date of commencement : 21 January 2020

31. Act 2 of 2019 — Payment Services Act 2019

Date of First Reading : (Bill No. 48/2018 published on 19 November 2018)
19 November 2018

Date of Second and Third Readings : 14 January 2019

Date of commencement : 28 January 2020

32. Act 40 of 2018 — Insolvency, Restructuring and Dissolution Act 2018

Date of First Reading : (Bill No. 32/2018 published on 10 September 2018)
10 September 2018

Date of Second and Third Readings : 1 October 2018

Date of commencement : 30 July 2020

33. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019

Date of First Reading : 7 October 2019
(Bill No. 32/2019)

Date of Second and Third Readings : 5 November 2019

Date of commencement : 2 January 2021

34. Act 1 of 2020 — Banking (Amendment) Act 2020

Date of First Reading : 4 November 2019
(Bill No. 35/2019)

Date of Second and Third Readings : 6 January 2020

Date of commencement : 1 July 2021

35. G.N. No. S 761/2021 — Securities and Futures Act (Amendment of Third Schedule) Order 2021

Date of commencement	:	9 October 2021

36. 2020 Revised Edition — Securities and Futures Act 2001

Operation	:	31 December 2021

37. Act 25 of 2021 — Courts (Civil and Criminal Justice) Reform Act 2021
(Amendments made by Part 7 of the above Act)

Bill	:	18/2021
First Reading	:	26 July 2021
Second and Third Readings	:	14 September 2021
Commencement	:	1 April 2022

38. G.N. No. S 791/2022 — Securities and Futures Act 2001 (Amendment of Third Schedule) Order 2022

Date of commencement	:	9 October 2022

39. Act 18 of 2022 — Financial Services and Markets Act 2022

Date of First Reading	:	14 February 2022 (Bill No. 4/2022)
Date of Second and Third Readings	:	5 April 2022
Date of commencement	:	28 April 2023 (Section 209(1)(*b*), (2), (15) and (16)) 10 May 2024 (Section 209(3)) 31 July 2024 (Section 209(1)(*a*), (c) and (*d*), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (17) and (18))

40. Act 12 of 2024 — Financial Institutions (Miscellaneous Amendments) Act 2024
(Amendments made by the above Act)

Bill	:	4/2024
First Reading	:	10 January 2024
Second and Third Readings	:	7 March 2024
Commencement	:	30 August 2024 24 January 2025

41. Act 5 of 2025 — Electronic Gazette and Legislation Act 2025

Bill	:	47/2024
First Reading	:	11 November 2024
Second and Third Readings	:	7 January 2025
Commencement	:	9 March 2025

Abbreviations

(updated on 29 August 2022)

G.N.	Gazette Notification
G.N. Sp.	Gazette Notification (Special Supplement)
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian)
M.	Malaya/Malaysia (including Federated Malay States, Malayan Union, Federation of Malaya and Federation of Malaysia)
Parl.	Parliament
S	Subsidiary Legislation
S.I.	Statutory Instrument (United Kingdom)
S (N.S.)	Subsidiary Legislation (New Series)
S.S.G.G.	Straits Settlements Government Gazette
S.S.G.G. (E)	Straits Settlements Government Gazette (Extraordinary)

COMPARATIVE TABLE

SECURITIES AND FUTURES ACT 2001

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

2020 Ed.	2006 Ed.
—	**46ZIC**—(11) [*Deleted by Act 4 of 2017*]
—	**81SAB**—(11) [*Deleted by Act 4 of 2017*]
—	**81ZGD**—(11) [*Deleted by Act 4 of 2017*]
—	**84**—(4) [*Deleted by Act 2 of 2009*]
—	(5) [*Deleted by Act 2 of 2009*]
—	(5A) [*Deleted by Act 2 of 2009*]
—	(5B) [*Deleted by Act 2 of 2009*]
—	(6) [*Deleted by Act 2 of 2009*]
—	(7) [*Deleted by Act 2 of 2009*]
—	(8) [*Deleted by Act 2 of 2009*]
—	**90**—(2A) [*Deleted by Act 2 of 2009*]
—	**97F**—(11) [*Deleted by Act 4 of 2017*]
—	**342** [*Repealed by Act 4 of 2017*]

THE SINGAPORE CODE
ON TAKE-OVERS AND MERGERS

TABLE OF CONTENTS

Documents

Other Provisions

INTRODUCTION

1 Nature and purpose of the Code

The Singapore Code on Take-overs and Mergers is issued by the Monetary Authority of Singapore pursuant to section 321 of the Securities and Futures Act. The Code is nevertheless non-statutory in that it does not have the force of law. Its primary objective is fair and equal treatment of all shareholders in a take-over or merger situation.

The Code is not concerned with the financial or commercial advantages or disadvantages of a take-over or merger; such matters should be decided by the company and its shareholders. The Code represents the collective public opinion on the standard of conduct to be observed in general, and how fairness can be achieved in particular, in a take-over or merger transaction. A fundamental requirement is that shareholders in the company subject to a take-over offer must be given sufficient information, advice and time to consider and decide on the offer.

2 Enforcement of the Code

The spirit as well as the precise wording of the Code must be adhered to by parties in a take-over or merger transaction - this is emphasised in General Principle 1 of the Code. Furthermore, it must be accepted that the General Principles and the spirit of the Code will apply in areas or circumstances not explicitly covered by any Rule.

The Code applies to both take-overs and mergers. It applies to corporations with a primary listing of their equity securities, business trusts with a primary listing of their units in Singapore and REITs. While the Code is drafted with listed public companies, listed registered business trusts and REITs in mind, unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and net tangible assets of $5 million or more must also observe the letter and spirit of the General Principles and Rules, wherever this is possible and appropriate. The Code does not apply to take-overs or mergers of other unlisted public companies and unlisted business trusts, or private companies. The Code applies to all offerors, whether they are natural persons (be they resident in Singapore or not and whether citizens of Singapore or not), corporations or bodies unincorporate (be they incorporated or carrying on business in Singapore or not); and extends to acts done or omitted to be done in and outside Singapore.

The Code is administered and enforced by the Securities Industry Council whose members comprise representatives mostly from the private sector and some from the public sector. The Council may, from time to time, issue notes on the interpretation of the General Principles and the Rules. It also has powers under the law to investigate any dealing in securities that is connected with a take-over or merger transaction. The duty of the Council is the enforcement of good business standards and not the enforcement of law. The Council expects prompt co-operation from those to whom enquiries are directed to ensure efficient administration of the Code.

The Council, as the administering body, performs its day-to-day business through its Secretariat headed by the Secretary to the Council. The Secretariat is available at all times for confidential consultation on points of interpretation of the Code. When there is any doubt as to whether a proposed course of conduct accords with the General Principles or the Rules, parties or their advisers should consult the Secretariat in advance. Such confidential consultation minimises the risk of breaches of the Code.

If there appears to be a breach of the Code, the Secretary will summon the alleged offender to appear before the Council for a hearing. Every alleged offender will have the opportunity to answer allegations and to call witnesses. The Council may also summon witnesses. As a rule, the Council's proceedings are informal and parties appearing before the Council, whether for disciplinary or other purposes, should present their case in person and lodge written submissions in their own name. While alleged offenders and witnesses may consult their legal advisers during hearings before the Council, these advisers may not examine or cross-examine witnesses nor answer questions on behalf of their clients.

If the Council finds that there has been a breach of the Code, it may have recourse to private reprimand or public censure or, in a flagrant case, to further action as the Council thinks fit, including actions designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market. In the case of advisers, the Council may also require such adviser to abstain from taking on Code-related work for a stated period. If the Council finds evidence to show that a criminal offence has taken place whether under the Companies Act, the Securities and Futures Act or under the criminal law, it will refer the matter to the appropriate authority.

Where a person has breached the Code, the Council may also make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or

former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. Such Rules normally include but are not limited to Rules 10, 14, 15, 16.4(g), 16.4(h), 17, 18, 19, 20.4, 21 and 33.2 of the Code. In addition, the Council may make a ruling requiring simple or compound interest to be paid at a rate and for a period to be determined, including any period prior to the date of the ruling and until full payment is made.

NOTE ON SECTION 2

Corporations and business trusts with a primary listing in Singapore, public companies and registered business trusts with a primary listing overseas as well as unlisted public companies and unlisted registered business trusts with more than 50 shareholders, or unitholders, as the case may be, and net tangible assets of $5 million or more may apply to the Council to waive the application of the Code. In considering such applications, Council would take into account, amongst others, the following factors:

(a) the number of Singapore shareholders or unitholders and the extent of trading in Singapore; and

(b) the existence of protection available to Singapore shareholders or unitholders provided under any statute or code regulating take-overs and mergers outside Singapore.

3 Code responsibilities

The primary responsibility for ensuring compliance with the Code rests with parties (including company directors) to a take-over or merger and their advisers, not with the Council. This is the essence of self-regulation. Documents issued in a take-over or merger should not be submitted to the Council in advance, except where required by the Council (e.g. circulars to shareholders in relation to whitewash resolutions). This means that anything contained in them which the Council finds misleading or incomplete (in terms of information which the shareholders could reasonably expect) will require correction by further circulars or announcements. Responsibility for the contents of documents rests with the offeror, the offeree company, their directors and advisers. The Securities Exchange also plays a part in that it may require clearance of certain documents with it in advance of their publication.

4 Organisation of the Code

The Code is organised as a set of General Principles and Rules. The General Principles are essentially standards of good commercial conduct. These General Principles apply to all transactions with which the Code is concerned. They are, however, expressed in broad terms and the Code does not define the precise extent of, or limitations on, their application. They are applied by the Council in accordance with their spirit to achieve their underlying purpose. The Council may modify the effect of their precise wording accordingly.

In addition to the General Principles, the Code contains a series of Rules, of which some are effectively expansions of the General Principles and examples of their application and others are provisions governing specific aspects of take-over procedure. Although most of the Rules are more detailed than the General Principles, they too are not framed in technical language and, like the General Principles, are to be interpreted in such a way as to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter and the Council may modify the application of a Rule if it considers that, in the particular circumstances of the case, it would otherwise operate in an inappropriate manner.

To assist with interpretation of the Rules, notes have been inserted under the Rules, where appropriate, to provide guidance as to how the Rules will normally be applied by the Council.

5 Communication with the Council

Postal communications should be addressed to the Secretary, Securities Industry Council, 10 Shenton Way, MAS Building, Singapore 079117. Contact details are 6225 5577 (telephone) and 6225 1350 (facsimile).

Securities Industry Council
Singapore

24 Jan 2019

DEFINITIONS

1 **Acting in Concert**: Persons acting in concert comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), co-operate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company.

Without prejudice to the general application of this definition, the following individuals and companies will be presumed to be persons acting in concert with each other unless the contrary is established:-

(a) the following companies:-

(i) a company;
(ii) the parent company of (i);
(iii) the subsidiaries of (i);
(iv) the fellow subsidiaries of (i);
(v) the associated companies of any of (i), (ii), (iii) or (iv);
(vi) companies whose associated companies include any of (i), (ii), (iii), (iv) or (v); and
(vii) any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the above for the purchase of voting rights.

(b) a company with any of its directors (together with their close relatives, related trusts as well as companies controlled by any of the directors, their close relatives and related trusts);

(c) a company with any of its pension funds and employee share schemes;

(d) a person with any investment company, unit trust or other fund whose investment such person manages on a discretionary basis, but only in respect of the investment account which such person manages;

(e) a financial or other professional adviser, including a stockbroker, with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser;

(f) directors of a company (together with their close relatives, related trusts and companies controlled by any of such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;

(g) partners; and

(h) the following persons and entities:-

(i) an individual;
(ii) the close relatives of (i);
(iii) the related trusts of (i);
(iv) any person who is accustomed to act in accordance with the instructions of (i); and
(v) companies controlled by any of (i), (ii), (iii) or (iv); and
(vi) any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the above for the purchase of voting rights.

NOTES ON DEFINITION OF ACTING IN CONCERT

1. *Rebuttal of concert-party presumption between close relatives*

Factors which the Council would consider in deciding whether the concert-party presumption between close relatives is rebutted includes (i) the pattern, volume, timing and price of share purchases by the close relatives; (ii) voting pattern of the shares by the close relatives; and (iii) whether the close relatives are of independent financial means commensurate with their acquisitions.

2. *Full information required*

In cases where the question of whether parties are acting in concert is being investigated, all parties will be required to disclose all relevant information including their dealings in shares in the offeree or potential offeree company. Failure to do so may result in disciplinary proceedings or in an inference being drawn that they are acting in concert.

3. *Break up of concert parties*

Where a ruling or admission has been made that a group of persons is or has been acting in concert, the Council will require clear evidence to the contrary to rule that they are no longer acting in concert.

4. *Underwriting arrangements*

Underwriting arrangements on arm's length commercial terms would not normally amount to an agreement or understanding within the meaning of acting in concert. However, some features of underwriting arrangements, for example the proportion of the ultimate total liability assumed by an underwriter, the commission structure or the degree of involvement of the underwriter with the offeror in connection with the offer, may be such as to lead the Council to conclude that a sufficient level of understanding has been created between the offeror and the underwriter to amount to an agreement or understanding within the meaning of acting in concert. In cases of doubt, the Council should be consulted.

5. *Banks*

A bank refers to a corporation that is licensed to carry on a banking or financing business. An arm's length agreement between a shareholder and a bank (including agreements under which the shareholder borrows money for the acquisition of shares) will not normally lead the Council to conclude that the bank is a concert party. In the event that such agreement involves the bank acquiring offeree company shares or an option over such shares, or otherwise creates an incentive for the bank to assist the shareholder in obtaining or consolidating effective control of the offeree company, the Council should be consulted.

6. *Registered business trusts and business trusts*

Where a reference to a company should be taken as a reference to a registered business trust or a business trust, the concert party relationship is with the trustee-manager of the registered business trust or business trust.

The Council should be consulted if the trustee-manager acts at the same time for more than one of the following:

(a) offeror or possible offeror;
(b) competing offeror or possible competing offeror; and
(c) offeree registered business trust or business trust.

7. *REITs*

Where a reference to a company should be taken as a reference to a REIT, the concert party relationship is with the REIT's:
(a) manager; and
(b) trustee.

In relation to the trustee, the concert party relationship is normally limited to the trustee (including its directors) acting in the capacity as trustee of the REIT.

The Council should be consulted if a manager or a trustee, in its capacity as trustee of a REIT, acts at the same time for more than one of the following:

(a) offeror or possible offeror;
(b) competing offeror or possible competing offeror; and
(c) offeree REIT.

For the purposes of calculating the voting rights held by a group acting in concert, the voting rights held by a trustee of unrelated trusts will not normally be counted. In cases of doubt, the Council should be consulted.

8. *Standstill agreements*

Agreements between a company, or the directors of a company, and a shareholder which restrict the shareholder or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or

reducing shareholdings, may be relevant for the purpose of this definition. In cases of doubt, the Council should be consulted.

2 **Associate:** It is not practicable to define "associate" in precise terms which would cover all the different relationships which may exist in a take-over or merger transaction. The term "associate" is intended to cover all persons (whether or not acting in concert with the offeror, offeree company or with one another) who directly or indirectly own, or deal in, the shares of the offeror or offeree company in a take-over or merger transaction and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

Without prejudice to the generality of the foregoing, the term "associate" will normally include the following:-

(a) the following companies in relation to the offeror (if it is a company) or the offeree company:-

(i) the parent company of the offeror or the offeree company;
(ii) the subsidiaries of the offeror or the offeree company;
(iii) the fellow subsidiaries of the offeror or the offeree company;
(iv) the associated companies of any of the offeror, the offeree company, (i), (ii) or (iii); and
(v) companies whose associated companies include any of the offeror, the offeree company, (i), (ii), (iii) or (iv);

(b) any person who has provided financial assistance (other than a bank in the ordinary course of business) to the offeror or the offeree company or any of the above for the purchase of voting rights;

(c) banks, stockbrokers, financial and other professional advisers to the offeror, the offeree company or appointed for or in connection with the take-over or merger transaction by any company mentioned in (a) including persons controlling, controlled by or under the same control as such banks, stockbrokers, financial and other professional advisers;

(d) the directors (together with their close relatives and related trusts as well as companies controlled by any of the directors, their close relatives and related trusts) of the offeror, the offeree company or any company mentioned in (a);

(e) the pension funds and employee share schemes of the offeror, the offeree company or any company mentioned in (a);

(e) any investment company, unit trust or other fund whose investments an associate manages on a discretionary basis, but only in respect of the investment account which the associate manages;

(f) a holder of 5% or more of the equity share capital of the offeror or offeree company. This includes a holder who acquires shares which takes him through 5%. Where two or more persons act as a syndicate or other group, pursuant to an agreement or understanding (whether formal or informal) to acquire or hold such equity share capital, they will be deemed to be a single holder for the purpose of this paragraph;

(g) any trustee-manager (together with its parent company, subsidiaries, and fellow subsidiaries, and its associated companies and companies of which it is an associated company) of the offeror, the offeree or any registered business trust or business trust that relates to the offeror or offeree in (a) above;

(h) any trustee (in its capacity as trustee of a REIT) of the offeror, the offeree or any REIT that relates to the offeror or offeree in any of the ways set out in (a) above;

(i) any manager (together with its parent, subsidiaries, and fellow subsidiaries, and its associated companies and companies of which it is an associated company) of the offeror, the offeree or any REIT that relates to the offeror or offeree in any of the ways set out in (a) above; and

(j) a company having a material trading arrangement with the offeror or offeree company.

3 **Associated Company:** A company is an associated company of another company if the second company owns or controls at least 20% but not more than 50% of the voting rights of the first-mentioned company.

4 **Cash Purchases:** References to purchases for cash and cash prices paid for shares are deemed to include contracts or arrangements for the acquisition of shares where the consideration consists of a debt instrument maturing for payment or capable of being redeemed in less than 12 months.

5 **Close Relatives:** Close relatives include immediate family (i.e. parents, siblings, spouse and children), siblings of parents (i.e. uncles and aunts) as well as their children (i.e. cousins), and children of siblings (i.e. nephews and nieces).

6 **Code:** Code means the Singapore Code on Take-overs and Mergers.

7 **Convertible Securities:** Convertible securities means securities convertible or exchangeable into new shares or existing shares in the company.

8 **Council:** Council means the Securities Industry Council.

9 **Derivative:** Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security or securities.

NOTE ON DEFINITION OF DERIVATIVE

The term "derivative" is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Code to restrict transactions in derivatives which are not connected to an offer or potential offer. The Council will not normally regard a derivative which is referenced to a basket or index of securities, including relevant securities, as connected with an offeror or potential offeror if at the time of dealing, the relevant securities in the basket or index represent less than 1% of the class in issue and, in addition, less than 20% of the value of securities in the basket or index. Nonetheless, derivatives referenced to a basket or index which meet these tests but in effect causes the holder to have a predominant long economic exposure to a relevant security would be regarded as being connected to an offer or potential offer. In cases of doubt, the Council should be consulted.

10 **Director:** A director includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the director of a corporation is accustomed to act, and an alternate or substitute director.

11 **Effective Control:** Effective control means a holding, or aggregate holdings, of shares carrying 30% or more of the voting rights (as defined below) of a company, irrespective of whether that holding (or holdings) gives de facto control. "Acquiring effective control" of a company refers to a situation where a person and parties acting in concert with him, who previously held in aggregate less than 30% of the company's voting rights, increase their aggregate holding of voting rights in the company to 30% or more. "Consolidating effective control" in a company refers to a situation where a person and parties acting in concert with him, who already owned between 30% and 50% of the company's voting rights, increase their aggregate holding of voting rights in the company by more than 1% within a 6 month period.

12 **Offer:** Offer includes, wherever appropriate, take-over and merger transactions, howsoever effected, including reverse take-overs, schemes of arrangement, trust schemes, amalgamations, partial offers and also offers by a parent company for shares in its subsidiary. But offers for non-voting non-equity capital do not come within the Code.

NOTE ON DEFINITION OF OFFER

Scheme of Arrangement, Trust Schemes and Amalgamations

All schemes of arrangement, trust schemes and amalgamations are subject to the provisions of the Code. However, the Council may, subject to conditions, exempt:-

(a) a scheme of arrangement or a trust scheme from:-

(i) Rule 14 on mandatory offers;

(ii) Rule 15 on voluntary offers;

(iii) Rule 16 on partial offers;

(iv) Rule 17 on type of consideration required;

(v) Note 1(b) on Rule 19 on appropriate offers to holders of convertibles, etc;

(vi) Rule 20.1 on requirement to keep offer open for 14 days after it is revised;

(vii) Rule 21 on purchases of voting rights in any scheme company at above the offer price;

(viii) Rule 22 on the offer timetable;

(ix) Rule 28 on acceptances;

(x) Rule 29 on the right of acceptors to withdraw their acceptances; and

(xi) Rule 33.2 on 6 months delay before acquisition of voting rights in the scheme company at above the offer price; and

(b) an amalgamation from:-

(i) Rule 20.1 to keep the offer open for 14 days after it is revised;

(ii) Rule 22 on offer timetable;

(iii) Rule 28 on acceptances; and

(iv) Rule 29 on the right of acceptors to withdraw their acceptances.

The Council will normally grant such exemption if:-

(a) the offeror and its concert parties as well as the common substantial shareholders of the merging companies (i.e. those holding 5% or more interests in both the companies to be merged) abstain from voting on the scheme of arrangement, trust scheme or amalgamation;

(b) those persons and their concert parties who, as a result of the scheme of arrangement, trust scheme or amalgamation, would acquire 30% or more voting

rights in a merging company or a new entity that holds one or both of the merging companies, or, if they together already hold between 30% and 50% of the merging company's voting rights before the scheme of arrangement, trust scheme or amalgamation, would increase their voting rights in such merging company by more than 1% in any period of 6 months, abstain from voting at the meeting of that merging company to approve the scheme of arrangement, trust scheme or amalgamation. The scheme, trust scheme or amalgamation document for that merging company must contain advice to the effect that by voting for the scheme, trust scheme, or amalgamation, shareholders are agreeing to such persons and their concert parties acquiring or consolidating effective control in the merging company without having to make a general offer for the company. In addition, the scheme, trust scheme or amalgamation document must disclose the names of such persons, their current voting rights in the merging company and their voting rights in the merging company and/or new entity after the scheme of arrangement, trust scheme or amalgamation;

(c) the directors of a merging company who are also directors of the other merging company or who are acting in concert with those persons in (a) or (b) above abstain from making a recommendation on the scheme of arrangement, trust scheme or amalgamation to shareholders of the merging companies;

(d) the merging company which is in effect the offeree company appoints an independent financial adviser to advise its shareholders on the scheme of arrangement, trust scheme or amalgamation. Where the scheme of arrangement, trust scheme or amalgamation involves a reverse take-over or a "merger of equals", each of the merging companies must appoint an independent financial adviser to advise their respective shareholders. In cases of doubt, the Council should be consulted;

(e) in the case of trust schemes, in addition to (a), (b), (c) and (d) above:

(i) the trust scheme is approved by a majority in number representing three-fourths in value of unitholders or class of unitholders present and voting either in person or by proxy at a meeting convened to approve the trust scheme; and

(ii) the trustee or trustee-manager obtains Court approval for the trust scheme under Order 80 of the Rules of Court; and

(f) in the case of amalgamations, in addition to (a), (b), (c) and (d) above:

(i) the amalgamation document must be posted within 35 days of the announcement of the trust scheme or amalgamation; and

(ii) the amalgamation must be effective by 5:30 pm on the 60th day after the date of posting of the trust scheme or amalgamation document.

13 **Offeror:** Offeror includes corporations and bodies unincorporate (be they incorporated or carrying on business in Singapore or not), as well as natural persons (be they resident in Singapore or not and whether citizens of Singapore or not).

14 **Offer Period:** Offer period means the period from the date when an announcement is made of a proposed or possible offer (with or without terms) until the date such offer is declared to have closed or lapsed.

15 **Options:** Options means options to subscribe for or purchase new shares or existing shares in the company.

16 **Persons:** Persons include bodies corporate.

17 **Price:** In calculating the price paid for shares purchased, stamp duty and dealing costs should be excluded. When accepting shareholders are entitled under the offer to retain a dividend declared by the offeree company but not yet paid, the offeror, in establishing the offer price, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled.

18 **Registered Business Trust and Business Trust:** Registered business trust and business trust have the same meanings as attributed to such terms by section 2 of the Business Trusts Act (Cap. 31A).

NOTE ON DEFINITION OF REGISTERED BUSINESS TRUST AND BUSINESS TRUST

References to company throughout the Code should be taken as a reference to a registered business trust or business trust and/or a company as the context requires. In the context of a registered business trust and a business trust, references to shares, shareholders and board of a company would, where appropriate refer to units, unitholders and the trustee-manager.

Where a reference to a company should refer to a registered business trust or business trust, an action taken by the company should refer to an action taken by the trustee-manager and/or any of its directors (in their respective capacity on behalf of a registered business trust or business trust). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a registered business trust or business trust, voting rights owned, controlled or held by the company should refer to voting rights owned, controlled or held, whether directly or indirectly, by the trustee-manager and/or any of its directors (in their respective capacity on behalf of the registered business trust or business trust). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a registered business trust or business trust, assets owned, controlled or held by the company should refer to assets owned, controlled or held by the trustee-manager. This would include assets owned, controlled or held by the trustee-manager through any special purpose vehicle. In cases of doubt, the Council should be consulted.

19 **REIT:** REIT refers to a real estate investment trust under the Securities and Futures Act (Cap 289).

NOTE ON DEFINITION OF REIT

References to company throughout the Code should be taken as a reference to a REIT and/or a company as the context requires. In the context of a REIT, references to shares, shareholders and board of a company would, where appropriate refer to units, unitholders and manager.

Where a reference to a company should refer to a REIT, an action taken by the company should refer to an action taken by the trustee (in its capacity as trustee of a REIT) or the manager and/or any of its directors (in their respective capacity on behalf of a REIT). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a REIT, voting rights owned, controlled or held by the company should refer to voting rights owned, controlled or held, whether directly or indirectly, by the trustee (in its capacity as trustee of a REIT) or the manager and/or any of its directors (in their respective capacity on behalf of a REIT). In cases of doubt, the Council should be consulted.

Where a reference to a company should refer to a REIT, assets owned, controlled or held by the company should refer to assets owned, controlled or held by the trustee (in its capacity as trustee of a REIT). This would include assets owned, controlled or held by the trustee through any special purpose vehicle. In cases of doubt, the Council should be consulted.

20 **Reverse Take-over:** A reverse take-over refers to a transaction that would lead to an offeree company shareholder and his concert parties acquiring effective control (i.e. 30% or more of the voting rights) of the offeror.

21 **Securities Exchange Offer:** Securities exchange offer means an offer in which the consideration includes securities of the offeror or any other body corporate.

22 **Securities Exchange:** Any securities exchange approved by the Monetary Authority of Singapore under the Securities and Futures Act.

23 **Statutory Control:** Statutory control means a holding, or aggregate holdings, of shares carrying more than 50% of the voting rights of a company.

24 **Voting Rights:** Voting rights means all the voting rights attributable to the share capital of a company which are currently exercisable at a general meeting.

25 **Warrants:** Warrants means rights to subscribe for or purchase new shares or existing shares in the company.

NOTES ON DEFINITIONS

1. *Control*

For the purpose of the above, control of a company is defined as ownership of 20% or more of the voting rights of the company.

2. *References to bank or financial and other professional advisers*

References to a "bank" do not apply to a bank whose sole relationship with a party to an offer is the provision of normal commercial banking services or such activities in connection with the offer as confirming that cash is available, handling acceptances and other registration work.

References to "financial and other professional advisers (including stockbrokers)", in relation to a party to an offer, do not include an organisation which has stood down, because of a conflict of interest or otherwise, from acting for that party in connection with the offer. If the organisation is to have a continuing involvement with that party during the offer, the Council must be consulted.

3. *Calculation of time*

Where a period laid down by the Code ends on a day which is not a business day, the period is extended until the next business day.

GENERAL PRINCIPLES

1 The spirit of the Code

It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in take-over or merger transactions. Accordingly, persons engaged in such transactions must observe both the spirit and the precise wording of the General Principles and Rules. Moreover, the General Principles and the spirit of the Code will apply in areas not explicitly covered by any Rule.

2 Limitations on directors' action

While the boards of an offeror and an offeree company and their respective advisers and associates have a primary duty to act in the best interests of their respective shareholders, the General Principles and Rules will inevitably impinge on the freedom of action of boards and persons involved in take-over and merger transactions. They must therefore accept that there are limitations on the manner in which those interests can be pursued in a take-over or merger transaction.

3 Equality of treatment

An offeror must treat all shareholders of the same class in an offeree company equally.

4 Oppression of minority

Rights of control must be exercised in good faith and oppression of the minority is wholly unacceptable.

5 Acquisition or consolidation of effective control

Where effective control of a company is acquired or consolidated by a person, or persons acting in concert, a general offer to all other shareholders is normally required.

6 Announcements

An offeror should announce an offer only after the most careful consideration. Before taking any action which may lead to an obligation to make a general offer, a person and his financial advisers should be satisfied that he can and will continue to be able to implement the offer in full.

7 Frustration of an offer by offeree board

If the board of an offeree company has received a bona fide offer or has reason to believe that a bona fide offer is imminent, it must not, without the approval of its shareholders in general meeting, take any action on the affairs of the offeree company that could effectively result in any bona fide offer being frustrated or the shareholders being denied an opportunity to decide on its merits.

8 Competent independent advice

An offeree board which receives an offer or is approached with a view to an offer being made, should, in the interests of its shareholders, seek competent independent advice.

9 Information to all shareholders

In the course of a take-over or merger transaction, or when such transaction is in contemplation, the offeror, the offeree company and their respective advisers must not give information to some shareholders that is not made available to all shareholders. This principle does not apply to the provision of information in confidence by the offeree company to a bona fide potential offeror or vice versa.

10 Sufficient information and time to shareholders

Shareholders should be given sufficient information, advice and time to enable them to reach an informed decision on an offer. No relevant information should be withheld from them.

11 Standards of care in documents

Any document or advertisement addressed to shareholders containing information, opinions or recommendations from the board of an offeror or offeree company or its advisers, should, as with a prospectus, meet the highest standards of care and accuracy. Profit forecasts require special care.

12 Prevention of a false market

All parties to a take-over or merger transaction should make full and prompt disclosure of all relevant information and use every endeavour to prevent the creation of a false market in the shares of an offeror or offeree company. Parties to such transactions must take care not to make statements which may mislead shareholders or the market.

13 Duties of directors with personal interests

Directors of an offeror or an offeree company should, in advising their shareholders, have regard to the interests of shareholders as a whole, and not to their own interests or those derived from personal or family relationships. Shareholders of companies which are effectively controlled by their directors must accept that the attitude of their board on any offer will be decisive. There may be good reasons for the board rejecting an offer or preferring the lower of two offers. The board must carefully examine its reasons for doing so and be prepared to explain its decision to shareholders.

RULES

1 APPROACH

1.1 Offers to be put to board or advisers

The offer should be put forward in the first instance to the board of the offeree company or to its advisers.

1.2 Identity of offeror

If the offer or an approach with a view to putting forward an offer is not made by the ultimate offeror or potential offeror, the identity of the ultimate or potential offeror must be disclosed at the outset to the board of the offeree company.

1.3 Implementation of offer

A board which is approached is entitled to be satisfied that the offeror will be in a position to implement the offer in full.

2 SECRECY BEFORE ANNOUNCEMENTS

There must be absolute secrecy before an announcement. All persons privy to confidential information, particularly relating to an offer or contemplated offer, must treat that information as secret and may pass it to another person only if it is necessary to do so and if that person is made aware of the need for secrecy. No person who is privy to such information should make any recommendation to any other person as to dealing in the relevant securities. All such persons must conduct themselves so as to minimise the risk of an accidental leak of information.

NOTE ON RULE 2

Warning Clients

Advisers should warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular this Rule and restrictions on dealings.

3 TIMING AND CONTENTS OF ANNOUNCEMENTS

3.1 Announcements to be made by offeror or potential offeror

Before the board of the offeree company is approached, the responsibility for making an announcement will normally rest with the offeror or potential offeror. The offeror or potential offeror should keep a close watch on the offeree company's share price and volume for signs of undue movement.

The offeror or potential offeror must make an announcement:-

(a) when, before an approach has been made to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchase of the offeree company's shares or otherwise) which have directly contributed to the situation; or

(b) immediately upon an acquisition of shares which gives rise to an obligation to make an offer under Rule 14.

In all cases of doubt, the Council should be consulted.

3.2 Announcements to be made by offeree company

Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company. The offeree board should keep a close watch on the offeree company's share price and volume for signs of undue movement.

The offeree board must make an announcement:-

(a) when the offeree board receives notification of a firm intention to make an offer from a serious source. Irrespective of whether the offeree board views the offer favourably or otherwise, it must inform its shareholders without delay. The board of the offeree company must issue a paid press notice or, where the offeror has published a paid press notice, an announcement;

(b) when, following an approach to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;

(c) when negotiations or discussions between the offeror and the offeree company are about to be extended to include more than a very restricted number of people; or

(d) when the board of a company is aware that there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying 30% or more of the voting rights of a company or when the board of a company is seeking potential offerors, and:-

(i) the company is the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover; or

(ii) more than a very restricted number of potential purchasers or offerors are about to be approached.

3.3 Announcements to be made by potential vendor

The holder(s) of shares carrying 30% or more of the voting rights of a company may, on occasions, hold negotiations or discussions with a potential offeror before the offeror makes an approach to the board of the company. If the company then becomes the subject of rumour or speculation about a possible offer, or there is undue movement in its share price or a significant increase in the volume of share turnover, and there are reasonable grounds for concluding that the actions of the potential vendor(s) (whether through inadequate security or otherwise) have contributed to the situation, the potential vendor(s) must make an announcement. In all cases of doubt, the Council should be consulted.

NOTES ON RULES 3.1, 3.2 AND 3.3

1. *Conditional offers*

When a proposed offer is conditional on acceptances or undertakings to accept by one or more shareholders, the proposed announcement must include a statement by those shareholders who have accepted or undertaken to accept the offer, whether such acceptances or undertakings are revocable, and if so, the conditions under which such acceptances or undertakings may be revoked.

2. *Agreements and letters of intent*

Agreements and letters of intent relating to an offer or possible offer should be announced publicly.

3. *Undue movement in share price*

A movement of approximately 20% above the lowest share price since the time of the approach or above an appropriate market index should be regarded as untoward. When there is such a movement or the offeree company is subject to rumour or speculation, the Council should be consulted if no immediate announcement is proposed to be made. In determining whether there has been undue movement in the share price, the Council may have regard to general market and sector movements, publicly available information about the company, trading activity in the company's securities, the time period over which the price movement has taken place, and any such other factors as it considers appropriate.

4. *Tender for Shares*

When the potential vendor calls a public tender for the sale of his shares in the offeree company, an announcement must be made. In the case of a closed tender, where there is rumour or speculation about a possible tender, or undue movement in the share price of the offeree company, or a significant increase in the volume of share turnover, an announcement must also be made.

5. *Holding Announcement*

In cases where an announcement of a firm intention to make an offer is premature or inappropriate, a holding announcement that talks are taking place (without naming the potential offeror) or that a potential offeror is considering making an offer may be made. If following such announcement, no further announcement has been made in respect of the offer or possible offer within 1 month, an announcement must be made setting out the progress on the talks or the consideration of the offer or possible offer. This obligation to provide

monthly updates continues until a firm intention to make an offer or a decision not to proceed with an offer is announced. When talks are terminated or a potential offeror decides not to proceed with an offer, an announcement must be made to that effect.

A possible alternative to an immediate announcement may be to obtain a suspension of trading of the offeree company's shares to be followed shortly by an announcement. In all cases of doubt, the Council should be consulted.

6. *Deadline for clarification by potential competing offerors*

Where an offeror has announced a firm intention to make an offer and a potential competing offeror becomes the subject of a possible offer announcement, the potential competing offeror must normally, by the 53rd day from the date the first offeror despatches its initial offer document, either:

(i) announce a firm intention to make an offer; or

(ii) make a no intention to bid statement.

Where the first offeror's offer is being implemented by way of a scheme of arrangement, a trust scheme or an amalgamation, the above deadline for the potential competing offeror to clarify its intention would normally be no later than the 7th day prior to the date of the shareholders' meeting to approve the relevant scheme or amalgamation.

The Council reserves the right to impose an earlier or later deadline where appropriate.

7. *Paid press notice*

A paid press notice, for the purpose of this Rule or other parts of the Code where this term is used, refers to a paid advertisement in the most widely circulated English-language national newspaper published daily. For the avoidance of doubt, the reference to national newspapers published daily includes those published every day except Sunday.

3.4 Suspension of trading

A potential offeror should not attempt to prevent the board of an offeree company from making an announcement or requesting the Securities Exchange to grant a temporary halt in dealings at any time the offeree board considers appropriate.

3.5 Announcement of firm intention to make an offer

When a firm intention to make an offer is announced, the announcement must state:-

(a) the terms of the offer;

(b) the identities of the offeror and the ultimate offeror or ultimate controlling shareholder of the offeror, where applicable;

(c) details of any existing holding of securities which are being offered for or which carry voting rights, or convertible securities, warrants, options or derivatives in respect of securities which are being offered for or which carry voting rights in the offeree company:-

(i) which the offeror owns or over which it has control;

(ii) which is owned or controlled by any person acting in concert with the offeror; or

(iii) in respect of which the offeror or any person acting in concert with it has received an irrevocable commitment to accept the offer;

(d) all conditions (including normal conditions relating to acceptances, listing and increase of capital) to which the offer or the posting of it is subject;

(e) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company which might be material to the offer; and

(f) the number and percentage of any relevant securities in the offeree company which the offeror or any person acting in concert with it has:-

(i) granted a security interest to another person, whether through a charge, pledge or otherwise;

(ii) borrowed from another person (excluding borrowed securities which have been on-lent or sold); or

(iii) lent to another person.

Where the offer is for cash or involves an element of cash, the announcement of an offer should include an unconditional confirmation by the financial adviser or by another appropriate third party that the offeror has sufficient resources available to satisfy full acceptance of the offer.

NOTES ON RULE 3.5

1. Unambiguous language

The language used in announcements should clearly and concisely reflect the position being described. Statements which may give the impression that persons have committed themselves to certain courses of action (e.g. accepting in respect of their own shares) when they have not in fact done so should be avoided.

2. Holdings by close relatives and/or a group of which an offeror or an adviser is a member

To maintain secrecy, it may not be prudent to make enquiries beforehand into details of any holdings of offeree company shares or options in respect of shares held by or entered into by close relatives and/or other parts of an offeror or adviser's group (see "acting in concert" in Definitions section) for inclusion in an announcement. In such circumstances, the Council should be consulted and the relevant details should be obtained as soon as possible after the announcement has been made. If the holdings are significant, a further announcement may be required.

3. Irrevocable commitments

References to commitments to accept an offer must specify in what circumstances, if any, they will cease to be binding; for example, if a higher offer is made.

4. *Confirmation of resources*

The Council may require evidence to support a statement that resources are available to satisfy the offeror's obligations. The Council may also require evidence that the offeror has sufficient resources to complete the purchase of shares which gives rise to the obligations.

3.6 Announcements of certain purchases

Acquisitions of voting rights of an offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a mandatory offer (Rule 14), to make a cash offer (Rule 17.1) or to revise an offer (Rule 20). Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of voting rights acquired, the price paid and any revisions to the terms of the offer, together with other information required by Rule 3.5 (to the extent that it has not previously been announced).

NOTE ON RULE 3

Timing of announcements

Within 30 minutes of incurring an obligation to make an offer or to revise an offer already made, the offeror must either make an announcement, or request the Securities Exchange for a temporary halt in trading of the offeree company's shares and make an announcement before the trading suspension is lifted.

4 NO WITHDRAWAL OF AN OFFER

Where the offeror has announced a firm intention to make an offer (as opposed to an announcement that talks are taking place which may lead to an offer), it cannot withdraw the offer without the Council's consent, unless the posting of the offer was expressed as being subject to the prior fulfilment of a specific condition and that condition has not been met.

NOTES ON RULE 4

1. *Competing offer*

An offeror need not normally proceed with an announced offer if a competitor has already posted a higher offer, which carries no additional conditions other than those necessary for the implementation of the original offer. The Council should be consulted if either offer is a securities exchange offer.

2. *Announcement required*

If an offeror is permitted to withdraw or an offer lapses because of non-fulfilment of a condition, the offeror will be required to make an announcement to explain why the offer is withdrawn or has lapsed.

5 FRUSTRATION OF OFFERS BY AN OFFEREE BOARD

In the course of an offer, or even before the date of the offer announcement, if the board of the offeree company has reason to believe that a bona fide offer is imminent, the board must not, except pursuant to a contract entered into earlier, take any action, without the approval of shareholders at a general meeting, on the affairs of the offeree company that could effectively result in any bona fide offer being frustrated or the shareholders being denied an opportunity to decide on its merits. Such actions include but are not limited to:-

(a) issue any authorised but unissued shares;

(b) issue or grant options in respect of any unissued shares;

(c) create or issue or permit the creation or issue of any securities carrying rights of conversion into or subscription for shares of the company;

(d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of material amount;

(e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

(f) cause the offeree company or any subsidiary or associated company to purchase or redeem any shares in the offeree company or provide financial assistance for any such purchase.

The notice convening such a meeting of shareholders must include information about the offer or anticipated offer.

If the offeree board considers that an obligation to take any of the above actions or other special circumstance exists, although a formal contract has not been entered into, it should consult the Council and obtain its consent to proceed without a shareholders' meeting.

NOTES ON RULE 5

1. *Consent by the offeror*

For any transaction that falls within this Rule and requires shareholders' approval at a general meeting, the Council would normally waive this requirement if the offeror has expressed no objections to the proposed transaction.

2. *"Material amount"*

To determine whether a disposal or acquisition is of "a material amount", the Council will generally consider the following:-

(a) *the value of the assets to be disposed of or acquired compared with the assets of the offeree company;*

(b) *where appropriate, the aggregate value of the consideration to be received or given compared with the assets of the offeree company; and*

(c) *where appropriate, net profits (after deducting all charges except taxation and excluding exceptional items) attributable to the assets to be disposed of or acquired compared with those of the offeree company.*

For these purposes, the term "assets" will normally mean fixed assets plus current assets less current liabilities.

The Council will normally consider relative values of 10% or more as material, although relative values lower than 10% may be considered material if the asset is of particular significance.

If several transactions that are not individually material occur or are intended, the Council will aggregate such transactions to determine whether the requirements of this Rule are applicable to any of them.

The Council should be consulted in advance where there is any doubt as to the application of the above.

3. *Interim dividends*

The declaration and payment of dividends by the offeree company, other than in the normal course and the usual quantum, during an offer period may in certain circumstances be contrary to this Rule in that it could effectively frustrate an offer. Offeree companies and their advisers must, therefore, consult the Council in advance. The scheduled payment of dividends declared before the offer period or before the board of the offeree company has reason to believe that a bona fide offer is imminent, whichever is earlier, does not fall within this Rule.

4. *Service contracts*

For the purposes of this Rule, the Council will regard any change to a director's service contract or terms of employment which leads to a significant improvement in his terms of service as entering into a contract "other than in the ordinary course of business".

This will not prevent any such improvement which results from a genuine promotion or new appointment, but the Council must be consulted in advance in such cases.

5. *Established share option schemes*

The Council will normally allow the offeree company to grant options over shares under an established share option scheme if its timing and level are in accordance with the company's normal practice.

6. *Registered business trusts, business trusts and REITs*

For the avoidance of doubt, no frustrating action should be undertaken by:

(a) in the case of an offeree registered business trust or business trust, the trustee-manager and/or the directors of the trustee-manager; and

(b) in the case of an offeree REIT, the manager and/or any of the directors of the manager and/or the trustee (in its capacity as trustee of such offeree REIT).

In particular, in addition to the matters set out in this Rule, the relevant parties must not, without the approval of the unitholders, do or agree to do the following:

(i) in the case of a registered business trust or business trust, otherwise than in the ordinary course of business:

(A) alter the terms of engagement between the offeree registered business trust or business trust and its trustee-manager; or

(B) enter into or alter the terms of, the service contracts between the trustee-manager and any of its directors; and

(ii) in the case of an offeree REIT, otherwise than in the ordinary course of business:

(A) alter the terms of engagement between the offeree REIT and its manager; or

(B) enter into or alter the terms of, the service contracts between the manager and any of its directors.

7. <u>When there is no need to post</u>

The Council may allow an offeror not to proceed with its offer if, at any time during the offer period prior to the posting of the offer document, the offeree company:-

(a) passes a resolution in a general meeting which has the effect of frustrating the offer; or

(b) announces or enters into a transaction pursuant to a contract entered into earlier which has the effect of frustrating the offer.

8. *Soliciting a competing offer etc.*

In considering the course of action which it may take in the face of an offer, an offeree board may consider the feasibility of soliciting a competing offer or running a sale process. The Council will not normally treat actions by the offeree board in soliciting a competing offer or running a sale process for the offeree company as actions which frustrate the original offer. A better offer or an alternative offer is generally in the interest of the offeree company's shareholders. Such action neither hinders the progress of, nor results in shareholders being deprived of the opportunity to decide on the merits of, the first offer. In cases of doubt, the Council should be consulted.

6 DIRECTORS' RESPONSIBILITIES

6.1 Conduct of offer

While a board of directors may delegate the day-to-day conduct of an offer to individual directors or a committee of directors, the board as a whole must ensure that proper arrangements are in place to enable it to monitor that conduct so that each director may fulfil his responsibilities under the Code. These arrangements should ensure that:-

(a) the board is provided promptly with copies of all documents and announcements issued by or on behalf of their company which bear on the offer; the board receives promptly details of all dealings in relevant securities made by their company or its associates and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of their company in the context of the offer which do not relate to routine administrative matters;

(b) those directors with day-to-day responsibility for the offer are in a position to justify to the board all their actions and proposed courses of action; and

(c) the opinions of advisers are available to the board where appropriate.

The above procedures should be followed, and board meetings held, as and when necessary throughout the offer in order to ensure that all directors are kept up-to-date with events and with actions taken.

The Council expects the directors to co-operate with it in connection with its enquiries. This includes providing, promptly on request, copies of minutes of board meetings and other information in their possession, or in the possession of an offeror or the offeree company as appropriate, which may be relevant to the enquiry.

6.2 Conflicts of interests

Directors who believe that they may face conflicts of interests in situations other than those set out in Note 1 on Rule 8.3 should consult the Council on whether it is appropriate for them to assume responsibility for any recommendations on the offer that the board may make to shareholders.

6.3 Resignation of directors of offeree company

Except with the Council's consent, the directors of the offeree company should not resign from the board until the offeror has clearly indicated that the offer will not be revised and the later of the date of posting of the offeree board circular or the date the offer becomes or is declared unconditional in all respects. This rule applies once a bona fide offer has been communicated to the offeree board or the offeree board has reason to believe that a bona fide offer is imminent.

6.4 Sale of shares by directors

Where directors (and their close relatives, related trusts and companies controlled by such directors, close relatives and related trusts) or shareholders or groups of shareholders acting collectively holding effective control, whether represented on the board or not, sell shares to a purchaser, as a result of which the purchaser is required to make an offer under Rule 14, the vendors must ensure that as a condition of the sale the purchaser undertakes to fulfill his obligations under Rule 14.

7 INDEPENDENT ADVICE

7.1 Board of offeree company

The board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders.

NOTES ON RULE 7.1

1. *Management buy-outs and offers by controlling shareholders*

   The requirement for competent independent advice is particularly important where the offer is a management buy-out or similar transaction or is being made by or with the co-operation of the existing controlling shareholder or group of shareholders. As the responsibility borne by the adviser is considerable, the board of the offeree company or potential offeree company should appoint an independent adviser as soon as possible after it becomes aware that such an offer may be made.

2. *When there is uncertainty about financial information*

   When there is a significant area of uncertainty in the most recently published accounts or interim figures of the offeree company (e.g. a qualified audit report, a material provision or contingent liability or doubt over the real value of a substantial asset, including a subsidiary company), the board and the independent adviser should highlight the factors which they consider important.

3. *When no recommendation is given or there is a divergence of views*

   When directors are unable to give a firm recommendation or when there is a divergence of views amongst board members or between the board and the independent adviser as to either the merits of an offer or the recommendation being made, this must be drawn to shareholders' attention and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors.

4. *Partial offer for less than 30%*

   The requirement for competent independent advice does not apply to partial offers which could not result in the offeror and persons acting in concert with it holding shares carrying 30% or more of the voting rights of the offeree company.

5. *Where the offeree board possesses management projections and forecasts*

In considering the course of actions which it may take in the face of an offer, an offeree board may consider sharing available management projections and forecasts with the independent adviser for the purpose of the latter's advice on the offer.

7.2 Board of a Singapore-incorporated offeror company

The board of a Singapore-incorporated offeror must obtain competent independent advice on an offer where the offer being made is a reverse take-over. The board of a Singapore-incorporated offeror must also obtain competent independent advice when it faces a material conflict of interests. The board must make known the substance of the advice obtained to its shareholders.

NOTES ON RULE 7.2

1. *General*

When the board of an offeror is required to obtain competent independent advice, it should do so before announcing an offer or any revised offer. Such advice should be concerned with whether or not the making of the offer is in the interests of the company's shareholders. Shareholders must have sufficient time to consider advice given to them prior to any general meeting held to implement the proposed offer. Any documents or advertisements issued by the board in such cases must include a responsibility statement by the directors as set out at Note 6 on Rule 8.3.

2. *Conflicts of interests*

A conflict of interests will exist, for instance, where there are significant cross-shareholdings between an offeror and the offeree company, where there are a number of directors common to both companies, or where a common substantial shareholder in both companies is a director of or has a nominee director in either company.

7.3 Disqualified advisers

The Council would not normally regard as an appropriate person to give competent independent advice a person who is in the same group as the financial or professional

adviser (including a stockbroker) to the offeror or who has a substantial interest in or financial connection with either the offeror or the offeree company of such a kind as to create a conflict of interests for that person.

NOTES ON RULE 7.3

1. *Independence of adviser*

   The Rule requires the offeree company's adviser to have a sufficient degree of independence from the offeror to ensure that the advice given is properly objective. Accordingly, in certain circumstances it may not be appropriate for a person who has had a recent advisory relationship with an offeror to give advice to the offeree company. In such cases the Council should be consulted. The views of the board of the offeree company will be an important factor in Council's consideration whether such a person should advise the offeree company.

2. *Conflicts of interests*

   Instances where conflicts of interest may arise include those resulting from the possession of material confidential information or where the adviser is part of a multi-service financial organisation, as exemplified below.

   It is incumbent upon multi-service financial organisations to familiarise themselves with the implications under the Code of conducting other businesses in addition to, for example, corporate finance or stockbroking. If one part of such an organisation is involved in an offer, for example, in giving advice to an offeror or the offeree company, a number of Rules of the Code may be relevant to other parts of that organisation, whose actions may have serious consequences under the Code. Compliance departments of such organisations have an important role in this respect and are encouraged to liaise with the Council in cases of doubt.

   It may be a fact that corporate finance, stockbroking, fund management and corporate advisory activities may be conducted on a day-to-day basis quite separately within the same organisation, but it is necessary for such organisation to satisfy the Council that it arranges its affairs to ensure that there is total and effective segregation of those operations, and those operations are conducted without regard for the interests of other parts of the same organisation or of its clients.

A financial or professional adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because that other party was a previous client or because of the adviser's involvement in an earlier transaction. In certain circumstances, this may necessitate the adviser declining to act, for example, because the information is such that a conflict of interests is likely to arise. It may not be possible to resolve such a conflict simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

When the adviser had previous dealings (other than the provision of credit facilities on an arm's length basis) with the offeree company, the adviser may act for the offeror only if the adviser, in its professional judgment, is satisfied that its previous dealings with the offeree company would not give the offeror an advantage in its take-over offer for the offeree company (i.e. the information the adviser possesses on the offeree company from its previous dealings is no longer material or relevant in the context of the offer). The adviser must consult the Council and be ready to justify the basis of its judgment to the Council before acting for the offeror. Where appropriate, the Council may take into account the views of the offeree company when deciding on whether to allow such an adviser to act for the offeror. When an adviser has been actively advising a company which becomes an offeree company, it may be acceptable for it to continue to act for the offeree company.

Where a financial adviser proposing to act for the offeree company has a financial connection with the offeror or persons acting in concert with the offeror or the offeree company or persons acting in concert with the offeree company, the adviser should consult the Council. The Council would normally allow the financial adviser to act for the offeree company if:-

(a) the financial connection is not material enough to create a conflict of interests; and

(b) the independent directors of the offeree company confirm in writing to the Council that, in their opinion, it is appropriate to appoint such financial adviser to render independent advice on the take-over offer.

In the case of a competitive offer, it is not acceptable for an adviser to act for more than one of the competing offerors in relation to the offer at any point in time. It is also not acceptable for an adviser who was acting, or had previously acted, for one offeror in a competitive offer to subsequently switch to acting for a competing offeror in relation to the same offer. This restriction does not apply to the provision of credit facilities to an offeror on an arm's length basis.

3. *<u>Success fees</u>*

Certain fee arrangements between an adviser and the offeree company may create a conflict of interests which would disqualify the adviser as an independent adviser to the offeree company. For example, a fee which becomes payable to the adviser only if the offer fails will normally create such a conflict of interests. In cases of doubt, the Council should be consulted.

8 INFORMATION

8.1 Information to Shareholders

Shareholders must be given all the facts necessary to make an informed judgment on the merits or demerits of an offer. Such facts require accurate and fair presentation and must be given to the shareholders early enough to enable them to make a decision in good time. The obligation of the offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders. In particular, whether or not the offer consideration is cash, information should be given about the offeror.

NOTES ON RULE 8.1

1. Material changes

Following the publication of the initial offer document or offeree board circular (as appropriate) and until the end of the offer period, the relevant company must promptly announce:

(a) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and

(b) any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

In cases of doubt, the Council should be consulted.

Where an announcement is required to be made under Rule 8.1, the Council may further require a document setting out the relevant information to be sent to the shareholders in the offeree company. In addition, to ensure prompt and wide dissemination of the material change in information, a paid press notice may be needed.

Any subsequent document issued to shareholders following the publication of the initial offer document or offeree board circular (as appropriate) and until the end of the offer period must also include information about any material change

in any information previously published by or on behalf of the relevant company during the offer period. If there have been no such changes, this should be stated.

Where information of the kind under this Note is published, and where such information is material to offeree company shareholders' consideration in determining whether to accept an offer, the Council expects the independent financial adviser and the offeree board to take into consideration such material information and, where appropriate, revise their recommendation and/or advice. In cases of doubt, the Council should be consulted.

2. *Pre-conditional offers*

When an offer has been announced, the making of which is subject to a pre-condition relating to action by offeree company shareholders (e.g. the rejection of a proposed acquisition or disposal), the first major circular sent by the potential offeror to those shareholders must normally include the information which would be required if it were an offer document.

8.2 Standard of Care

Any document or advertisement addressed to shareholders in connection with an offer or any announcement issued in connection with an offer must, as is the case with a prospectus, satisfy the highest standard of accuracy and present the information contained therein adequately and fairly. This applies whether the offeror, the offeree company, or any of their advisors or agents issues the document, advertisement or announcement.

NOTES ON RULE 8.2

1. *Adviser's responsibility*

The Council regards advisers as being responsible for guiding their clients and any relevant public relations advisers with regard to any information released during the course of an offer.

Advisers must ensure, at the outset, that directors and officials of companies are warned that they must consider carefully the Code implications of what they say, particularly during interviews and discussions with the media. It is very difficult after publication to alter an impression given or a view or remark

attributed to a particular person. In appropriate circumstances, the Council will require a statement of retraction. Particular areas of sensitivity on which comment must be avoided include future profits and prospects, asset values and the likelihood of the offer being revised.

2. *Source*

The source for any information which is material to an argument must be clearly stated, including sufficient details to enable the significance and/or reliability of such information to be assessed.

3. *Quotations*

A quotation (e.g. from a newspaper or other source) must not be used out of context and details of the origin must be included. Since quotations will necessarily carry the implication that the comments quoted are endorsed by the board, such comments must not be quoted unless the board is prepared, where appropriate, to corroborate or substantiate them and the directors' responsibility statement is included.

4. *Diagrams etc.*

Pictorial representations, charts, graphs and diagrams must be presented without distortion and, when relevant, must be to scale.

5. *Unambiguous language*

The language used in documents, releases or advertisements must clearly and concisely reflect the position being described. Statements which may give the impression that persons have committed themselves to certain courses of action (e.g. accepting in respect of their own shares) when they have not in fact done so must be avoided.

8.3 Responsibility

Each document or advertisement addressed to shareholders and each announcement issued in connection with an offer must state that the directors of the company issuing the document or advertisement (including any who may have delegated detailed supervision of the document, advertisement or announcement) have taken all reasonable care to ensure that the facts stated and all opinions expressed therein are fair and accurate and, where appropriate, no material facts have been omitted and also state that they jointly and severally accept responsibility accordingly.

If it is proposed that any director should be excluded from such a statement, the Council's consent is required. Such consent is given only in exceptional circumstances. In such cases, the exclusion and the reasons for it must be stated in the document, advertisement or announcement.

A copy of the authority on behalf of the relevant board of directors for the issue of such document, advertisement or announcement must be lodged with the Council.

NOTES ON RULE 8.3

1. *Exclusion from directors' responsibility statement*

Where it is proposed that any director be excluded from a directors' responsibility statement, an application for the Council's consent should be made by or on behalf of the director concerned, stating clearly the reasons for the application. If it is expected that the director concerned will be away during the material period of time, arrangements should be made to ensure that the Council's consent is sought in good time.

The Council will normally exempt a director of the offeree company who is, or has entered into an agreement to become, a director, employee or nominee of the offeror or a person acting in concert with the offeror from assuming responsibility for any recommendations on the offer that the board of the offeree company may make to its shareholders. Such director of the offeree company must, however, still assume responsibility for the accuracy of facts stated in documents which the offeree company sends to its shareholders in connection with the offer.

Directors of the offeree company who have sold offeree company shares to the offeror or persons acting in concert with the offeror are not deemed to have an

irreconcilable conflict of interests. The same holds true for directors of the offeree company who are directors, employees or nominees of the vendor company which has sold offeree company shares to the offeror or persons acting in concert with the offeror. The Council will not normally exempt these directors from assuming responsibility for any recommendations on the offer that the offeree board may make to shareholders.

2. *Delegation of responsibility*

If detailed supervision of any document has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out. Each director must also disclose to the committee:-

(a) all relevant facts directly relating to himself (including his close relatives, related trusts and companies controlled by him, his close relatives and related trusts); and

(b) all other relevant facts known to him and relevant opinions held by him which, to the best of his knowledge and belief, either are not known to any member of the committee or, in the absence of his specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document.

3. *Composite document*

When the offer document and the offeree board circular are combined in a composite document, all directors of the offeror should take responsibility for the composite document, other than for the information in the document relating to the offeree company for which all directors of the offeree company should take responsibility.

4. *When an offeror is controlled by another person*

If the offeror is controlled, directly or indirectly, by another person or company, the Council will normally require that, in addition to the directors of the offeror, such other person or the directors of an ultimate parent company or, if there is a listed company in the chain between the ultimate parent company and the offeror, the directors of the listed company take responsibility for documents issued by or on behalf of the offeror. The Council may dispense with this requirement if the offeror in question is of sufficient substance in relation to the person or company which controls it.

In the case of professional trustee companies, the Council would look to the person in accordance with whose directions or wishes the trustees are accustomed to act and such person would be required to take responsibility.

5. *Origin*

Advertisements, announcements and documents sent to shareholders must identify clearly and prominently at their start from whom they originate. Shareholders should not be left in any doubt as to their origin. Advertisements and announcements should also include the directors' responsibility statement unless the information published is contained in a circular to shareholders which includes such a statement.

6. *Directors' joint and several responsibility*

Documents should state that all directors of the company issuing the document, jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading.

8.4 Unacceptable statements

Parties to an offer or potential offer and their advisers must take care not to issue statements which, while not factually inaccurate, may mislead shareholders and the market or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.

NOTE ON RULE 8.4

Statements of support

The board of the offeree company must not make statements about the level of support from its shareholders unless their up-to-date intentions have been clearly stated to the offeree company or its advisers. The Council will require such statements to be verified to its satisfaction; this may include immediate confirmation being given directly to the Council by the relevant shareholders.

8.5 Advertisements

The publication of advertisements connected with an offer or potential offer is prohibited unless the advertisement falls within one of the categories listed below:-

(a) product advertisements not bearing on an offer or potential offer (where there could be any doubt, the Council must be consulted);

(b) corporate image advertisements not bearing on an offer or potential offer;

(c) advertisements confined to non-controversial information about an offer (e.g. reminders as to closing times or the value of an offer). Such advertisements must avoid argument or invective;

(d) advertisements comprising preliminary or interim results and their accompanying statement, provided the latter is not used for argument or invective concerning an offer; or

(e) advertisements to give information, the publication of which by advertisement is required by the Securities Exchange.

NOTES ON RULE 8.5

1. *Accurate and fair advertisement*

The Code requires accuracy and fair representation in advertisements. The making of a misleading statement is a serious matter. Advertisements should therefore be prepared with care by the parties concerned. If a published advertisement has had a misleading effect, the Council will take a serious view of the matter. If there appears to have been no intention to mislead, the Council may decide that a simple correction will suffice. Any correction must be immediate.

2. *Use of alternative media*

For the purposes of this Rule, advertisements include not only press advertisements but also advertisements in other media, such as television, radio, video, audio tape, poster and the Internet.

8.6 Telephone campaigns and other forms of solicitations

Except with the Council's consent, campaigns in which shareholders are contacted by telephone or other medium may be conducted only by staff of the financial adviser who are fully conversant with the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and not misleading at the time it is quoted, may be used in such campaigns. Shareholders must not be put under pressure and must be encouraged to consult their professional advisers.

NOTES ON RULE 8.6

1. *Consent to use other callers*

If it is impossible to use staff of the type mentioned in this Rule, the Council may consent to the use of other people subject to:-

(a) an appropriate script for callers being approved by the Council;

(b) the financial adviser carefully briefing the callers prior to the start of the operation and, in particular, stressing:-

(i) that callers must not depart from the script;

(ii) that callers must decline to answer questions the answers to which fall outside the information given in the script; and

(iii) the callers' responsibilities under General Principle 9; and

(c) the operation being supervised by the financial adviser.

2. New information

In spite of this Rule, if new information is given to some shareholders, such information must immediately be made available to all shareholders.

3. Gathering of irrevocable commitments

The Council must be consulted before a telephone campaign is conducted with a view to gathering irrevocable commitments in connection with an offer. Where irrevocable commitments are to be sought, the financial adviser should be satisfied that the proposed arrangements will provide adequate information as to the nature of the commitment sought; and a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required. The financial adviser concerned will be responsible for ensuring compliance with all relevant legislation and other regulatory requirements.

8.7 Information to offeror

Immediately following the announcement of a firm intention to make an offer, the offeree company must, on the offeror's request, provide the offeror with information on its outstanding voting equity share capital. The offeree company must also update the offeror on any subsequent changes thereto during the offer period.

NOTES ON RULE 8.7

1. Offeree company's obligation following offeror's announcement

After the announcement of a firm intention to make an offer, the offeree company must, within 48 hours of the offeror's request, provide the offeror with all relevant details of its outstanding voting rights, the issued shares and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. In the case of

conditionally allotted shares, the details should include the conditions and the date on which such conditions may be satisfied. In the case of rights, the details should include the number of shares which may be unconditionally allotted or issued during the offer period as a result of the exercise of such rights, identifying separately those attributable to rights which commence or expire on different dates, and the various prices at which these rights could be exercised.

2. *Allotment of shares by offeree company during offer period*

The offeree company must immediately notify the offeror of any allotment or issue of shares and of the exercise of any such rights during the offer period and provide the offeror as soon as possible with all relevant details. The offeror must make appropriate arrangements to ensure that any person to whom shares of a type to which the offer relates are unconditionally allotted or issued during the offer period will have an opportunity of accepting the offer in respect of such shares. In cases of doubt, the Council must be consulted.

9 EQUALITY OF INFORMATION

9.1 Equality of information to shareholders

Information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

NOTES ON RULE 9.1

1. *Furnishing of information to offerors*

   This Rule does not prevent the furnishing of information in confidence by an offeree company to a bona fide offeror or vice versa.

2. *Briefings*

   Companies and their advisers may hold "briefings" for shareholders, analysts or stockbrokers during the offer period, provided no material new information is forthcoming, no significant new opinions are expressed and the following provisions are observed:-

   (a) *an appropriate representative of the financial adviser to the party convening the briefing must be present. That representative will be responsible for confirming in writing to the Council, not later than 12 noon on the business day following the date of the briefing, whether any material new information was forthcoming and whether any significant new opinions were expressed at the briefing; and*

   (b) *if at the briefing any material new information was forthcoming or significant new opinions were expressed, a circular giving such details should be sent to shareholders immediately thereafter: in the later stages of a take-over or merger it may be necessary to make use of paid newspaper space as well as a circular. The circular or advertisement should include a directors' responsibility statement. If such new information is not capable of being substantiated in the manner required by the Code – e.g. a profit forecast - this should be made clear and it should be formally withdrawn in the circular or advertisement.*

Should there be any dispute as to whether the provisions above have been complied with, the relevant financial adviser will be expected to satisfy the Council that they have been. Financial advisers may therefore find it useful to record the proceedings of such briefings, although this is not a requirement. The financial adviser must ensure that no briefings are arranged without its knowledge.

3. *Press, television, radio interviews, etc*

Parties to a take-over or merger transaction must take particular care not to release new information during interviews or discussions with the media. If, notwithstanding this Note, any new information is made public in this way, a circular must be sent to shareholders and, where appropriate, paid newspaper space taken as required in Note 2(b) above.

4. *Circulars issued by brokers*

Stockbrokers or advisers to any party to a take-over or merger transaction who wish to circulate to their clients information on the company with which they are associated must clear the circular with the Council first. When giving their clients information on companies which are parties to an offer, stockbrokers and advisers must bear in mind that new information must not be restricted to a small group. Accordingly, such circulars should not contain any statements of fact or opinion derived from information not generally available; in particular, profit forecasting (unless, and then only to the extent that, the offer documents contain forecasts) should normally be avoided. The role of the stockbroker and adviser in relation to the offer must be clearly disclosed. Clearance before the issue of such circular or material may normally be effected by telephone but where there is doubt, a draft of the circular should be sent to the Council before circulation. In all cases, copies of the circular or material must be sent to the Council at the time of issue.

9.2 Information to competing offeror

Any information, including particulars of shareholders, given to one offeror or potential offeror must, on request, be furnished equally and promptly to any other bona fide offeror or potential offeror, who should specify the questions to which it requires answers. In cases where information on the offeree company's trade and business secrets had been given earlier by the offeree company to one offeror or potential

offeror, the offeree company should consult the Council before rejecting a request by any other bona fide offeror or potential offeror for the same information.

This Rule also applies to a person seeking to acquire all or materially all of the assets and/or businesses of a company which is the subject of an offer or bona fide potential offer. In such cases, the Rule applies equally to such person and the offeror and/or the bona fide offeror. The Council should be consulted in cases of doubt.

NOTES ON RULE 9.2

1. *Management buy-outs*

If the offer or potential offer is a management buy-out or similar transaction, the information which this Rule requires to be given to a competing or potential offeror which has specified the questions to which it requires answers is:-

(a) *the information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror; and*

(b) *any other information that is material in the context of making an offer insofar as the board of the offeree company is aware that the management is in possession of such information.*

This, however, does not include providing information on the offeree company's trade and business secrets. The Council expects the directors of the offeree company who are involved in making the offer to co-operate with the independent directors of the offeree company and its advisers in the assembly of information.

2. *Offer for assets or business of the offeree company*

For the purpose of this Rule, the Council would normally regard a person to be seeking to acquire materially all of the assets and/or businesses of a company if such assets and/or businesses account for or contribute more than 30% of the offeree company's sales, earnings, assets or market capitalisation. The Council should be consulted in cases of doubt.

10 NO SPECIAL DEALS

Except with the Council's consent, the offeror or persons acting in concert with it may not make any arrangements with selected shareholders and may not deal or enter into arrangements to deal or make purchases or sales of shares of the offeree company, or enter into arrangements concerning acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

NOTES ON RULE 10

1. *Top-ups and other arrangements*

An arrangement with special conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer, revised offer or successful competing offer. An irrevocable commitment to accept an offer combined with an option to put the shares to the offeror should the offer fail will also be regarded as such an arrangement.

Arrangements made by an offeror with a person acting in concert with it, whereby shares in the offeree company are purchased by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Council must be consulted.

2. *Two-tier offers*

Two-tier offers where shareholders who accept the offer before a stipulated cut-off date would receive a higher consideration than those who accept the offer after the cut-off date will be regarded as arrangements with special conditions.

A two-tier offer that offers to pay a higher offer price if a certain level of acceptances is reached will not be regarded as an arrangement with special conditions if the higher offer price is payable to all accepting shareholders.

3. *Fees*

The Rule also covers cases where a shareholder in an offeree company is to be remunerated for playing a part in promoting an offer. The Council will normally consent to such remuneration, provided that the shareholding is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been a shareholder, would be entitled to receive no less remuneration.

4. *Management retaining an interest*

The Council should be consulted if the management of the offeree company is to remain financially interested in the business after the offer is completed. The methods by which this may be achieved vary but the principle which the Council is concerned to safeguard is that the risks as well as the rewards associated with an equity shareholding should apply to the management's retained interest. For example, the Council would not normally find acceptable an option arrangement which guaranteed the original offer price as a minimum.

5. *Disposal of offeree company assets*

In some cases, certain assets of the offeree company may be of no interest to the offeror. If a shareholder in the offeree company seeks to acquire the assets in question, there is a possibility that the terms of the transaction will be such as to confer a special benefit on him. The arrangement is also not capable of being extended to all shareholders. The Council will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable.

6. *Joint offerors*

When two or more persons come together to form a consortium on such terms and in such circumstances that each of them can be considered to be a joint offeror, Rule 10 is not breached if one (or more) of them is already a shareholder in the offeree company. Subject to that, joint offerors may make arrangements between themselves regarding the future membership, control and management of the business being acquired. The factors that the Council will take into account in determining whether a person is a joint offeror include the following:

(a) the proportion of equity share capital of the bid vehicle the person will own after completion of the acquisition;

(b) whether the person will be able to exert a significant influence over the future management and direction of the bid vehicle;

(c) the contribution the person is making to the consortium;

(d) whether the person will be able to influence significantly the conduct of the bid; and

(e) whether there are arrangements in place to enable the person to exit from his investment in the bid vehicle within a short time or at a time when other equity investors cannot.

11 RESTRICTIONS ON DEALINGS BEFORE AND DURING THE OFFER

11.1 Restrictions on dealings before the offer

No dealings of any kind in the securities of the offeree company (including convertible securities, warrants, options and derivatives in respect of such securities) may be transacted by any person, not being the offeror, who has confidential price-sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions. Such restriction does not apply to persons acting in concert with an offeror in respect of such dealings where such dealings are excluded from the offer or where there are no-profit arrangements in place.

No such dealings may take place in the securities of the offeror (including convertible securities, warrants, options and derivatives in respect of such securities) except where the proposed offer is not deemed price-sensitive in relation to such securities.

Without prejudice to the generality of the foregoing, the Council will regard a person "to have confidential price-sensitive information concerning an offer or contemplated offer" if:-

(a) he is a director or employee of one of the companies concerned or engaged in the proposed offer; or

(b) he is a professional adviser either to one of the companies concerned or engaged in the proposed offer or to any person referred to in (a); or

(c) he is in a position to have received information in the context of a confidential relationship,

and he actually received such information.

The close relatives and related trusts of such a person as well as companies controlled by such person, his close relatives or related trusts would be deemed to be in the same position as such person.

NOTE ON RULE 11.1

No-profit arrangements

Arrangements made by a potential offeror with a person acting in concert with it whereby offeree securities are purchased (which would include entering into options in respect of securities of the offeree company) by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) will not be considered as no-profit arrangements for the purposes of this Rule. In cases of doubt, the Council must be consulted.

11.2 Restrictions on dealings during the offer

The offeror and persons acting in concert with it must not sell any securities in the offeree company during the offer period except:-

(a) For sales before the offer has become or been declared unconditional as to acceptances:-

(i) with the prior consent of the Council;

(ii) only after 24 hours' advance notice by public announcement of the intention to sell has been given; and

(iii) the sale is not at below the offer price.

After an announcement of an intention to sell the securities of the offeree company has been made, neither the offeror nor persons acting in concert with it can make further purchases and only in exceptional circumstances will the Council permit the offeror to revise the offer price. If the offer is one made under Rule 14, the Council will not give consent for the sale unless it is satisfied that circumstances exist to warrant such a sale.

(b) For sales after the offer has become or been declared unconditional as to acceptances:-

(i) such intention must have been disclosed in the offer document; and

(ii) 24 hours' advance notice by public announcement must be given before the sale.

NOTES ON RULES 11.1 AND 11.2

1. *Dealings after termination of discussions*

If discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, no dealings in securities (including convertible securities, warrants, options and derivatives in respect of such securities) of the offeree company by any person privy to this information may take place prior to an announcement of the position.

2. *No dealing contrary to published advice*

Directors and financial advisers to a company who own securities in that company must not deal in such securities contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving at least 24 hours' advance notice of their intentions together with any appropriate explanation.

3. *Discretionary clients*

Sales of offeree company securities for discretionary clients by fund managers connected with the offeror may be relevant.

11.3 Restriction on dealings by offeror in offeror shares during non-cash offers

Where the consideration for an offer includes securities of the offeror or any other body corporate, neither the offeror nor its concert parties may deal in any such securities (whether through share repurchases or otherwise) during the offer period.

12 DISCLOSURE OF DEALINGS DURING THE OFFER

Save insofar as appears from the Code, it is undesirable to fetter the market. Accordingly, all parties to a take-over and merger transaction (other than a partial offer) and associates are free to deal subject to this Rule.

12.1 Dealings by parties and their associates for themselves or for discretionary clients

Dealings in relevant securities by the offeror, the offeree company or any of their associates for their own accounts or for the accounts of discretionary investment clients during the offer period must be publicly disclosed in accordance with Notes 4, 5 and 6 on Rule 12 below.

NOTE ON RULE 12.1

Discretionary accounts

Discretionary investment clients include individuals and funds for whom or which the offeror, the offeree company or any of their associates is accustomed to make investment decisions without prior reference. The principle which the Council normally applies is that if a person manages investment accounts on a discretionary basis, the relevant securities so managed will be treated, for the purposes of this Rule, as controlled by that person and not by the person on whose behalf the relevant securities are managed.

12.2 Dealings by parties and their associates for non-discretionary clients

Except with the Council's consent, dealings in relevant securities during the offer period by an offeror, the offeree company or any of their associates for the account of non-discretionary investment clients (other than an offeror, the offeree company and any of their associates) must be privately disclosed in accordance with Notes 4, 5 and 6 on Rule 12 below.

NOTE ON RULES 12.1 and 12.2

Multiple investment management operations

Except with the Council's consent, where more than one investment management operation is conducted in the same group, the relevant securities controlled by all such operations will be treated for the purposes of Rules 12.1 and 12.2 as those of a single person and must be aggregated (see Note 11 on Rule 12 below).

12.3 Dealings by parties and their associates in their capacities as agents

Where the offeror, the offeree company or any of their associates deal in relevant securities during the offer period only as brokerage agents for investment clients and not as principal, such transactions need not be disclosed.

NOTES ON RULE 12

1. Consultation with the Council

In any case of doubt as to the application of Rule 12, the Council should be consulted.

2. Disclosure of dealings in offeror securities

Disclosure of dealings in relevant securities of an offeror is required only in the case of a securities exchange offer.

3. Relevant securities

Relevant securities for the purposes of this Rule include:-

(a) securities of the offeree company which are being offered for or which carry voting rights;

(b) equity share capital of the offeree company and an offeror;

(c) securities of an offeror which carry the same or substantially the same rights as any to be issued as consideration for the offer;

(d) securities carrying conversion or subscription rights into any of the foregoing; and

(e) options and derivatives in respect of any of the foregoing.

The taking, granting, acquisition, disposal, exercising (by either party), lapsing, closing out or variation of an option (including a traded option contract) in respect of any of the foregoing or the exercise or conversion of any security under (d) above, whether in respect of new or existing securities, and the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or issue or variation of, a derivative will be regarded as a dealing in relevant securities (see also Notes 6 and 8 below).

4. *Timing of disclosure*

Disclosure must be made no later than 12 noon on the dealing day following the date of the relevant transaction.

5. *Method of disclosure*

(a) *Public disclosure (for Rule 12.1)*

Dealings should be disclosed in writing to the Securities Exchange, the Council and the press. Persons proposing to engage in dealings should also acquaint themselves with the disclosure requirements of the Companies Act and the Securities and Futures Act.

If parties to an offer and their associates choose to make press announcements regarding dealings in addition to making formal disclosures, they must ensure that no confusion results.

Public disclosure may be made by the party concerned or by an agent acting on its behalf. Where there is more than one agent (e.g. a merchant bank and a stockbroker), particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is neither overlooked nor duplicated.

(b) *Private disclosure (for Rule 12.2)*

Dealings should be disclosed in writing to the Council. Council reserves the right to make public such information when circumstances warrant it.

6. *<u>Details to be included in disclosures</u>*

(a) *Public disclosure (for Rule 12.1)*

A disclosure of dealings must include the following information:-

(i) *the total of the relevant securities in question purchased or sold, or redeemed or repurchased by the company itself;*

(ii) *the prices paid or received;*

(iii) *in the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood. For options, this should include the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives, this should include, at least, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable, the closing out date) and the reference price;*

(iv) *the identity of the principal or associate or other person dealing and, if different, the ultimate beneficial owner or controller. Dealings by or on behalf of a principal include any dealings where the investment risk is directly or indirectly borne by one of the principals, eg. where an associate has the right to sell to one of the principals at an agreed price any securities bought;*

(v) *nature of the investment clients (i.e. discretionary or non-discretionary) must be stated where dealings are by associates on behalf of investment clients. Subject to Note 9 below, the clients' names need not be disclosed;*

(vi) *the resultant total amount of relevant securities owned or controlled by the associate or other person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents. For dealings by a principal, the total number of securities owned or*

controlled by the principal and persons acting in concert with it must be disclosed. For dealings by an associate, the total number of securities owned or controlled by the associate and by investment accounts under the discretionary management of the associate must be disclosed; and

(vii) if relevant, details of any arrangements required by Note 7 below.

(b) Private disclosure (for Rule 12.2)

A private disclosure under Rule 12.2 must include the identity of the associate dealing, the total of relevant securities purchased or sold and the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). In the case of dealings in options the same information as specified in (a)(iii) above is required.

7. <u>Indemnity and other arrangements</u>

For the purposes of this Note, an arrangement includes indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.

When an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or the offeree company in relation to relevant securities, details of the arrangement must be publicly disclosed, whether or not any dealing takes place.

8. <u>Dealings in convertible securities, warrants, options and derivatives</u>

For the purposes of Rules 12.1 and 12.2, a disclosure of dealings in convertible securities, warrants, options and derivatives is required only if the person dealing in such instruments owns or controls 5% or more of the class of securities which is the subject of the instruments. Disclosure of dealings in such instruments is limited to those which cause the holder to have a long economic exposure to the underlying securities.

A person who has a long economic exposure to changes in the price of a security would benefit economically if the price of the security goes up and will suffer economically if the price of that security goes down.

9. *Responsibilities of stockbrokers, bankers and other intermediaries*

Stockbrokers, bankers and others who deal in relevant securities on behalf of clients have a general duty to ensure, so far as they are able, that those clients are aware of the disclosure obligations attaching to associates and other persons and that those clients are willing to comply with them. Dealers who deal directly with investors should, in appropriate cases, likewise draw their attention to the relevant Rules.

Intermediaries are expected to co-operate with the Council in its dealings enquiries. Therefore, those who deal in relevant securities should appreciate that stockbrokers and other intermediaries will supply the Council with relevant information as to those dealings, including identities of clients, as part of that co-operation.

10. *Unlisted public companies*

The requirements to disclose dealings apply also to dealings in relevant securities of unlisted public companies.

11. *Disclosure by advisers belonging to a large group*

For a financial or professional adviser that belongs to a group with an extensive network of companies worldwide, the Council will normally exempt funds managed on a discretionary basis within the group from the requirements of this Rule if:-

(a) the group has in place distinct and effective "Chinese Walls" between its various operations; and

(b) the offeror is not part of the group.

Such exemption would be invalidated if such funds acquire/have acquired shares in the offeree company before or during the offer period that would give rise to inferences that such acquisitions are/were for the purpose of assisting

the offeror in obtaining or consolidating effective control of the offeree company.

12. *Potential offerors*

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that he is considering making an offer, the potential offeror, and persons acting in concert with him, must disclose dealings in accordance with this Rule, and such disclosure must include the identity of the potential offeror.

In a contested take-over or merger situation, dealings by an offeror (or his associates) in the shares of any other offeror should be disclosed. This applies whether the deals are for their own accounts or for the account of their investment clients.

13. *Exemption from disclosure requirements*

Dealings in securities of an offeror where the consideration for the offer is cash or fixed income securities not carrying conversion or subscription rights need not be disclosed.

13 BREAK FEES

In all cases where a break fee is proposed, certain safeguards must be observed. In particular, a break fee must be minimal (normally no more than 1% of the value of the offeree company calculated by reference to the offer price) and the offeree company board and its financial adviser must provide, in writing, to the Council:-

(a) a confirmation that the break fee arrangements were agreed as a result of normal commercial negotiations;

(b) an explanation of the basis (including appropriateness) and the circumstances in which the break fee becomes payable;

(c) any relevant information concerning possible competing offerors, e.g. the status of any discussions, the possible terms, any pre-conditions to the making of an offer, the timing of any such offer etc.;

(d) a confirmation that all other agreements or understandings in relation to the break fees arrangements have been fully disclosed; and

(e) a confirmation they each believe the fee to be in the best interests of offeree company shareholders.

Any break fee arrangement must be fully disclosed in the announcement made under Rule 3 and in the offer document. Relevant documents must be made available for inspection.

The Council should be consulted at the earliest opportunity in all cases where a break fee or any similar arrangement is proposed.

NOTES ON RULE 13

1. *Arrangements to which the Rule applies*

A break fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail (e.g.

the recommendation by the offeree company board of a higher competing offer).

This Rule will also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment.

Such arrangements also include, but are not limited to, penalties, put or call options or other provisions having similar effects, regardless of whether such arrangements are considered to be in the ordinary course of business. In cases of doubt, the Council should be consulted.

2. *Statutory provisions*

Any view expressed by the Council in relation to such fees or arrangements can only relate to the Code and must not be taken to extend to any other relevant law or regulation.

3. *"Whitewashes"*

This Rule also applies to the payment of an inducement fee in the context of a "whitewash" transaction. In this context, the 1% test will normally be calculated by reference to the value of the offeree company immediately prior to the announcement of the proposed "whitewash" transaction.

4. *The 1% limit*

The 1% limit can be calculated on the basis of the fully diluted equity share capital of the offeree company. In this regard, only options and warrants which are "in the money" may be included in the calculation. When determining the value of the fully diluted share capital, the value to be attributed to such warrants and options is their "see-through" value, taking into account the offer price for the relevant shares and any exercise price. The value attributable to convertible securities is the offer price multiplied by the conversion ratio. Any taxes payable as a result should be taken into account in determining whether the 1% limit would be exceeded (except to the extent that such taxes is recoverable by the offeree company). In the case

of a securities exchange offer, the value of the offeree company for these purposes will be fixed by reference to the value of the offer at the time of announcement of the transaction (and will not fluctuate as a result of subsequent movements in the price of the consideration securities after announcement).

14 MANDATORY OFFER

14.1 When mandatory offers are triggered

Except with the Council's consent, where:-

(a) any person acquires whether by a series of transactions over a period of time or not, shares which (taken together with shares held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a company; or

(b) any person who, together with persons acting in concert with him, holds not less than 30% but not more than 50% of the voting rights and such person, or any person acting in concert with him, acquires in any period of 6 months additional shares carrying more than 1% of the voting rights,

such person must extend offers immediately, on the basis set out in this Rule, to the holders of any class of share capital of the company which carries votes and in which such person, or persons acting in concert with him, hold shares. In addition to such person, each of the principal members of the group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer.

Transitional Provisions for Rule 14.1

A person who, together with his concert parties, holds shares carrying 25% or more but less than 30% of the voting rights of a company immediately prior to 1 Jan 2002 will be permitted to acquire additional voting rights in the company without incurring a general offer obligation for the company, as long as his and his concert parties' total voting rights in the company are less than 30%. Any acquisitions that would result in the person and his concert parties acquiring 30% or more of the voting rights of the company will be subject to Rule 14.1(a).

Any person who, together with his concert parties, holds shares carrying not less than 30% but not more than 50% of the voting rights of the company immediately prior to 1 Jan 2002 will be subject to Rule 14.1(b). Voting rights acquired prior to 1 Jan 2002 will be taken into account in determining whether such person and his concert parties have acquired more than 1% of the voting rights of the company in the last 6 months. If

such person and his concert parties had acquired 1% or more of the voting rights of the company within the last 6 months but prior to 1 Jan 2002, they will not be required to make a general offer for the company on or after 1 Jan 2002 solely as a result of such acquisitions. But the person and his concert parties will incur a general offer obligation for the company under Rule 14.1(b) if any of them were to acquire any further voting rights in the company on or after 1 Jan 2002.

NOTES ON RULE 14.1

1. *Shareholders coming together to act in concert*

   Acting in concert requires the co-operation of two or more parties. Where a party has acquired shares independently of other shareholders or potential shareholders but subsequently joins them to co-operate to obtain or consolidate effective control of a company, the Council would not normally require a general offer to be made under Rule 14.1 even if their existing aggregate shareholdings amount to 30% or more of the voting rights of that company. However, once such parties have joined together, the provisions of Rule 14.1 would apply so that:-

   (a) if the combined shareholdings amounted to less than 30% of the voting rights of that company, an obligation to make an offer would arise if any member of that group acquired further shares such that the group's aggregate holdings of voting rights reached 30% or more; or

   (b) if the combined shareholdings amounted to between 30% and 50% of the voting rights of that company, no member of that group could acquire shares which would result in aggregate acquisitions by the group amounting to more than 1% of the voting rights of the company in any 6 month period without incurring a similar obligation.

2. *Shareholders voting together*

   The Council will not normally regard the action of shareholders voting together on particular resolutions at one general meeting as action which of itself should lead to an offer obligation. Such voting pattern at more than one general meeting may, however, be taken into account as one indication that the shareholders are acting in concert.

3. *Collective shareholders' action*

Notwithstanding Note 2 above, the Council will normally presume shareholders who requisition or threaten to requisition the consideration of a board control-seeking proposal at a general meeting, together with their supporters as at the date of requisition or threat, to be acting in concert with each other and with the proposed directors. Such parties will be presumed to be acting in concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal with the result that subsequent acquisitions of interests in shares by any member of the group could give rise to an obligation to make a general offer under this Rule.

In determining whether a proposal is board control-seeking, the Council will have regard to a number of factors including the following:

(a) the relationship between any of the proposed directors and any of the shareholders proposing them or their supporters. Relevant factors in this regard would include:

(i) whether there is or has been any prior relationship between any of the proposing shareholders, or their supporters, and any of the proposed directors;

(ii) whether there are any agreements, arrangements or understandings between any of the proposing shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment; and

(iii) whether any of the proposed directors will be remunerated in any way by any of the proposing shareholders, or their supporters, as a result of or following their appointment.

If, on this analysis, there is no relationship between any of the proposed directors and any of the proposing shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the parties will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is

not insignificant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;

(b) the number of directors to be appointed or replaced compared with the total size of the board;

If it is proposed to appoint or replace only one director, the proposal will not normally be considered to be board control-seeking. If it is proposed to replace the entire board, or if the implementation of the proposal would result in the proposed directors representing a majority of the directors on the board, the proposal will normally be considered to be board control-seeking.

If, however, the implementation of the proposal would not result in the proposed directors representing a majority of the directors on the board, the proposal will not normally be considered to be board control-seeking unless an analysis of the factors set out at paragraphs (c) to (f) below would indicate otherwise;

(c) the board positions held by the directors being replaced and to be held by the proposed directors;

(d) the nature of the mandate, if any, for the proposed directors;

(e) whether any of the proposing shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in shares in the company; and

(f) the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the proposing shareholders or their supporters.

In determining whether it is appropriate for such parties to be held no longer to be acting in concert, the Council will take account of a number of factors, including the following:

(a) *whether the parties have been successful in achieving their stated objective;*

(b) *whether there is any evidence to indicate that the parties should continue to be held to be acting in concert;*

(c) *whether there is any evidence of an ongoing struggle between the proposing shareholders, or their supporters, and the board of the company;*

(d) *the types of proposing shareholders involved and the relationship between them; and*

(e) *the relationship between the proposing shareholders, or their supporters, and the proposed/new directors.*

4. *<u>Directors of a company</u>*

Directors of a company will be presumed to be acting in concert during an offer period or when they have a reason to believe that a bona fide offer is imminent. In such circumstances, the provisions of this Rule will apply. At other times, directors of a company are not presumed to be acting in concert in relation to control of their company. Subject to the constraints imposed by the Code, particularly the normal application of Rule 14 to the shareholdings which each director controls, directors are free to deal in the shares of their company. The Council reserves the right, however, to examine situations closely should the actions of the directors suggest that they are acting in concert.

The directors of companies defending against an offer, their advisers and others acting in concert with them should consult the Council before acquiring any voting rights which might lead them to incur an obligation under this Rule.

5. *<u>Acquisition of voting rights by members of a group acting in concert</u>*

While the Council accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the membership of such groups may change at any time. This being the case, there will be

circumstances when the acquisition of voting rights by one member of a group acting in concert from another member will result in the acquirer of the voting rights having an obligation to make an offer. Whenever the holdings of a group acting in concert total 30% or more of the voting rights of a company, an obligation to make an offer will normally arise when, as a result of an acquisition of voting rights from another member of the group, a single member or a sub-group comes to hold 30% or more or, if already holding between 30% and 50%, to have acquired more than 1% of the voting rights in any 6 month period. The factors which the Council will take into account in considering whether to waive the obligation to make an offer include:-

(a) whether the leader of the concert-party group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;

(b) the price paid for the shares acquired; and

(c) the relationship between the persons acting in concert and how long they have been acting in concert.

When the group holds between 30% and 50% of the voting rights, an offer obligation will arise if there are acquisitions from non-members of more than 1% in aggregate in any 6 month period.

When the group holds over 50%, no obligation normally arises from acquisitions by any member of the group. However, subject to considerations similar to those set out above, the Council may regard as giving rise to an obligation to make an offer any acquisition by a single member or sub-group of the group of voting rights sufficient to increase his/its holding to 30% or more or, if he/it already holds between 30% and 50%, by more than 1% in any 6 month period.

In applying this Rule, concert parties who are close relatives will be treated no differently from unrelated concert parties. However, the Council will normally waive this Rule in the case where a person bequeaths his shareholding in a company to his close relatives without consideration.

6. *Vendor of part only of a shareholding*

Shareholders sometimes wish to sell part only of their holdings or a purchaser may be prepared to acquire part only of a holding. This arises particularly where an acquirer wishes to acquire under 30%, thereby avoiding an obligation under this Rule to make a general offer. The Council will be concerned to see whether in such circumstances the arrangements between the purchaser and vendor effectively allow the purchaser to exercise a significant degree of control over the retained voting rights, in which case a general offer would normally be required. These concerns will also apply when the purchaser is already a member of a group acting in concert with the vendor, or when the purchaser joins such a group.

The Council will also take into account any other transactions between the purchaser and the vendor, and between the purchaser and other members of the group acting in concert with the vendor. This could include, for example, the aggregation of transfers of voting rights to the purchaser over a period of time, or arrangements which have an effect similar to transfer, such as the underwriting by a purchaser of a rights issue which the vendor has agreed not to take up, or a placing of shares with the purchaser.

A judgement on whether such a significant degree of control exists will obviously depend on the circumstances of each case. By way of guidance, the Council would regard the following points as relevant:-

(a) a significant degree of control over the retained voting rights would be less likely if the vendor was not an "insider";

(b) the payment of a very high price for the voting rights would tend to suggest that control over the entire holding was being secured;

(c) if the parties negotiate options over the retained voting rights it may be more difficult for them to satisfy the Council that a significant degree of control is absent;

(d) where the retained voting rights are in themselves a significant part of the company's capital (or even in certain circumstances represent a

significant sum of money in absolute terms) a correspondingly greater element of independence may be presumed; and

(e) it would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, without any other evidence of a significant degree of control over the retained voting rights, would not lead the Council to conclude that a general offer should be made.

7. <u>The chain principle</u>

Occasionally, a person or group of persons acting in concert to acquire statutory control of a company (which need not be a company to which the Code applies) will thereby acquire or consolidate effective control, as defined in the Code, of a second company because the first company itself holds, either directly or indirectly through intermediate companies, a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or group, secure or consolidate effective control of the second company. The Council will not normally require an offer to be made under this Rule in these circumstances unless the second company constitutes or contributes significantly to the first company in the following aspects:-

(a) assets;

(b) market capitalisation (where the first and second companies are listed);

(c) sales; or

(d) earnings.

Where the first company is unlisted, the pro-rated book NTA or market value of shares in the second company held by the unlisted first company is compared against the first company's book NTA. If the second company is unlisted, the

pro-rated book NTA of the second company is compared against the first company's (i) book NTA; or (ii) market capitalisation.

The Council should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule.

8. *Pro-rata distribution of voting shares in a downstream company by an upstream company to its shareholders*

There may be occasions when an upstream company distributes, on a pro-rata basis, its shareholdings in a downstream company to shareholders in the upstream company. For the purposes of this Rule, an upstream shareholder and his concert parties who acquire or consolidate effective control in the downstream company pursuant to such distribution will not incur a general offer obligation for the downstream company under Rule 14 if:-

(a) *the upstream shareholder and his concert parties own or control more than 50% of the voting rights in the upstream company; or*

(b) *the upstream shareholder and his concert parties are not acting in concert with the directors of the upstream company and have not acquired any voting rights in the upstream company and/or downstream company during the period between the announcement of the distribution proposal and the date on which upstream shareholders' approval is obtained for the distribution.*

If an upstream shareholder and his concert parties would acquire or consolidate effective control in the downstream company as a result of a proposed distribution but does not meet any of the two conditions above, then he and/or his concert parties must:-

(a) *make a general offer for the downstream company as required under Rule 14. Such offer must be announced within 6 months (or such longer period of time as the Council may allow under paragraph (b) below) after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders).*

The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if they:-

(i) after becoming aware that the announcement of the distribution proposal is imminent, acquire before the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) additional voting rights in the upstream company and/or acquire before or after the date of the distribution additional voting rights in the downstream company; or

(ii) after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders), exercise the voting rights attached to such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) below,

without first disposing of the required number of downstream company shares as per paragraph (b) below or obtaining a Whitewash waiver as per paragraph (c) below;

(b) dispose within 6 months (or such longer period of time as the Council may allow where exceptional circumstances warrant such extension of time) of the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) such number of downstream company shares as is necessary to reduce their aggregate voting rights in the downstream company to the higher of:-

(i) a level which is within the thresholds stipulated in Rule 14.1; and

(ii) the minimum percentage aggregate effective interest (whether owned or controlled directly or indirectly via the upstream company on a pro-rata basis) of the upstream shareholder and his concert parties in the downstream company in the last 3 years. The aggregate indirect interest of the upstream shareholder and his concert parties in the downstream company will be computed by multiplying the minimum percentage voting rights of the

upstream shareholder and his concert parties in the upstream company in the last 3 years by the upstream company's voting rights in the downstream company which will be distributed. For example, if the upstream company is distributing 60% of the downstream company's voting rights (out of its total holdings of 80%) under the distribution proposal and the minimum percentage voting rights of the upstream shareholder and his concert parties in the upstream company in the last 3 years is 40%, their indirect interest in the downstream company is 24% (40% times 60%). Where the upstream company has acquired significant voting rights in the downstream company within 3 years of the distribution proposal, the Council should be consulted.

The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if they have not obtained a Whitewash waiver as per paragraph (c) below and they:-

(i) after becoming aware that the announcement of the distribution proposal is imminent and pending the divestment of such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) above, acquire before the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) additional voting rights in the upstream company and/or acquire before or after the date of the distribution additional voting rights in the downstream company;

(ii) after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) and pending the divestment of such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) above, exercise the voting rights attached to such downstream company shares; or

(iii) fail to divest such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) above within 6 months (or such longer period of time as the Council may allow) of the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders); or

(c) obtain the approval of the independent shareholders of the downstream company for a Whitewash Resolution (see Note 1 of Notes on Dispensation from Rule 14 and Appendix 1 "Whitewash Guidance Note") to waive the requirement for the upstream shareholder to make a general offer for the downstream company. Such Whitewash waiver by downstream shareholders may be obtained either before or after the distribution.

If the Whitewash waiver by downstream shareholders is sought before the distribution, any exemption from the requirement to make an offer under Rule 14 granted by the Council will be subject to the following conditions:-

<u>Shareholders meeting at the downstream company</u>

(i) the Whitewash Resolution to be approved by independent downstream shareholders at a shareholders meeting of the downstream company;

<u>Shareholders meeting at the upstream company</u>

(ii) the circular to upstream shareholders for the shareholders meeting at the upstream company to authorise the distribution to contain advice to the effect that by voting for the distribution resolution and if downstream shareholders approve the Whitewash Resolution at the downstream company, upstream shareholders are waiving their right to a general offer at the required price by the upstream shareholder and his concert parties who would acquire or consolidate effective control in the downstream company for downstream company shares after the distribution; and the names of the upstream shareholder and his concert parties, as well as their voting rights in the downstream company at the time of the resolution and after the proposed distribution to be disclosed in the same circular;

(iii) *the resolution to authorise the distribution to be approved by a majority of those upstream shareholders present and voting at the meeting on a poll who could not become obliged to make an offer for the downstream company as a result of the distribution;*

(iv) *the upstream shareholder and his concert parties who could become obliged to make an offer for the downstream company as a result of the distribution to abstain from voting for the resolution to authorise the distribution;*

(v) *directors of the upstream company who are acting in concert with the upstream shareholder who could become obliged to make an offer for the downstream company as a result of the distribution to abstain from making a recommendation on the resolution to authorise the distribution; and*

Disqualifying transactions

(vi) *the upstream shareholder and his concert parties who could become obliged to make an offer for the downstream company as a result of the distribution not to have acquired and not to acquire any shares in the upstream company and/or downstream company during the period between when they become aware that the announcement of the distribution proposal is imminent, and the later of the date on which upstream shareholders' approval is obtained for the distribution and the date on which downstream shareholders approve the Whitewash Resolution. The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if this condition is not met.*

If the Whitewash waiver by downstream shareholders is sought after the distribution, any exemption from the requirement to make an offer under Rule 14 granted by the Council will be subject to the following conditions:-

(i) *the Whitewash Resolution to be approved by independent downstream shareholders at a shareholders meeting of the*

downstream company to be held as soon as practicable, but in any case not later than 3 months after the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders);

(ii) *the upstream shareholder and his concert parties who could become obliged to make an offer for the downstream company as a result of the distribution not to have acquired and not to acquire:-*

- *any shares in the upstream company during the period between when they become aware that the announcement of the distribution proposal is imminent and the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders); and/or*

- *any shares in the downstream company during the period between when they become aware that the announcement of the distribution proposal is imminent and the date on which downstream shareholders approve the Whitewash Resolution.*

The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if this condition is not met; and

(iii) *the upstream shareholder and/or his concert parties not to exercise the voting rights attached to such number of their downstream company shares which is above the higher of the thresholds specified in paragraphs (b)(i) and (b)(ii) during the period between the date of the distribution (i.e. the date on which downstream company shares are transferred to the upstream shareholders) and the date on which downstream shareholders approve the Whitewash Resolution. The upstream shareholder and/or his concert parties must announce immediately a general offer for the downstream company as required under Rule 14 if this condition is not met.*

Regardless of whether the Whitewash waiver by downstream shareholders is sought before or after the distribution, if such Whitewash waiver is not approved by downstream shareholders but the distribution takes place or has taken place, the upstream shareholder and/or his concert parties must make a general offer for the downstream company as required by Rule 14 or reduce their aggregate voting rights in the downstream company by such amount and within such time period as per paragraph (b) above.

For the purposes of this Note, a distribution proposal means an announcement made by the upstream company that contains details of the number of shares and the percentage shareholding in the downstream company to be distributed to shareholders in the upstream company.

9. *Triggering a mandatory offer during a voluntary offer*

If the offeror in a voluntary offer or any person acting in concert with it incurs an obligation under this Rule during the offer by acquiring voting rights otherwise than through acceptances of the voluntary offer, the Council must be consulted. Once such an obligation is incurred, an offer in compliance with this Rule must be announced immediately.

If there is no change in the offer price, it will be sufficient, following the announcement, simply to notify offeree company shareholders in writing of the new total holding of the offeror, of the fact that the acceptance condition in the form required by Rule 14.2 is the only condition remaining, and of the period for which the offer will remain open following posting of the document. (See also Note 4 on Rule 20.1)

10. *Instruments convertible into, rights to subscribe for and options in respect of new shares which carry voting rights*

In general, the acquisition of instruments convertible into, rights to subscribe for and options in respect of new shares which carry voting rights does not give rise to an obligation under this Rule to make an offer. However, the exercise of any conversion or subscription rights or options will be considered to be an acquisition of voting rights for the purpose of this Rule.

The Council will not normally require an offer to be made following the exercise of instruments convertible into, rights to subscribe for, and options in respect

of, new securities which carry voting rights provided that the issue of such instruments, subscription rights or options to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 of the Notes on Dispensation from Rule 14. This dispensation may be invalidated if there are any purchases of voting rights prior to such exercise.

Where there are conversion or subscription rights or options currently capable of being exercised, this Rule is invoked at a level of 30% of the existing voting rights.

11. *The reduction or dilution of a shareholding*

If a shareholder or group of shareholders acting in concert holding 30% or more sells shares, the provisions of this Rule will apply to the reduced holding. As a result, an offer obligation will arise if:

(a) *following a reduction of the holding below 30%, it is increased to 30% or more; or*

(b) *the reduced holding is 30% or more, and is increased by more than 1% in any 6 month period.*

In this context, sales of shares may not be netted off against purchases.

Shareholdings in a company may be diluted following the issue by that company of new shares. Normally, the Council will regard such dilution in the same light as the sale of shares described above. However, the Council will consider waiving the requirements of this Rule for the restoration of a diluted holding by purchases from those to whom new shares are issued if shareholders' approval was sought beforehand in the manner outlined in Note 1 of the Notes on Dispensation from Rule 14.

12. *Acquisitions of up to 1% in any 6 month period*

For the purpose of the 1% limit on acquisitions in any 6 month period by a person or group of persons acting in concert, shares acquired before or during a previous mandatory offer are not taken into account. This also applies to

shares acquired with the prior approval of independent shareholders within the terms of Note 1 of the Notes on Dispensation from Rule 14.

13. *Acquisition or control of voting rights*

If voting rights or general control of them, as distinct from the shares themselves, are acquired, the Council will deem this to be the acquisition of relevant shares for the purpose of this Rule. This will not normally apply in the case of a bank taking security over shares in the normal course of its business (see also Note 2 of the Notes on Dispensation from Rule 14).

14. *Allotted but unissued shares*

When shares of a company carrying voting rights have been allotted (even if only provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Council should be consulted.

15. *Securities borrowing and lending*

In a securities borrowing and lending transaction, the borrower of the shares is deemed to have acquired the voting rights attached to the shares for the purpose of Rule 14, unless he can show that he cannot exercise, direct, or influence the exercise of such voting rights. When the borrower returns the shares, he is deemed to have disposed of the voting rights attached to those shares for the purpose of Rule 14.

For the purpose of Rule 14, the lender is deemed to have disposed of the voting rights attached to the shares that he lent out. On the return of those shares, the lender is deemed to have acquired the voting rights attached to the shares.

However, if the lender has the right to recall the borrowed shares by giving advance notice of 7 days or less to the borrower any time during the period of the loan, the lender, for the purpose of Rule 14, will not be deemed to have disposed of the voting rights attached to those shares when he lends them out, nor will he be deemed to have acquired the voting rights attached to those shares when they are returned to him. The borrower will, nevertheless, be deemed to have acquired the voting rights attached to such borrowed shares during the entire loan period and to have disposed of such voting rights on returning such borrowed shares to the lender.

16. *Options and derivatives*

For the purposes of Rule 14, a person who has acquired or written any option or derivative which causes him to have a long economic exposure, whether absolute or conditional, to changes in the price of securities will normally be treated as having acquired those securities. Such options and derivatives would exclude instruments convertible into, rights to subscribe for and options in respect of new shares (see Note 10 on Rule 14.1). Any person who would breach the thresholds stipulated in Rule 14.1 as a result of acquiring such options or derivatives, or, acquiring securities underlying options or derivatives when already holding such options or derivatives, must consult the Council beforehand to determine if an offer is required, and, if so, the terms of the offer to be made.

In determining if an offer is required, the Council will consider, amongst others, the time when the option or derivative is entered into, the consideration paid for the option or derivative, and the relationship and arrangements between the parties to the option or derivative.

A person who has a long economic exposure to changes in the price of a security would benefit economically if the price of the security goes up and will suffer economically if the price of that security goes down.

For the avoidance of doubt, a conditional put and call option agreement, the nature of which is no different from a conditional share purchase agreement, will not be regarded as an option or derivative.

17. *Persons holding 25% or more but less than 30% before 1 Jan 2002*

A person who, together with his concert parties, holds 25% or more but less than 30% of the voting rights of a public company before 1 Jan 2002 can acquire additional voting rights in the company on or after 1 Jan 2002 without making a general offer for the company, as long as the total voting rights in the company held by him and his concert parties are less than 30%.

Except with the Council's prior consent, any acquisitions that would result in such a person and his concert parties acquiring 30% or more of the voting rights

of the company on or after 1 Jan 2002 will be subject to Rule 14.1(a). The Council will normally consent to waiving Rule 14.1(a) where a person and his concert parties acquire not more than 30% of the voting rights of the company if that person applies to the Council with satisfactory evidence to show that he and his concert parties held 25% or more but less than 30% of the voting rights in the company before 1 Jan 2002. After increasing their aggregate voting rights to 30% pursuant to the Council's consent, such person and his concert parties will be subject to Rule 14.1(b).

18. *Conversion of multiple voting shares to ordinary voting shares or reduction of voting rights of multiple voting shares*

When there is a conversion of multiple voting shares to ordinary voting shares (the "Conversion") or a reduction in the voting rights attached to each multiple voting share (the "Reduction"), any resulting increase in the percentage of voting rights held by a shareholder and persons acting in concert with him will be treated as an acquisition for the purpose of Rule 14. Consequently, a shareholder or group of shareholders acting in concert could obtain or consolidate effective control of the company and become obliged to make an offer under Rule 14. For the purposes of this Rule, the Council will not normally require such shareholder and his concert parties to make a general offer for the company as required under Rule 14 if the shareholder (i) is independent of the Conversion or the Reduction; (ii) has not acquired any additional voting rights in the company from the date he becomes aware that the Conversion or the Reduction is imminent; and (iii) has not exercised his voting rights in excess of the relevant mandatory offer threshold under Rule 14.1 from the date of the Conversion or the Reduction. The Council should be consulted in all relevant cases.

If such shareholder is not independent of the Conversion or the Reduction, he and his concert parties who acquire or consolidate effective control in the company arising from the Conversion or the Reduction must:-

(a) make a general offer for the company as required under Rule 14. Such offer must be announced within 6 months (or such longer period of time as the Council may allow under paragraph (b) below) after the date of the Conversion or the Reduction.

The shareholder and/or his concert parties must announce immediately a general offer for the company as required under Rule 14 if they:-

(i) after becoming aware that the Conversion or the Reduction is imminent, acquire before or after the date of the Conversion or the Reduction additional voting rights in the company; or

(ii) after the date of the Conversion or the Reduction, exercise the voting rights attached to such number of shares which is above the thresholds stipulated in Rule 14.1,

without first disposing of the required number of shares as per paragraph (b) below or obtaining a Whitewash waiver as per paragraph (c) below;

(b) dispose within 6 months (or such longer period of time as the Council may allow where exceptional circumstances warrant such extension of time) of the date of the Conversion or the Reduction such number of shares as is necessary to reduce their aggregate voting rights in the company to a level which is within the thresholds stipulated in Rule 14.1.

The shareholder and/or his concert parties must announce immediately a general offer for the company as required under Rule 14 if they have not obtained a Whitewash waiver as per paragraph (c) below and they:-

(i) after becoming aware that the Conversion or the Reduction is imminent, acquire before or after the date of the Conversion or the Reduction additional voting rights in the company;

(ii) after the date of the Conversion or the Reduction, exercise the voting rights attached to such number of shares which is above the thresholds stipulated in Rule 14.1; or

(iii) fail to divest such number of shares which is above the thresholds stipulated in Rule 14.1 within 6 months (or such longer period of time as the Council may allow) of the date of the Conversion or the Reduction; or

(c) obtain the approval of the independent shareholders of the company for a Whitewash Resolution (see Note 1 of Notes on Dispensation from Rule 14 and Appendix 1 "Whitewash Guidance Note") to waive the requirement for the shareholder to make a general offer for the company. Such Whitewash waiver by the shareholder may be obtained either before or after the date of the Conversion or the Reduction.

If the Whitewash waiver by independent shareholders is sought before the date of the Conversion or the Reduction, any exemption from the requirement to make an offer under Rule 14 granted by the Council will be subject to the following conditions:-

(i) the Whitewash Resolution to be approved by independent shareholders present and voting at a shareholders meeting;

Disqualifying transactions

(ii) the shareholder and his concert parties who could become obliged to make an offer for the company as a result of the Conversion or the Reduction not to have acquired and not to acquire any shares in the company during the period between when they become aware that the Conversion or the Reduction is imminent, and the date on which the shareholders approve the Whitewash Resolution. The shareholder and/or his concert parties must announce immediately a general offer for the company as required under Rule 14 if this condition is not met.

If the Whitewash waiver by the independent shareholders is sought after the Conversion or the Reduction, any exemption from the requirement to make an offer under Rule 14 granted by the Council will be subject to the following conditions:-

(i) *the Whitewash Resolution to be approved by independent shareholders at a shareholders meeting to be held as soon as practicable, but in any case not later than 3 months after the date of the Conversion or the Reduction;*

Disqualifying transactions

(ii) *the shareholder and his concert parties who could become obliged to make an offer for the company as a result of the Conversion or the Reduction not to have acquired and not to acquire any shares in the company during the period between when they become aware that the Conversion or the Reduction is imminent and the date on which independent shareholders approve the Whitewash Resolution.*

The shareholder and/or his concert parties must announce immediately a general offer for the company as required under Rule 14 if this condition is not met; and

(iii) *the shareholder and/or his concert parties not to exercise the voting rights attached to such number of their shares which is above the thresholds specified in Rule 14.1 during the period between the date of the Conversion or the Reduction and the date the independent shareholders approve the Whitewash Resolution. The shareholder and/or his concert parties must announce immediately a general offer for the company as required under Rule 14 if this condition is not met.*

Regardless of whether the Whitewash waiver by shareholders is sought before or after the Conversion or the Reduction, if such Whitewash waiver is not approved by shareholders but the Conversion or the Reduction has taken place, the shareholder and/or his concert parties must make a general offer for the company as required by Rule 14 or reduce their aggregate voting rights in the company by such amount and within such time period as per paragraph (b) above.

14.2 Conditions

Except with the Council's consent:-

(a) offers made under this Rule must be conditional upon, and only upon, the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding more than 50% of the voting rights;

(b) no acquisition of voting rights which would give rise to a requirement for an offer under this Rule may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements (including the approval of a foreign regulatory authority); and

(c) notwithstanding (a) and (b) above, offers under this Rule must, if appropriate, contain the terms set out in Appendix 3 in relation to such offers.

NOTES ON RULE 14.2

1. *Conditional agreements & put and call option agreements*

An offeror is, however, permitted to attach conditions to a share acquisition agreement or a put and call option agreement which, on fulfilment of the conditions precedent, would trigger a mandatory bid obligation under this Rule, subject to the following:-

(a) the pre-conditions should be stated clearly in the conditional agreements or put and call agreements;

(b) the pre-conditions should be objective and reasonable;

(c) the conditional agreements or put and call agreements must specify a reasonable period for the fulfilment of the pre-conditions failing which the offer will lapse; and

(d) no condition should be invoked to cause a conditional agreement or a put and call agreement to lapse unless:-

(i) the offeror has demonstrated reasonable efforts to fulfil the conditions within the time period specified; and

(ii) the circumstances that give rise to the right to invoke the conditions are material in the context of the proposed transaction.

Immediately upon entering into such an agreement, the potential offeror must make an announcement stating the terms of the offer, the identity of the potential offeror, the conditions to be fulfilled before the offer is made, and the time period for the fulfilment of these pre-conditions failing which the offer will lapse.

2. <u>When more than 50% is held</u>

An offer made under this Rule should be unconditional as to acceptances when the offeror and persons acting in concert with it hold more than 50% of the voting rights before the offer is made.

3. <u>When dispensations may be granted</u>

The Council will not normally consider a request for a dispensation under this Rule.

14.3 Consideration

(a) Offers made under this Rule must, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company during the offer period and within 6 months prior to its commencement. Where any such shares have been acquired for a consideration other than cash, General Principle 3 may be relevant and the Council should be consulted. The Council should be consulted as to the offer to be made for any class of share capital in respect of which no acquisitions have taken place within the preceding 6 months or when there is more than one class of equity share capital involved.

(b) The Council's consent is required if the offeror considers that the highest price should not apply in a particular case.

NOTES ON RULE 14.3

1. *Nature of consideration*

When voting rights have been acquired for a consideration other than cash, the offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.

2. *Calculation of the price*

The minimum offer price should be the highest of:-

(a) *the highest price paid by the offeror and its concert parties for outright purchase of shares in the offeree company within 6 months of the offer and during the offer period. If voting rights have been acquired in exchange for listed securities, the price will normally be established by reference to the volume weighted average traded price of the listed securities on the date of the acquisition. However, the Council reserves the right to set aside any inexplicably high or low traded prices;*

(b) *the highest price paid by the offeror and its concert parties for shares in the offeree company acquired through the exercise of instruments convertible into securities which carry voting rights within 6 months of the offer and during the offer period. The price paid for shares acquired through the exercise of such instruments is deemed to be:-*

(i) *where the offeror and its concert parties have not acquired any such instruments within 6 months of the offer or during the offer period: the highest of the volume weighted average traded prices of shares of the offeree company on the days the conversion rights were exercised. The Council reserves the right to set aside any inexplicably high or low traded prices; or*

(ii) *where the offeror and/or its concert parties have acquired such instruments within 6 months of the offer or during the offer period: the highest price paid by the offeror and its concert parties for such instruments, adjusted by the conversion ratio. For example, if the offeror paid $20 for an instrument convertible*

into 5 voting shares, the minimum offer price should be $4 (i.e. $20 divided by 5); and

(c) *the highest price paid by the offeror and its concert parties for shares in the offeree company acquired through the exercise of rights to subscribe for, and options in respect of, securities which carry voting rights within 6 months of the offer and during the offer period. The price paid for shares acquired through the exercise of such subscription rights or options is deemed to be:-*

(i) where the offeror and its concert parties have not acquired any such subscription rights or options within 6 months of the offer or during the offer period: the higher of:

- *the highest of the volume weighted average traded prices of shares of the offeree company on the days such subscription rights or options were exercised. The Council reserves the right to set aside any inexplicably high or low traded prices; and*

- *the exercise price of such subscription rights and options; or*

(ii) where the offeror and/or its concert parties have acquired such subscription rights or options within 6 months of the offer or during the offer period: the highest price paid by the offeror and its concert parties for such subscription rights or options plus the exercise price of such subscription rights or options.

The Council should be consulted in advance in situations involving the exercise of instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights or where reference is to be drawn to volume weighted average traded prices.

The prices paid for voting rights transferred between members of a group acting in concert may be relevant where, for example, all voting rights held within a group are transferred to that member making the offer or where prices paid between members are materially above the market price.

3. *Chain Principle*

If the offeror and its concert parties did not acquire shares in the second company in the 6 months prior to the date it acquired more than 50% of the voting rights in the first company or the date it announced an offer for the first company whichever is earlier (the "Relevant Date"), the Council will generally require the offer price to be the simple average of daily volume weighted average traded prices of the second company on either the latest 20 trading days or whatever number of trading days there were within the 30 calendar days prior to the Relevant Date. The Council, however, reserves the right to disregard any inexplicably high or low traded prices during the said 30 calendar days when computing the offer price.

The Council may still invoke the averaging formula above if the offeror and/or its concert parties acquired shares in the second company in the 6 months prior to the Relevant Date and the Council has reason to believe that such purchases were made with a view to avoiding the application of the averaging formula.

4. *Pro-rata distribution of voting rights in a downstream company by an upstream company to its shareholders*

The offer price will be the highest price that the offeror and/or its concert parties have paid for voting rights in the downstream company in the 6 months prior to the date of announcement of the distribution proposal. If the offeror and its concert parties did not acquire shares in the downstream company in the 6 months prior to the date of announcement of the distribution proposal, the Council will generally require the offer price to be the simple average of the daily volume weighted average traded prices of the downstream company on either the latest 20 trading days or whatever number of trading days there were within the 30 calendar days prior to the date of announcement of the distribution proposal. The Council, however, reserves the right to disregard any inexplicably high or low traded prices during the said 30 calendar days when computing the offer price.

5. *Conditional agreements and put and call option agreements*

When listed shares are offered as consideration under a conditional share acquisition agreement or put and call option agreement referred to in Note 1 on Rule 14.2, the relevant price for the purpose of Rule 14.3 is to be established

by reference to the volume weighted average traded price of the listed securities on the date of the announcement of the conditional share acquisition or put and call option agreement.

If the relevant price so established represents the highest price paid by the offeror and his concert parties in the 6 months prior to the date of the announcement of the share acquisition or put and call option agreement and the offeror does not acquire any further voting rights in the offeree company at a higher price, then the offeror may make the consequent mandatory offer at such relevant price as long as the conditions precedent are fulfilled and the mandatory offer is triggered within 3 months of the date of the announcement of the share acquisition or put and call option agreement.

If the conditions precedent are fulfilled and the mandatory offer is triggered more than 3 months after the date of the announcement of the share acquisition or put and call option agreement, the relevant price for the purpose Rule 14.3 is to be established by reference to the volume weighted average traded price of the listed securities on the date the conditions precedent are fulfilled and the mandatory offer is triggered. The offeror may make the mandatory offer at such relevant price if the offeror and his concert parties have not acquired any shares at higher than the relevant price during the offer period and in the 6 months prior to the date of its commencement.

In cases of doubt, the Council should be consulted. The Council may, on application by the offeror, extend the validity of the price established by reference to the volume weighted average traded price of the listed securities on the date of the announcement of the conditional share acquisition or put and call option agreement beyond 3 months.

6. *<u>Packaged deals</u>*

The Council will pay particular attention to any transaction structured as a packaged deal, where the offeror acquires voting rights in the offeree company together with other assets. In certain instances, the Council may require the appointment of an independent valuer to assess a fair market value for the assets in question.

7. *Dispensation from highest price*

If the offeror considers that the highest price should not apply to a particular case, it should consult the Council which will have the discretion to agree on an adjusted price.

Factors which the Council might take into account when considering an application for an adjusted price include:-

(a) the size and timing of the relevant purchases;

(b) the attitude of the board of offeree company;

(c) whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and

(d) the number of shares purchased in the preceding 6 months.

8. *Conversion of multiple voting shares to ordinary voting shares or reduction of voting rights of multiple voting shares*

The offer price will be the highest price that the offeror and/or its concert parties have paid for voting rights in the company in the 6 months prior to the earlier of the date of the announcement of the conversion of multiple voting shares to ordinary voting shares (the "Conversion") or a reduction in the voting rights attached to each multiple voting share (the "Reduction"), or the date of the Conversion or the Reduction. If the offeror and its concert parties did not acquire shares in the company in the 6 months prior to the earlier of the date of the announcement of the Conversion or the Reduction, or the date of the Conversion or the Reduction, the Council will generally require the offer price to be the simple average of the daily volume weighted average traded prices of the company on either the latest 20 trading days or whatever number of trading days there were within the 30 calendar days prior to the earlier of the date of the announcement of the Conversion or the Reduction, or the date of the Conversion or the Reduction. The Council, however, reserves the right to disregard any inexplicably high or low traded prices during the said 30 calendar days when computing the offer price.

14.4 Restrictions on control by offeror

Except with the Council's consent, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company, before the offer document is despatched. Any such nominee should refrain from becoming engaged in matters relating to the offer. In addition, the offeror and persons acting in concert with it should not exercise the votes attaching to any shares held in the offeree company before the offer document is despatched, and following the despatch of the offer document should not exercise such voting rights to frustrate the offer.

NOTES ON DISPENSATION FROM RULE 14

1. *Vote of independent shareholders on the issue of new securities ("Whitewash")*

   [See Whitewash Guidance Note at Appendix 1 for the detailed requirements of the Code under this dispensation.]

   When the issue of new securities as consideration for an acquisition, a cash subscription, or the taking of a scrip dividend would otherwise result in an obligation to make a general offer under this Rule, the Council will normally waive the obligation if there is an independent vote at a shareholders' meeting. For this purpose, "independent vote" means a vote by shareholders who are not involved in, or interested in, the transaction in question. The requirement for a general offer will also be waived in cases involving the underwriting of an issue of new shares, provided there has been an independent vote of shareholders and the underwriter puts in place clear and effective arrangements not to exercise the voting rights attached to those shares. If an underwriter incurs an obligation under this Rule unexpectedly, for example as a result of an inability to sub-underwrite all or part of his liability, the Council should be consulted.

   The appropriate provisions of the Code apply to Whitewash proposals. Full details of the potential holding of voting rights must be disclosed in the document sent to shareholders relating to the issue of the new securities. The document must also include competent independent advice on the proposals the shareholders are being asked to approve, together with a statement that the Council has agreed to waive any consequent obligation under this Rule to make a general offer. Voting on the resolution must be by way of a poll.

The Council must be consulted and a draft document submitted at an early stage. The document must not be despatched until the Council has confirmed that it has no further comments thereon.

When a person or group of persons acting in concert may, as a result of such arrangements, come to control more than 49% of the voting rights of the company (and so have the freedom to move to 50% or more without incurring an obligation under this Rule), specific and prominent reference to the possibility must be contained in the document and to the fact that the controlling shareholders will be able to exercise their control and increase their overall shareholding without incurring any further obligation under this Rule to make a general offer.

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval by independent vote of a majority of the shareholders at a general meeting of the company: -

(a) The Council will not normally waive an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with him have acquired voting rights in the company in the 6 months prior to the announcement of the proposal but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

(b) a waiver will be invalidated if any acquisitions are made in the period between the announcement of the proposal and the shareholders' meeting.

Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of voting rights attaching to the shares to which the potential controlling shareholders have become entitled as a result.

Where the final controlling shareholding is dependent on the results of underwriting, the offeree company must make an announcement following the

issue of new securities stating the number of shares and percentage of voting rights held by the controlling shareholders at that time.

2. *Enforcement or foreclosure of security for a loan, receivers, etc.*

Where a shareholding in a company is charged to a bank or lending institution on an arm's length basis and in the ordinary course of its business as security for a loan, and, as a result of enforcement or foreclosure, the lender would otherwise incur an obligation to make a general offer under this Rule. The Council will normally waive the requirement, provided that the security was not given at a time when the lender had reason to believe that enforcement or foreclosure was likely. In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement or foreclosure of the security, the Council will wish to be satisfied that such arrangements are necessary to preserve the lender's security and will also take into account the provisions above. When following enforcement or foreclosure a lender wishes to sell all or part of his shareholding, the provisions of this Rule apply to the purchaser.

Although a receiver, liquidator or administrator of a company is not required to make an offer when he takes control of a holding of 30% or more of the voting rights of another company, the provisions of this Rule apply to a purchaser from such a person.

3. *Balancing block: where 50% will not accept*

Situations may arise where a person, or group of persons acting in concert, acquires 30% or more of the voting rights of a company at a time when another person, or group of persons acting in concert, already holds 30% or more of the voting rights of that company. In such a situation, the Council will not normally waive the requirement for that person or group of persons to make a general offer under this Rule unless:-

(a) there is a single person holding 50% or more of the voting rights of the company who provides a written confirmation to the Council that he will not accept the offer which the purchaser would otherwise be obliged to make; or

(b) the Council is provided with written confirmation from the holders of 50% or more of the voting rights of that company that they would not accept the offer which the purchaser would be obliged to make.

Waivers under this Rule are subject to the following:-

(a) the purchaser and persons acting in concert with him are not to acquire voting rights via nominees or procure other persons to acquire voting rights on their behalf for the purpose of giving the written confirmation;

(b) the purchaser and persons acting in concert with him are not to offer any consideration, promise or inducement in return for undertakings by holders of voting rights that they will not accept the offer which the purchaser would otherwise be obliged to make;

(c) holders of voting rights are given the full facts, in particular, their giving up their right to a general offer to be made by the purchaser at not less than the highest price paid by the purchaser or any person acting in concert with him for voting rights in the company during the offer period and within the 6 months prior to the commencement of the offer;

(d) the purchaser to produce evidence to satisfy the Council that those shareholders who have undertaken not to accept the offer are indeed the beneficial owners of such shares; and

(e) the undertakings are procured just before the purchaser raises his shareholding to 30% or more of the voting rights of the company.

4. <u>Placing and top-up transactions</u>

A waiver from the obligation to make a general offer under this Rule will normally be granted where a shareholder, who together with persons acting in concert with him holds 50% or less of the voting rights of a company, places part of his holding with one or more independent persons (see Note 5 below) and then, as soon as is practicable, subscribes for up to such additional shares as he requires to maintain the percentage interest in the offeree company which he held prior to the placement, at a price substantially equivalent to the placing price after taking account of expenses incurred in the transaction. Such a

waiver is required even if the placing and top-up are to be effected simultaneously whether by way of placing and subscription agreements that are inter-conditional or otherwise. For purposes of Rule 14.1(b), the placing shareholder will be deemed to have a percentage holding equal to the lowest percentage holding which he had in the 6 month period prior to or immediately after the placing and top-up transaction. A waiver from the obligation to make a general offer under this Rule will not be required where a shareholder, who together with persons acting in concert with him holds more than 50% of the voting rights of a company, just after carrying out a placing and top-up transaction as described above. However, the Council will require confirmation from the financial adviser or placement agent of the controlling shareholder of the identity of the placee or placees and whether they are independent.

5. *Verification of independence of placees*

When compliance with a Rule or a waiver depends on a disposition or placement of voting rights to independent persons, the Council will normally require the financial adviser, placement agent or acquirer of the voting rights to verify and/or confirm that the purchaser is independent of, and does not act in concert with, the vendor of the voting rights. In the case of a single placee, the Council will be particularly concerned with verifying the independence of the placee. The offeror or its concert parties should not be involved in screening or selecting the placees.

6. *Share buy-back*

Please see the Share Buy-back Guidance Note at Appendix 2.

15 VOLUNTARY OFFER

15.1 Conditions

A voluntary offer is a take-over offer for the voting shares of a company made by a person when he has not incurred an obligation to make a general offer for the company under Rule 14.1. A voluntary offer must be conditional upon the offeror receiving acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and person acting in concert with it holding more than 50% of the voting rights. In addition, a voluntary offer must not be made subject to conditions whose fulfilment depends on the subjective interpretation or judgement by the offeror or lies in the offeror's hands. Normal conditions, such as level of acceptance, approval of shareholders for the issue of new shares and the Securities Exchange's approval for listing, may be attached without reference to the Council. Where appropriate, a voluntary offer must contain terms set out in Appendix 3. The Council should be consulted where other conditions would be attached.

NOTES ON RULE 15.1

1. *An element of subjectivity*

The Council will normally wish to be satisfied that fulfilment of the condition does not depend to an unacceptable degree on the subjective judgement of the offeror as such conditions can create uncertainty. Where, however, there are reasonable grounds for an offer to be conditional on specific statements, facts or estimates relating to the offeree company's business being satisfactorily confirmed, the Council will normally allow such conditions to be included provided that the test is sufficiently objective and depends on the judgement of parties other than the offeror or persons acting in concert with it.

2. *Invoking conditions*

An offeror should not invoke any condition, other than the acceptance condition, so as to cause the offer to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer, and information about the condition is not available from public records or is not known to the offeror before the offer announcement.

3. *Approval of regulatory authority*

Where any condition states that the approval of a regulatory authority is required and where such approval is given subject to certain terms and conditions which substantially change the terms and circumstances of the offer, the offeror may, with the Council's consent, be permitted to withdraw its offer.

4. *Voluntary offers conditional on high-level acceptances*

The Council will allow voluntary offers conditional on high-level acceptances subject to the following:-

(a) the offeror must state clearly in the offer document the level of acceptances upon which the offer is conditional i.e. an offer cannot be declared unconditional as to acceptances unless it receives the stipulated level of acceptances; and

(b) the offeror has to satisfy the Council that it is acting in good faith in imposing such high level of acceptances.

The Council will consider allowing the offeror to revise the initial acceptance level to a lower level (but above 50% as required by Rule 15.1) during the course of the voluntary offer, provided the revised offer remains open for another 14 days following the revision. In addition, shareholders who have accepted the initial offer should be permitted to withdraw their acceptance within 8 days of notification of the revision. The revised acceptance level will take into account withdrawals and new acceptances as at the close of the offer.

5. *Pre-conditional voluntary offer*

An offeror may announce a pre-conditional voluntary offer where the announcement of a firm intention to make an offer is subject to the fulfilment of certain pre-conditions, subject to the following:-

(a) the pre-conditions should be stated clearly in the announcement of the pre-conditional offer;

(b) the pre-conditions should be objective and reasonable;

(c) the announcement of the pre-conditional offer must specify a reasonable period for the fulfilment of the pre-conditions failing which the offer will lapse; and

(d) no pre-condition should be relied upon to cause the offer to lapse unless:-

(i) the offeror has demonstrated reasonable efforts to fulfil the conditions within the time period specified; and

(ii) the circumstances that give rise to the right to rely upon the conditions are material in the context of the proposed transaction.

15.2 Consideration

Offers made under this Rule must, in respect of each class of equity share capital involved, be in cash or securities or a combination thereof at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company during the offer period and within 3 months prior to its commencement.

NOTES ON RULE 15.2

1. Calculation of the price

Note 2 on Rule 14.3 also applies to this Rule, except the reference period for share purchases is 3 months and not 6 months.

2. Packaged deals

Note 6 on Rule 14.3 also applies to this Rule.

3. Dispensation from highest price

Note 7 on Rule 14.3 also applies to this Rule, except the reference period for share purchases is 3 months and not 6 months.

16 PARTIAL OFFER

16.1 Council's consent required

The Council's consent is required for any partial offer.

16.2 Offers for less than 30%

The Council will normally consent to a partial offer which could not result in the offeror and persons acting in concert with it holding shares carrying 30% or more of the voting rights of the offeree company.

NOTE ON RULE 16.2

The Council would normally consent to a partial offer for less than 30% of the voting rights of the offeree company, subject to the offeror complying with Rule 16.4(d), (f), (g), (h) and (i). In addition, the offeror and its concert parties must not acquire any voting rights in the offeree company during the offer period. However, the offeror may acquire voting rights in the offeree company before the commencement of the offer period and immediately after the close of a successful partial offer. (See also Note 4 on Rule 7.1)

16.3 Offers for between 30% and 50%

The Council will not consent to any partial offer which could result in the offeror and its concert parties holding shares carrying not less than 30% but not more than 50% of the voting rights of the offeree company.

16.4 Offers for more than 50%

The Council will not normally consent to a partial offer which could result in the offeror and its concert parties holding shares carrying more than 50% of the voting rights of the offeree company, unless:

(a) the partial offer is not a mandatory offer under Rule 14;

(b) the offeror confirms and undertakes in its application for consent that it and its concert parties did not and will not acquire any voting shares (excluding voting

shares acquired by the offeror and its concert parties via a rights issue and/or bonus issue without increasing their aggregate percentage shareholdings) in the offeree company:-

(i) in the 6 months prior to the date of the offer announcement (and confirms this fact in the offer announcement);

(ii) in the period between submitting the application for the Council's consent and the making of the partial offer;

(iii) during the offer period (except pursuant to the partial offer); and

(iv) during a period of 6 months after the close of the partial offer, if the partial offer becomes unconditional as to acceptances. The Council's consent for purchases of shares in the offeree company by the offeror and its concert parties within 12 months of the close of a successful partial offer will normally be granted if such purchases are proposed to be made more than 6 months after the partial offer;

(c) the partial offer is conditional, not only on the specified number or percentage of acceptances being received, but also on approval by the offeree company's shareholders, where the offeror together with parties acting in concert with it hold 50% or less in the offeree company prior to the announcement of the partial offer. Where the offeror together with parties acting in concert with it hold more than 50% of the voting rights of the offeree company, approval by the offeree company's shareholders is still required if the partial offer could result in the offeror and parties acting in concert with it holding more than 90%, or the offeree company failing to comply with the Securities Exchange's rules on minimum free float. The offeror, parties acting in concert with it and their associates are not allowed to vote on the partial offer. Voting should be:-

(i) if a general meeting is convened, by way of a poll on a separate ordinary resolution on the partial offer. The partial offer must be approved by shareholders (present and voting either in person or by proxy) of more than 50% of the votes cast; or

(ii) if it is on the form of acceptance for the partial offer, in a separate box with the number of voting shares indicated. The partial offer must be approved by shareholders of more than 50% of the votes received. Upon the close of the partial offer, the receiving agent must confirm in writing to the Council that it has done the necessary checks and verification to ensure that votes (if any) cast by shareholders not allowed to vote, are disregarded and excluded for the purpose of determining shareholders' approval for the partial offer;

Where approval for a partial offer has been obtained from the offeree company's shareholders before the partial offer is made, the offeror must announce the offer on the date of the shareholders' meeting to approve the partial offer;

(d) arrangements are made with the Securities Exchange prior to the posting of the offer document to provide a temporary trading counter to trade odd-lots in the offeree company's shares after the close of the partial offer. Such counter should be open for a reasonable period of time, which in any case should not be shorter than 1 month;

(e) the offer document contains a specific and prominent statement to the effect that if the partial offer succeeds, the offeror will be able to exercise statutory control over the offeree company and that the offeror and its concert parties will be free, subject to the 6-month rest in Para 16.4(b)(iv) above, to acquire further shares without incurring any obligation to make a general offer;

(f) the partial offer is made to all shareholders of the class and arrangements are made for those shareholders who wish to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage should be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which he has offered. The offeror should arrange its acceptance procedure to minimise the number of new odd-lot shareholdings;

(g) when a partial offer is made for a company with more than one class of equity share capital, a comparable offer is made for each other class;

(h) an appropriate partial offer is made for outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities which carry voting rights. In addition, the partial offer to shareholders must be extended to holders of newly issued shares arising from the exercise of such instruments, subscription rights or options during the offer period; and

(i) the precise number of shares, percentage or proportion offered is stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number, percentage or proportion.

NOTE ON RULES 16.1, 16.2 and 16.4

Entitlement to partial offer

The entitlements of offeree company shareholders to the partial offer will be in proportion to the number of offeree company shares held in their securities accounts as at the books closure date, which must be on the 14th day before the first closing date of the offer (if such day falls on a non-business day, the next business day will be the relevant book closure date). Such entitlements are not transferable.

16.5 Consideration

Partial offers may, in respect of each class of share capital involved, be in cash or securities or a combination of cash and securities.

NOTE ON RULE 16.5

When cash offer is required

Rule 17.1 on when a cash offer is required also applies to partial offers made under this Rule.

16.6 Settlement of consideration

Shares represented by acceptances in a partial offer should not be acquired by the offeror prior to expiry of the partial offer. Such shares must be paid for by the offeror as soon as possible following expiry of the partial offer but in any event within 7 business days of the partial offer's expiry date.

16.7 Council's consent for subsequent offers

Any person who intends to make a partial offer for the same offeree company within 12 months from the date of the close of a previous partial offer (whether successful or not) must seek the Council's prior consent. The Council will not normally grant its consent unless the subsequent partial offer is, as would be normally required, recommended by the board of the offeree company and proposed to be made by a person not acting in concert with the previous offeror. All such subsequent partial offers must comply with all the requirements in this Rule.

In the case of subsequent offers other than partial offers:-

(a) the restrictions in Rule 33.1(a) apply following a partial offer:-

(i) for more than 50% of the voting rights of the offeree company which has not become or been declared unconditional; and

(ii) for less than 30% of the voting rights of the offeree company which has not become or been declared unconditional.

(b) the restrictions in Rule 33.1(b) apply following a partial offer for less than 30% of the voting rights of the offeree company which has become or been declared wholly unconditional.

17 TYPE OF CONSIDERATION REQUIRED

17.1 When a cash offer is required

Except with the Council's consent, a cash offer is required where: -

(a) the offeror and any person acting in concert with it has bought for cash (see Note 4 below), during the offer period and within 6 months prior to its commencement, shares of any class under offer in the offeree company carrying 10% or more of the voting rights of that class; or

(b) in the view of the Council there are circumstances which render such a course necessary.

The offer for each class of shares must be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of the class during the offer period and within 6 months prior to its commencement.

NOTES ON RULE 17.1

1. Gross purchases

For the purpose of Rule 17.1(a), the Council will normally consider gross purchases of shares over the relevant period and will not allow the deduction of any shares sold over that period.

2. Where less than 10% has been purchased for cash

The discretion given to the Council in Rule 17.1(b) to require cash to be made available in certain cases where less than 10% has been purchased for cash during the offer period and within 6 months prior to its commencement will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company. In such cases, relatively small purchases could be relevant.

Rule 17.1(b) may also be relevant when 10% or more has been acquired in the previous 6 months for a mixture of securities and cash.

3. *Acquisitions for securities*

Shares acquired in exchange for securities during the offer period or in the 6 months prior to the commencement of the offer period will be deemed to be purchases for cash for the purpose of this Rule on the basis of the value of the securities at the time of the transaction. However, if the vendor of the offeree company shares is required to hold the securities until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, the shares acquired will not be deemed to be purchases for cash.

4. *Dispensation from highest price*

Note 7 on Rule 14.3 also applies to this Rule.

5. *Allotted but unissued shares*

When shares of a company carrying voting rights have been allotted (even provisionally) but have not yet been issued, for example under a rights issue when the shares are represented by renounceable letters of allotment, the Council should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.

17.2 When a securities offer is required

Where purchases of any class of the offeree company shares carrying 10% or more of the voting rights have been made by an offeror and any person acting in concert with it in exchange for securities during the offer period and in the 3 months prior to the commencement of the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, an obligation to provide a cash alternative will also arise under Rule 17.1. (See Note 3 on Rule 17.1)

NOTES ON RULE 17.2

1. *Basis on which securities are to be offered*

Any securities required to be offered pursuant to this Rule must be offered on the basis of the actual number of consideration securities received by the vendor for each offeree company share. Where there has been more than one

relevant purchase, offeror securities must be offered on the basis of the largest number of consideration securities received for each offeree company share.

When shares of a company carrying voting rights have been allotted (even provisionally) but have not yet been issued, for example under a rights issue when the shares are represented by renounceable letters of allotment, the Council should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.

2. *Equality of treatment*

The Council may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than 3 months prior to the commencement of the offer period. However, this discretion will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company.

3. *Vendor placings*

Shares acquired in exchange for securities will normally be deemed to be purchases for cash for the purposes of this Rule if an offeror or any of its associates have in place arrangements for the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

4. *Management retaining an interest*

In a management buy-out or similar transaction, if the only offeree company shareholders who receive offeror securities are members of the management of the offeree company, the Council will not, so long as the requirements of Note 4 on Rule 10 are complied with, require all offeree company shareholders to be offered offeror securities under this Rule, even though such members of the management of the offeree company propose to sell, in exchange for offeror securities, more than 10% of the offeree company's shares.

If, however, offeror securities are made available to any non-management shareholders (regardless of the size of their holding of offeree company shares), the Council will normally require such securities to be made available to all shareholders on the same terms.

5. *Acquisition for a mixture of cash and securities*

The Council should be consulted when 10% or more of the voting rights of the offeree company has been acquired during the offer period and 6 months prior to the commencement of the offer period for a mixture of securities and cash.

6. *Purchases in exchange for securities to which selling restrictions are attached*

Where an offeror and any person acting in concert with it has purchased 10% or more of the voting rights in the offeree company during the offer period and within 6 months prior to the commencement and the consideration received by the vendor includes shares to which selling restrictions of the kind set out in the second sentence of Rule 17.2 are attached, the Council should be consulted.

18 COMPARABLE OFFERS FOR DIFFERENT CLASSES OF CAPITAL

Where a company has more than one class of equity share capital, a comparable offer must be made for each class; the Council should be consulted in advance in such cases. An offer for non-voting equity capital should not be made conditional on any particular level of acceptances in respect of that class unless the offer for the voting capital is also conditional on the success of the offer for the non-voting equity capital.

NOTES ON RULE 18

1. *Ratio of offer values*

   In the case of offers involving two or more classes of equity share capital, the ratio of the offer values must be justified to the Council in advance. Where the offers relate to equity shares that are listed, the Council will normally accept the ratio of the offer values to be equal to the ratio of the simple average of daily volume weighted average traded prices of the equity shares over the course of 6 months (3 months in the case of voluntary offers) preceding the commencement of the offer period. Where traded prices are not available for all the classes of equity shares, and the classes of equity shares differ only in their voting rights, the Council will normally accept the ratio of the offer values to be equal to one. In all other cases, the ratio of the offer values must be justified to the Council in advance and the Council will have regard to all relevant circumstances.

2. *Offer for non-voting shares only*

   Where an offer for non-voting shares only is being made, comparable offers for voting classes are not required.

19 APPROPRIATE OFFERS TO HOLDERS OF CONVERTIBLES, ETC

The following applies to an offeree company with outstanding instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights:

(a) Where an offer is made for equity share capital and the offeree company has instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights (hereinafter referred to as “stocks”) outstanding, the offeror must make an appropriate offer or proposal to the holders of the stocks (hereinafter referred to as "stockholders"). Equality of treatment is required.

(b) The board of the offeree company must obtain competent independent advice on any offer or proposal to the stockholders and disclose the substance of such advice to its stockholders together with the board's views on the offer or proposal.

(c) Whenever practicable the offeror should despatch the offer or proposal to stockholders at the same time that it posts the offer document to shareholders. If this is not practicable, the offeror should inform the Council and despatch the offer or proposal as soon as possible thereafter.

(d) The offer or proposal to stockholders required by this Rule should not be made conditional on any particular level of acceptances unless the share offer itself is conditional on the stock offer achieving that level of acceptances. The offer or proposal to stockholders required by this Rule may be carried out by way of a scheme to be considered by a stockholders' meeting.

NOTES ON RULE 19

1. *Appropriate offer price for instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights*

For outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights, the "see-through" price is normally used to determine the appropriate offer

price. An appropriate offer or proposal for such instruments, subscription rights or options is at least the higher of the following:-

(a) the "see-through" price. For rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights, the "see-through" price is the excess of the offer price for the underlying securities over the exercise or subscription price of such subscription rights or options. For instruments convertible into securities being offered for or which carry voting rights, the "see-through" price is the offer price for the underlying securities multiplied by the conversion ratio. For example, if the share offer price is $4, the "see-through" price for an instrument convertible into 5 shares should be $20 ($4 times 5); and

(b) the highest price paid by the offeror and persons acting in concert with it for such instruments, subscription rights or options during the offer period and:-

(i) for a mandatory offer: within 6 months of commencement of the offer period; or

(ii) for a voluntary offer: within 3 months of commencement of the offer period.

Where the offeror and persons acting in concert with it have not acquired any instruments convertible into, rights to subscribe for, nor options in respect of, securities being offered for or which carry voting rights during the time periods set out in Para (b) above and the see-through price is zero or negative, the offeror may offer a nominal amount for such instruments, subscription rights or options.

A higher offer would not be considered appropriate if it is part of a special deal to provide an incentive to persons who also hold shares or other securities of the offeree company to accept the offer.

There may be cases where a basis other than the "see-through" price is more appropriate, and if the offeror is of the view that the consideration should be determined on some other basis, the Council should be consulted in advance.

2. *Equality of treatment*

"Equality of treatment" under this Rule should be taken to mean equality of treatment within a class of security holders as opposed to equality of treatment between different classes of securities.

3. *When instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights are exercisable during an offer*

The offeror is required to extend the share offer to holders of new shares arising from the exercise of outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights during the offer period. When such instruments, subscription rights or options are exercisable during an offer, all relevant documents issued to shareholders of the offeree company in connection with the offer must also, where practicable, be issued simultaneously to the holders of these instruments, subscription rights or options.

20 REVISION

20.1 Offer open for 14 days after revision

If revised, an offer must be kept open for at least 14 days from the date of posting of the written notification of the revision to shareholders.

NOTES ON RULE 20.1

1. *Announcements which may increase the value of an offer*

   In a securities exchange offer, an offeror's announcement of trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments may increase the value of the offer. Therefore, an offeror will not normally be permitted to make such announcements after it is precluded from revising the offer. This restriction does not apply to the announcement of trading results and dividends in order to comply with the law or the listing rules of the Securities Exchange. The Council must be consulted beforehand, and be satisfied that every effort has been made to bring the announcement forward and it does not appear likely to influence materially the outcome of the offer.

2. *When revision is required*

   An offeror will be required to revise its offer if it, or any person acting in concert with it, purchases shares at above the offer price or it becomes obliged to introduce a cash offer or to make a cash offer, or to increase the existing cash offer.

3. *When revision is not permissible*

   An offeror must not place itself in a position where it would be required to revise its offer if:-

   (a) it has made a no increase statement; or

   (b) such revision would require the offer period to be extended beyond the last day on which the offer is capable of becoming or being declared unconditional as to acceptances stipulated in Rule 22.9.

4. *Triggering a mandatory offer*

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, makes an acquisition which causes it to have to extend a mandatory offer at no higher than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition. But such an acquisition can be made only if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is posted. If the offeror has earlier made a no increase statement but subsequently makes an acquisition which causes it to incur a mandatory bid obligation at a higher offer price, then the offeror must implement the mandatory offer at the higher offer price. The Council takes a serious view of such breaches of the Code, and reserves the right to reprimand and or caution the offeror for going back on his earlier no increase statement. (See also Note 9 on Rule 14.1)

20.2 No increase statements

If the offeror or a person on behalf of the offeror has made a "no increase" statement and it is not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to amend the terms of the offer in any way even if the amendment would not result in an increase in the value of the offer, except in wholly exceptional circumstances or where the right to do so has been specifically reserved.

NOTES ON RULE 20.2

1. *Firm statements*

In general, an offeror will be bound by any firm statement as to the finality of its offer. In this respect, the Council will treat any indication of finality as absolute, unless the offeror clearly states the specific circumstances in which the statement will not apply. The Council will not distinguish between the precise words used, e.g. the offer is "final" or will not be "increased", "amended", "revised", "improved" or "changed". The Council will regard any statement of intention as a firm statement.

2. *Reservation of right to set statements aside*

A no increase statement may be set aside only if the offeror has specifically reserved the right to do so at the time the statement was made; this applies

whether or not the offer was recommended at the outset. The first document sent to shareholders in which mention is made of the no increase statement must contain prominent reference to this reservation (precise details of which must also be included in the document.) Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details.

If a competitive situation arises (see Notes on Rule 22.6 and Rule 29) after a no increase statement is made, the offeror can choose not to be bound by it and be free to increase the offer only if he has specifically reserved the right to set aside the no increase statement when such statement was made and provided that:-

(a) the offeror gives notice to increase the offer within four business days of the announcement of the competing offer; and

(b) the offeree company's shareholders, who accepted the offer after the date of the no increase statement, are given a right of withdrawal for a period of 8 days following the date on which the notice to increase the offer is posted.

3. <u>Recommended offers</u>

The offeror can choose not to be bound by a no increase statement where an increased or improved offer is recommended for acceptance by the board of the offeree company if the first document sent to shareholders, where the no increase statement was mentioned, includes prominent reference to this Note.

4. <u>Offeree company announcements after day 39</u>

An offeror may reserve the right to set aside a no increase statement in the event the offeree company makes an announcement of the kind referred to in Rule 22.8 after the 39th day following the publication of the initial offer document, only if the no increase statement is made after that day. If such an announcement is subsequently made by the offeree company and the offeror wishes to set aside its no increase statement the offeror must make an announcement to this effect within 4 business days after the date of the offeree company announcement.

20.3 New conditions for increased or improved offer

An offeror may attach new conditions to an increased or improved offer, but only to the extent necessary to implement the revised offer and subject to the Council's consent.

20.4 Entitlement to revised consideration

If an offer is revised, all shareholders who accepted the original offer must receive the revised consideration.

20.5 Competitive situations

If a competitive situation continues to exist in the later stages of the offer period, the Council will normally require revised offers to be announced in accordance with an auction procedure, the terms of which will be determined and announced by the Council. That procedure will normally follow the auction procedure set out in Appendix 4. However, the Council will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree company. Under any auction procedure, the Council may set a deadline by which any revised offer document must be sent to offeree company shareholders and persons with information rights.

NOTES ON RULE 20.5

1. *Dispensation from obligation to make an offer*

   The Council will normally grant a dispensation from the obligation to make a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.

2. *Schemes of arrangement*

   Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Council as to the applicable timetable.

21 PURCHASES AT ABOVE OFFER PRICE

21.1 Highest price paid

If an offeror or any person acting in concert with it buys securities in the offeree company at above the offer price (being the then current value of the offer during the offer period), it must increase its offer to not less than the highest price paid for any securities so acquired.

NOTE ON RULE 21.1

Subscription for new securities

Subscription for new securities at a price above the offer price will be treated as a purchase for the purposes of this Rule.

21.2 Offers involving a further issue of listed securities

For the purposes of this Rule, if the offer entails a further issue of securities of a class already listed on the Securities Exchange, the current value of the offer on a given day should normally be established by reference to the volume weighted average traded price of such securities during the immediately preceding trading day. If there were no dealings in the relevant securities on the immediately preceding trading day, the latest trading day on which there were dealings.

The Council reserves the right to set aside any inexplicably high or low traded prices.

If the offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

21.3 Shareholder notification

Within 30 minutes after the purchase of securities at above the offer price, it must be announced that a revised offer will be made in accordance with this Rule (see also Rule 20). The announcement should also state the number and class of securities purchased and the price paid.

Shareholders of the offeree company must be notified in writing of the increased price payable under this Rule at least 14 days before the offer closes.

NOTES ON RULE 21

1. *Instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights*

   Purchases of instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights will normally be relevant to this Rule if they are converted or exercised (as applicable). Such purchases will then be treated as if they were purchases of the underlying securities at a price calculated by reference to the purchase price and the relevant conversion or exercise terms. In any case of doubt, the Council should be consulted.

2. *Estimate of value*

   If the offer entails the issue of securities of a class which is not already quoted, the value should be based on a reasonable estimate, by an appropriate adviser, of what the price would have been had they been quoted. When appropriate, an updated valuation should be announced.

3. *Restricted market*

   Where there is a restricted market in the securities of an offeror, or if the amount of securities to be issued is large in relation to the amount already quoted, the Council may require justification of prices used to determine the value of the offer.

4. *Securities not to be listed*

   If it is not intended to seek an immediate listing of the securities to be issued as consideration, the Council should be consulted in advance.

22 OFFER TIMETABLE

22.1 Despatch of offer document

The offer document, which must not be dated more than 3 days prior to despatch, should normally be posted not earlier than 14 days but not later than 21 days from the date of the offer announcement. The offeror should consult the Council in advance if the offer document is not to be posted within the prescribed period.

NOTE ON RULE 22.1

Pre-conditional offers

In the case of a pre-conditional voluntary offer or a mandatory offer triggered upon the fulfilment of conditions attached to a share acquisition agreement or a put and call option agreement, the Council may, upon application by the offeree company, permit the offer document to be posted on a date earlier than 14 days after the date of offer announcement.

22.2 Despatch of the offeree board circular

The board of the offeree company should advise its shareholders of its views of the offer within 14 days of the posting of the offer document.

22.3 First closing date

An offer must initially be open for at least 28 days after the date on which the offer document is posted.

22.4 Further closing dates to be specified

Any announcement of an extension of an offer must state the next closing date or if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, those shareholders who have not accepted the offer should be notified in writing at least 14 days before the offer is closed.

22.5 No obligation to extend

There is no obligation to extend an offer the conditions of which are not met by the first or subsequent closing date.

22.6 Offer to remain open for 14 days after unconditional as to acceptances

After an offer has become or is declared unconditional as to acceptances, the offer must remain open for acceptance for not less than 14 days after the date on which the offer would otherwise have closed. This requirement does not apply if, before the offer becomes or is declared unconditional as to acceptances, the offeror has given notice in writing to shareholders of the offeree company at least 14 days before the specified closing date that the offer will not be open for acceptance beyond such date. Such notice may not be given, or if already given, will not be capable of being enforced in a competitive situation. This requirement also applies to an offer that is unconditional in all respects before the posting of the offer document, unless the offeror has stated in the offer document that the offer will not be extended beyond the first closing date.

NOTE ON RULE 22.6

Council would normally regard a competitive situation to have arisen if a competing offer has been announced. In the case where a pre-conditional offer or a proposal to acquire materially all of the assets and/or businesses is announced, the Council should be consulted.

22.7 No extension statements

If statements in relation to the duration of an offer such as "the offer will not be extended beyond a specified date unless it is unconditional as to acceptances" ("no extension statements") are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, the offeror will not be allowed subsequently to extend the offer beyond the stated date except where required by Rule 22.6, where the right to do so has been specifically reserved or in wholly exceptional circumstances.

NOTES ON RULE 22.7

1. *Firm statements*

   Note 1 on Rule 20.2 also applies to this Rule, except all references to "finality" should be taken to be references to "duration".

2. *Reservation of right to set statements aside*

   Note 2 on Rule 20.2 also applies to this Rule, except all references to "no increase statement" and "increase the offer" should be taken to be references to "no extension statement" and "extend the offer" respectively.

3. *Recommended Offers*

   Note 3 on Rule 20.2 also applies to this Rule, except all references to "no increase statement" should be taken to be references to "no extension statement".

4. *Offeree company announcements after day 39*

   Note 4 on Rule 20.2 also applies to this Rule, except all references to "no increase statement" should be taken to be references to "no extension statement".

22.8 Offeree company announcements after day 39

Except with the Council's consent, the board of the offeree company should not announce trading results, profit or dividend forecasts, asset valuations or major transactions after the 39th day following the posting of the initial offer document. Where the announcement of trading results and dividends would normally take place after the 39th day, every effort should be made to bring forward the date of the announcement, but, where this is not practicable, the Council will normally give its consent to a later announcement. If an announcement of the kind referred to in this paragraph is made after the 39th day, the Council will normally be prepared to grant an extension of the period of 60 days referred to in Rule 22.9.

22.9 Final day rule

No offer (whether revised or not) will be capable of becoming or being declared unconditional as to acceptances after 5.30 pm on the 60th day after the date the offer document is initially posted nor of being kept open after the expiry of such period unless it has previously become or been declared unconditional as to acceptances. An offer may be extended beyond that period of 60 days with the permission of the Council. The Council will consider granting such permission in circumstances, including but not limited to, where a competing offer has been announced.

NOTE ON RULE 22.9

Competing offers

In the event the Council grants its permission to extend on account of a competing offer having been announced, all existing offers will normally be bound by the timetable established by the despatch of the offer document of the latest competing offeror.

22.10 Time for fulfilment of other conditions

Except with the Council's consent, all conditions must be fulfilled or the offer must lapse within 21 days of the first closing date or of the date the offer becomes or is declared unconditional as to acceptances, whichever is the later.

23 OFFER DOCUMENTS

23.1 Advisory statement

Every offer document must contain the following words which are to be displayed prominently in that document:-

"If you are in doubt about this offer you should consult your stockbroker, bank manager, solicitor or other professional adviser."

23.2 Intentions relating to the offeree company and its employees

An offeror should cover the following points in the offer document:-

(a) its intentions regarding the business of the offeree company;

(b) its intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company;

(c) the long-term commercial justification for the proposed offer; and

(d) its intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries.

23.3 Disclosure of interests in securities and dealings

The offer document must state:-

(a) the shareholdings of the offeror in the offeree company;

(b) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;

(c) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any person acting in concert with the offeror owns or controls (with the names of such persons acting in concert);

(d) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accepting the offer together with the names of such persons; and

(e) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 7 on Rule 12.

(f) the number and percentage of any shareholdings in the offeree company which the offeror or any person acting in concert with it has:-

(i) granted a security interest to another person, whether through a charge, pledge or otherwise;

(ii) borrowed from another person (excluding borrowed shares which have been on-lent or sold); or

(iii) lent to another person.

If in any of the above categories there are no shareholdings, this fact should be stated.

If any party whose shareholdings are required by this Rule to be disclosed has dealt for value in the shares in question during the period commencing 6 months (3 months in the case of a voluntary offer) prior to the beginning of the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such deals have been made, this fact should be stated.

NOTES ON RULE 23.3

1. Relevant shareholdings

References in this Rule to shareholdings include:-

(a) for shareholdings in the offeree company, holdings of:-

(i) securities which are being offered for or which carry voting rights; and

(ii) convertible securities, warrants, options and derivatives in respect of (i); and

(b) for shareholdings in the offeror company, holdings of-

(i) equity share capital;

(ii) securities which carry substantially the same rights as any to be issued as consideration for the offer; and

(iii) convertible securities, warrants, options and derivatives in respect of (i) or (ii).

2. Meaning of "interested"

References to directors being 'interested' in shareholdings should be interpreted according to Section 164 of the Companies Act.

3. Conversion rights and options

Where holdings of conversion or subscription rights or options (including traded options) are disclosed, the exercise period and exercise price must be given. Where dealings in options are disclosed, the date of buying, granting or writing the options, the exercise period, the exercise price and any option money paid or received must be stated.

Where holdings of derivatives are disclosed, the number of reference securities to which they relate (when relavant), the maturity date and the reference price must be given. Where dealings involving derivatives are disclosed, the number

of reference securities to which they relate, the date of entering into or closing out of the derivative, the maturity date and the reference price must be stated. In each case, full details must be given so that the nature of the holding or dealing can be fully understood.

4. *Commitments to accept an offer*

References to irrevocable commitments to accept an offer must make it clear if there are circumstances in which they cease to be binding, for example, if a higher offer is made.

23.4 Financial information

Except with the Council's consent, the offer document must contain the following information about the offeror, whether the offer consideration is securities or cash:-

(a) names, descriptions and addresses of all its directors;

(b) a summary of its principal activities;

(c) details, for the last three financial years, of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share;

(d) a statement of the assets and liabilities shown in the last published audited accounts;

(e) particulars of all known material changes in the financial position of the company subsequent to the last published audited accounts or a statement that there are no such known material changes;

(f) details relating to items referred to in (c) and (d) in respect of any interim statement or preliminary announcement made since the last published audited accounts;

(g) significant accounting policies together with any points from the notes of the accounts which are of major relevance for the interpretation of the accounts; and

(h) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

The offer document should also state whether or not there has been, within the knowledge of the offeror, any material change in the financial position or prospects of the offeree company since the date of the last balance sheet laid before the company in general meeting, and, if so, particulars of any such change.

NOTE ON RULE 23.4

Where the offeror is a subsidiary company

If the offeror is a subsidiary, its ultimate holding company will normally have to disclose the prescribed information on a consolidated basis in the offer document. The Council may dispense with this requirement if the subsidiary in question is of sufficient substance in relation to the group and the offer.

23.5 Conditions of offer

The offer document must set out clearly:-

(a) the price or other considerations to be paid for the securities;

(b) all conditions attached to acceptances, in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional as to acceptances; and

(c) a statement whether or not the offeror intends to avail itself of powers of compulsory acquisition.

23.6 Special arrangements

Unless otherwise agreed with the Council, every offer document must include:-

(a) a statement as to whether or not any agreement, arrangement or understanding exists between the offeror or any person acting in concert with

it and any of the directors, or recent directors, shareholders or recent shareholders of the offeree company having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding; and

(b) a statement as to whether or not any securities acquired pursuant to the offer will be transferred to any other person, together with the names of the parties to any such agreement, arrangement or understanding, particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held, and particulars of all securities which will or may be transferred.

Any document evidencing an irrevocable undertaking to accept the offer should be made available for inspection.

NOTES ON RULE 23.6

1. *Arrangements with directors or any person connected with offer*

Information on the following arrangements, if any, must be provided:-

(a) *details of any payment or other benefit which will be made or given to any director of the offeree company or of any corporation which is by section 6 of the Companies Act deemed to be related to that company as compensation for loss of office or otherwise in connection with the offer; and*

(b) *details of any agreement or arrangement made between the offeror and any of the directors of the offeree company or any other person in connection with or conditional upon the outcome of the offer or otherwise connected with the offer.*

2. *Restriction on transfers*

The offer document should contain particulars of any restriction on the right to transfer the securities to which the offer relates, and the arrangements, if any, being made to enable the securities to be transferred pursuant to the offer.

23.7 Directors' service contracts

The offer documents should, except in the case of an offeror offering solely cash, contain a statement (if appropriate, a negative statement) indicating whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree company, or any other associated relevant transaction. Such information should include any alterations to fixed amounts receivable or the effect of any factor governing commissions or other variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all the directors will normally be acceptable.

23.8 Availability of financial resources

Where the offer is for cash or includes an element of cash, the offer document must include an unconditional confirmation by an appropriate third party (e.g. the offeror's banker or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash would be available to satisfy full acceptance of the offer. The Council reserves the right to require evidence to support such confirmation.

23.9 Ultimate owner of securities acquired

Unless otherwise agreed with the Council, the offer document must contain a statement as to whether or not any securities acquired pursuant to the offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.

23.10 Market prices of offeree's shares

The offer document should state:-

(a) the closing price on the Securities Exchange (or on a securities exchange where they are listed) of the securities of the offeree company which are the subject of the offer:-

(i) on the latest practicable date prior to publication of the document;

(ii) on the latest business day immediately preceding the date of the initial announcement of the offer; and

(iii) at the end of each of the 6 calendar months preceding the date of the initial announcement; and

(b) the highest and lowest closing prices during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document, and the respective dates of the relevant sales.

23.11 Shares offered for and dividends

The offer document should contain details of the securities for which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

23.12 Further information in cases of securities exchange offers

The following additional information should be given by the offeror when it is offering its securities in exchange for the securities of the offeree company:-

(a) the nature and particulars of its business;

(b) the date and country of its incorporation;

(c) the address of its principal office in Singapore;

(d) the authorised and issued share capital, and the rights of the shareholders in respect of capital, dividends and voting;

(e) whether the shares being offered will rank pari passu with the existing issued shares of the offeror, and if not, a precise description of how the shares will rank for dividends and capital;

(f) the number of shares issued since the end of the last financial year of the offeror;

(g) where the securities are quoted or dealt in on a securities exchange, this fact and the securities exchange(s) concerned should be stated. The following information should also be included:-

(i) the closing price on the latest practicable date prior to the publication of the document. Where the securities are quoted or dealt in on more than one securities exchange, it is sufficient to state the latest available closing price in relation to the securities exchange with the greatest number of recorded dealings in the securities in the 6 months immediately preceding the date of the initial announcement;

(ii) where the take-over offer has been the subject of a public announcement in newspapers or by any other means, the closing price on the latest business day immediately preceding the date of the initial announcement of the offer;

(iii) the closing price at the end of each of the 6 calendar months preceding the date of the initial announcement; and

(iv) the highest and lowest closing prices during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document, and the respective dates of the relevant sales;

(h) where the securities are not quoted or dealt in on a securities exchange, the statement should contain all information which the offeror may have as to the number, amount and price at which the securities may have been sold during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the publication of the offer document. If the offeror has no such information, a statement to that effect should be made;

(i) details of the outstanding instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights affecting shares in the offeror;

(j) details of any re-organisation of capital during the three financial years preceding the date of the offer;

(k) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect;

(l) details of any material litigation to which the offeror is, or may become, a party;

(m) details of every material contract entered into with an interested person not more than three years before the date of the offer, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the offeror; and

(n) how and when the documents of title to the securities will be issued.

NOTE ON RULE 23.12

1. "Interested person"

An interested person is:-

(a) a director, chief executive officer, or substantial shareholder of the company;

(b) the immediate family of a director, the chief executive officer, or a substantial shareholder (being an individual) of the company;

(c) the trustees, acting in their capacity as such trustees, of any trust of which a director, the chief executive officer or a substantial shareholder (being an individual) and his immediate family is a beneficiary;

(d) any company in which a director, the chief executive officer or a substantial shareholder (being an individual) together and his immediate family together (directly or indirectly) have an interest of 30% or more;

(e) *any company that is the subsidiary, holding company or fellow subsidiary of the substantial shareholder (being a company); or*

(f) *any company in which a substantial shareholder (being a company) and any of the companies listed in (e) above together (directly or indirectly) have an interest of 30% or more.*

2. *"Date of the offer"*

The date of the offer refers to the date the offer document is despatched.

23.13 Rights of offeree company shareholders

The obligations of the offeror and the rights of the offeree company shareholders under Rules 18, 22 and 28 must be specifically incorporated in the offer document.

24 OFFEREE BOARD CIRCULARS

24.1 Recommendations of offeree board and financial adviser

(a) The offeree board circular should indicate whether or not the board of directors of the offeree company recommends to shareholders the acceptance or rejection of take-over offer(s) made, or to be made, by the offeror.

(b) The board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders in the offeree board circular.

(c) If any document issued to shareholders of the offeree company in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless issued by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the issue of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.

NOTES ON RULE 24.1

1. <u>When a board has effective control</u>

A board whose shareholdings confer effective control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

2. <u>Split boards</u>

If the board of the offeree company is split in its views on the offer, the directors who hold dissenting views and are the minority on the board should also publish their views. The Council will normally require that the offeree company circulate such directors' views to its shareholders.

3. *Conflicts of interests*

Directors who have an irreconcilable conflict of interests and those who have been exempted by the Council from making recommendations to shareholders on an offer should not join with the remainder of the board in the expression of its views on the offer. In such cases, the reasons for their exclusion should be clearly explained to shareholders. In the case where all the directors on the offeree company board have been exempted by the Council, the responsibility for making a recommendation to shareholders shall reside primarily with the independent financial adviser.

4. *Updated recommendations*

The Council will normally not object to the offeree board issuing an updated recommendation to its shareholders if the circumstances justify it. For example, the offeree board may decide to recommend an offer, after having rejected it initially, when the offeror increases the offer price. It is not acceptable, however, for the offeree board or its adviser to make a recommendation on the offer merely for tactical purposes when such recommendation is not in the best interests of all shareholders. The offeree board must give its shareholders sufficient time to consider the updated recommendation. To ensure prompt and wide dissemination of the updated recommendation, a paid press notice may be needed.

24.2 Views of the board on the offeror's plans for the company and its employees

Where relevant, the board of the offeree company should comment in a letter to its shareholders on statements regarding the offeror's intentions with respect to the offeree company and its employees made pursuant to Rule 23.2.

24.3 Shareholdings and dealings

(a) The document of the offeree company advising its shareholders on an offer (whether recommending acceptance or rejection of the offer) must state:-

(i) the shareholdings of the offeree company in the offeror;

(ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;

(iii) the shareholdings in the offeree company and in the offeror (in the case of a securities exchange offer only) owned or controlled by the independent financial adviser to the offeree company, or by funds whose investments are managed by the adviser on a discretionary basis (the funds need not be named); and

(iv) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer.

(b) If in any of the above categories [with the exception of paragraph (a)(iii)] there are no shareholdings, then this fact should be stated.

(c) If any party whose shareholdings are required by paragraph (a) to be disclosed has dealt for value in the shares in question during the period commencing 6 months (3 months in the case of a voluntary offer) prior to the beginning of the offer period and ending with the latest practicable date prior to the posting of the offeree board circular, the details, including dates and prices, must be stated. If no such deals have been made, this fact should be stated.

NOTES ON RULE 24.3

1. <u>Shareholdings</u>

References in this Rule to shareholdings include-

(a) for shareholdings in the offeree company, holdings of:-

(i) securities which are being offered for or which carry voting rights; and

(ii) convertible securities, warrants, options and derivatives in respect of (i); and

(b) for shareholdings in the offeror company, holdings of:-

(i) equity share capital;

(ii) securities which carry substantially the same rights as any to be issued as consideration for the offer; and

(iii) convertible securities, warrants, options and derivatives in respect of (i) or (ii).

2. *"Interested" in Shareholdings*

References to directors being 'interested' in shareholdings should be interpreted according to section 164 of the Companies Act.

3. *Conversion rights and options*

Where holdings of conversion or subscription rights or options (including traded options) are disclosed, the exercise period and exercise price must be given. Where dealings in options are disclosed, the date of buying, granting or writing the options, the exercise period, the exercise price and any option money paid or received must be stated.

4. *Commitments to accept an offer*

The offeree board circular must specify the circumstances, if any, under which commitments to accept the offer will cease to be binding.

5. *When directors resign*

When, as part of the transaction leading to an offer being made, some or all of the directors of the offeree company resign, this Rule applies to them and their shareholdings and dealings must be disclosed in the circular in the usual way.

24.4 Financial Information

Except with the Council's consent, the offeree circular must contain the following information about the offeree company:-

(a) names, descriptions and addresses of its directors;

(b) its principal activities;

(c) details, for the last three financial years, of turnover, exceptional items, net profit or loss before and after tax, minority interests, net earnings per share and net dividends per share;

(d) a statement of the assets and liabilities shown in the last published audited accounts;

(e) particulars of all known material changes in the financial position of the company subsequent to the last published audited accounts or a statement that there are no such known material changes;

(f) details relating to items referred to in (c) in respect of any interim statement or preliminary announcement made since the last published audited accounts;

(g) significant accounting policies together with any points from the notes of the accounts which are of major relevance for the interpretation of the accounts; and

(h) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

24.5 Share capital of the offeree company

The following information about the offeree should be disclosed:-

(a) the authorised and issued capital, and the rights of the shareholders in respect of capital, dividends and voting;

(b) the number of shares issued since the end of the last financial year;

(c) details of outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights affecting shares in the offeree company; and

(d) if the shares to which the offer relates are not quoted or dealt in on a securities exchange, all the information which the offeree company may have as to the number, amount and price at which any such shares have been sold during the period starting from the 6 months preceding the date of the initial announcement until the latest practicable date prior to the publication of the offeree board circular.

24.6 Material contracts

The offeree circular should contain a summary of the principal contents of each material contract with interested persons (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning three years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries.

NOTE ON RULE 24.6

"Interested person"

An interested person is as defined in Note on Rule 23.12.

24.7 Directors' service contracts

Documents sent to shareholders of the offeree company recommending acceptance or rejection of offers must contain particulars of all service contracts of any director or proposed director with the offeree company or any of its subsidiaries which have more than 12 months to run and which cannot be terminated by the company within the next 12 months without paying any compensation. If there are no such contracts, this fact should be stated. If any such contracts have been entered into or amended during the period between the start of 6 months preceding the date of the initial announcement and the latest practicable date prior to the publication of the offeree board circular, particulars of the earlier contracts (if any) which have been amended or replaced as well as the current contracts must be disclosed. If there have been no new contracts or amendments to existing contracts, this should be stated.

NOTE ON RULE 24.7

1. *Service contracts of directors of offeree company*

For the purpose of this Rule, the following particulars of service contracts should be disclosed:-

(a) the name of the director or proposed director under contract;

(b) the expiry date of the contract;

(c) the amount of fixed remuneration payable under the contract (irrespective of whether received as a director or for management, but excluding arrangements for company payments in respect of a pension or similar scheme); and

(d) the amount of any variable remuneration payable under the contract (e.g. commission on profits) with details of the formula for calculating such remuneration.

Where there is more than one contract, a statement of the aggregate remuneration payable thereunder is normally regarded as fulfilling the requirements under (c) and (d) above, except to the extent that this method would conceal material anomalies which ought to be disclosed (e.g. because one director is remunerated at a very much higher rate than the others). It is not regarded as sufficient to refer to the latest annual accounts, indicating the information regarding service contracts may be found there, or to state that the contracts are open for inspection at a specified place.

24.8 Arrangements affecting directors

Information on the following arrangements must be provided, if any:-

(a) details of any payment or other benefit which will be made or given to any director of the offeree company or of any other corporation which is by virtue of section 6 of the Companies Act deemed to be related to that company, as compensation for loss of office or otherwise in connection with the offer;

(b) details of any agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the offer ; and

(c) details of any material contract entered into by the offeror in which any director of the offeree company has a material personal interest, whether direct or indirect.

25 PROFIT FORECASTS

25.1 Standards of care

There are obvious hazards attached to the forecasting of profits. But this should in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to shareholders in an offer. The responsibility for compiling a profit forecast lies solely with the directors. They must do so with due care and consideration. The financial adviser must satisfy himself that the forecast has been prepared in this manner by the directors.

25.2 The assumptions

When a profit forecast appears in any document addressed to shareholders in connection with an offer, the directors must state in the document the assumptions, including the commercial assumptions, upon which they have based their profit forecast.

When, after an offer document has been posted, a profit forecast is given in a press announcement, any assumptions on which the forecast is based should be included in the announcement.

NOTES ON RULE 25.2

1. *Reasonableness and reliability of forecast*

   One of the main objectives of documents issued in connection with a take-over or merger transaction is to persuade shareholders either to accept or to reject an offer. However objective the directors try to be, their forecast may be influenced by the position they or their advisers advocate. Profit forecasting entails judgement and is subject to various uncertainties. By listing the assumptions on which the forecast is based, the directors can give useful information to shareholders to assist them in forming a view on the reasonableness and reliability of the forecast. The assumptions should include a summary of uncertain events or factors on which the directors passed judgement. The directors should also draw the shareholders' attention to and, where possible, quantify those uncertain events or factors which could affect the achievement of the forecast.

The directors should explain any uncertainties surrounding the profit forecast. Not only is this useful to shareholders in evaluating the merits of the offer, it also protects directors from subsequent unjustified criticism if the forecast is not achieved.

2. *Duties of parties*

The directors must prepare a profit forecast with scrupulous care and objectivity. The forecast and the assumptions on which it is based are the sole responsibility of the directors. However, the financial adviser has a duty to discuss the assumptions with his client and to satisfy himself that the forecast has been made with due care and consideration. In addition, the auditor or reporting accountant should satisfy himself that the forecast, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made.

The directors should make the assumptions underlying a forecast as meaningful as possible. The financial adviser and auditor or reporting accountant should assist the directors in achieving this objective.

Although the auditor or reporting accountant has no responsibility for the assumptions, he will as a result of his review be in a position to advise the company on what assumptions should be listed in the circular and the way in which they should be described. The financial adviser and auditor or reporting accountant obviously have substantial influence on the information given in a circular about assumptions. Neither of them should allow an assumption to be published (if it appears to be unrealistic) or to be omitted (if it appears to be important), without commenting on it in their reports.

3. *General rules*

The following general rules should apply to the selection and drafting of assumptions:

(a) *The shareholder should be able to understand their implications and so be helped in forming a judgment on the reasonableness of the forecast and the main uncertainties affecting it.*

(b) The assumptions should, wherever possible, be specific rather than general, definite rather than vague.

(c) All-embracing assumptions and those concerning the general accuracy of the estimates should be avoided. The following assumptions are not acceptable:-

"Sales and profits for the year will not differ materially from those budgeted for."

"There will be no increases in costs other than those anticipated and provided for."

Every forecast entails estimates of income and costs, and obviously depends on these estimates. Assumptions like those stated above do not help the shareholder in considering the forecast and should be omitted unless additional information is given to make them meaningful, e.g. sales x% up on last year's sales have been budgeted for.

(d) The assumptions should not relate to the accuracy of the accounting systems. If the systems of accounting and forecasting are such that full reliance cannot be placed on them, this should be the subject of some qualification in the forecast itself (perhaps also requiring a qualification in the reports of the financial adviser and auditor or reporting accountant). It is not satisfactory for such deficiency to be covered by the assumptions. The following assumptions are not acceptable:

"The book record of stocks and work in progress will be confirmed at the end of the financial year".

"The estimate of stocks on hand as at 31st December, 2000 will prove substantially accurate".

(e) Even some specific assumptions may still leave the shareholder in doubt as to their implications, for instance:

"No abnormal liabilities will arise under guarantee".

"Provisions for outstanding legal claims will prove adequate".

The first assumption above relates to the unforeseen and the second to the adequacy of the estimating system. The directors probably consider it necessary to include such assumptions because of the uncertainty about the liabilities arising from guarantees given or legal claims. In both these examples, information should be given about the extent or basis of the provision already made and/or about the circumstances in which liabilities unprovided for might arise.

(f) *The assumptions should relate only to matters which may have a material bearing on the forecast.*

(g) *There may be occasions, particularly when the estimate relates to a period already ended, when no assumptions are required.*

(h) *The larger and more complex the group, the more difficult it is to make the assumptions specific, definite, and brief. In such instances it may be appropriate to give a profit forecast by division and relate the assumptions specifically to the various divisions.*

(i) *In some circumstances, it may be useful to indicate the effect on the profit forecast if the major assumptions prove to be wholly or partly invalid. For example, the effect on the forecast can be shown if sales volume, selling price, raw material costs etc, were y% above or below estimate or if full production from a new factory were delayed by z months. It may also be appropriate to give a range of forecast profits rather than a single figure.*

4. *<u>Breakdown of forecasts by activities</u>*

There are inevitable limitations on the accuracy of some forecasts; these limitations should be made clear to assist the shareholder in reviewing the forecasts. A description of the general nature of the business or businesses with an indication of any major hazards in forecasting in these particular businesses should normally be included. To show the significance of any such hazards, it may be useful to give a breakdown of forecast sales and profits

before tax by activity or business together with published figures in recent years.

5. *Unforeseen circumstances*

It must be expected that a forecast will take account all foreseen circumstances and it does not seem necessary or helpful to have a general assumption about the unforeseen such as those as follows:-

"The profits anticipated will not be unduly affected by any unforeseen factors.";

"There will be no significant unforeseen circumstances".

Although it is a general practice for a prospectus containing a profit forecast to use such a phrase, that practice requires modification in a take-over document containing a profit forecast. Instead of making an assumption about the unforeseen circumstances, the directors can state in the document that:

"The directors forecast that, in the absence of unforeseen circumstances, the profits before tax for the year ....."

6. *Examples*

Examples of assumptions that comply with the general rules are as follows:

(a) *"The company's present management and accounting policies will not be changed" (for a company being acquired);*

(b) *"Interest rates and the bases and rates of taxation, both direct and indirect, will not change materially";*

(c) *"There will be no material change in international exchange rates or import duties and regulations";*

(d) *"Percentage of time lost on building sites, due to adverse weather conditions, will be average for the time of the year";*

(e) *"Turnover for the year will be $1 million on the basis that sales will continue in line with levels and trends experienced to date, adjusted for*

normal seasonal factors; a reduction of $100,000 in turnover would result in a reduction of approximately $10,000 in the profit forecast";

(f) *"Beer sales will increase in line with the trend established in the previous year, which corresponds to the national average rate of increase";*

(g) *"An increase of about 10% in subscriptions will be achieved as a result of increases in the prices of certain journals and an increase in the number of subscribers";*

(h) *"Trading results will not be affected by industrial disputes in the company's factories or in those of its principal suppliers";*

(i) *"The current national dock strike will not last longer than six weeks";*

(j) *"The new factory at Jurong will be in full production by the end of the first quarter. A delay of one month would cause the profit forecast to be reduced by $5,000";*

(k) *"Increases in labour costs will be restricted to those recently agreed with the trade unions";*

(l) *"Increases in the level of manufacturing costs for the remainder of the year will be kept within the margin of 2% allowed for in the estimates"; and*

(m) *"The conversion rights attaching to all the convertible loan stock will be exercised on the next conversion date".*

25.3 Reports required in connection with profit forecasts

A forecast made by an offeror offering solely cash need not be reported on. With the Council's consent, this exemption may be extended to an offeror offering as consideration a non-convertible debt instrument maturing for payment or capable of being redeemed in less than 12 months.

In all other cases, the following reports are required:-

(a) The auditor or reporting accountant must examine and report on the accounting policies and calculations for the forecast.

(b) The financial adviser, if he is mentioned in the document containing the forecast, must examine the forecast and report whether, in his view, the forecast has been made after due and careful enquiry.

(c) Where revenue or profit from land and buildings is a material element in a forecast that part of the forecast should normally be examined and reported on by an independent valuer. As a general rule, the Council considers revenue or profit from the sale of or rental of properties material if it exceeds 25% of the total forecast revenue or profit. This requirement does not apply where the income is virtually certain e.g. known rents receivable under existing leases.

It is not necessary for copies of the above reports to be lodged with the Council.

25.4 Publication of reports and consent letters

Whenever a profit forecast is made during an offer period, the reports must be included in the document addressed to shareholders containing the forecast. When the forecast is made in a press announcement, that announcement must contain a statement that the forecast has been reported on in accordance with the Code. If a company's forecast is published first in a press announcement, it must be repeated in full, together with the reports, in the next document sent to shareholders by that company. If no such document is planned, a paid press notice containing the forecast in full together with the reports should be issued. The reports must be accompanied by a statement that those making them have given and not withdrawn their consent to publication.

25.5 Validity of forecast

Once a forecast has been reported on in accordance with this Rule, reference may be made to that profit forecast in any document published within 60 days thereafter. However, where a forecast is repeated in the context of a different transaction from that for which the forecast was initially reported on, the Council will accept the reproduction of the original reporting letters if the directors confirm in the document

that they know of no reason why the original forecast should not stand and the financial adviser and auditor or reporting accountant who reported on the forecast have given their consent in writing to the extended use of their reports. The letters of consent of the financial adviser and auditor or reporting accountant and their original reports must be contained in the document.

When a company includes a forecast in a document, any document subsequently sent out by that company in connection with that offer must, except with the Council's consent, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the financial adviser and auditor or reporting accountant who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

25.6 Statements which will be treated as profit forecasts

(a) When no figure is mentioned

Even when no particular figure is mentioned or even if the word "profit" is not used, certain forms of words may constitute a profit forecast. Examples are "profits will be somewhat higher than last year" and "the profits of the second half-year are expected to be similar to those earned in the first half-year" (when interim figures have already been published). Whenever a form of words puts a floor under or a ceiling on the likely profit of a particular period or contains the data necessary to calculate an approximate figure for future profits, the Council will treat it as a profit forecast which must be reported on in accordance with this Rule. In cases of doubt, professional advisers should consult the Council in advance.

(b) Forecasts before the offer period

Except with the Council's consent, any profit forecast which has been made before the commencement of the offer period must be examined, repeated and reported in the document sent to shareholders. At the outset, an adviser should invariably check whether or not his client has a forecast on the public record so that the procedures required by this Rule can be set in train with a minimum of delay.

Exceptionally, the Council may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in

accordance with the Code nor for a revised forecast to be made. In these circumstances, the Council would insist on shareholders being given a full explanation as to why the requirements of the Code could not be met.

(c) Estimates, interim and preliminary figures

An estimate of profit for a period which has already expired constitutes a profit forecast for the purpose of this Rule. Except with the Council's consent, any unaudited profit figures published during an offer period must be reported on by the auditor or reporting accountant and financial adviser in accordance with this Rule.

This provision does not, however, apply to: -

(i) unaudited statements of annual or interim results which have already been published;

(ii) unaudited statements of annual results which comply with the requirements for preliminary profits statements as set out in the Singapore Exchange Listing Manual;

(iii) unaudited statements of interim results which comply with the requirements for periodic reports as set out in the listing rules of the Securities Exchange in cases where the offer has been publicly recommended by the board of the offeree company; or

(iv) unaudited statements of interim results by offerors which comply with the requirements for periodic reports as set out in the listing rules of the Securities Exchange, whether or not the offer has been publicly recommended by the board of the offeree company but provided the offer could not result in the issue of securities which would represent 10% or more of the enlarged voting share capital of the offeror.

The Council should be consulted in advance if the company is not listed on the Securities Exchange but wishes to take advantage of the exemptions under (ii), (iii) or (iv) above.

(d) Forecasts for a limited period

A profit forecast for a limited period (e.g. the following quarter) is subject to this Rule.

(e) Dividend forecasts

A dividend forecast does not normally constitute a profit forecast unless, for example, it is accompanied by an estimate as to dividend cover. A dividend forecast of a REIT would normally be regarded as a profit forecast. In cases of doubt, the Council should be consulted.

(f) Profit warranties

The Council must be consulted in advance if a profit warranty is to be published in connection with an offer as it may be regarded as a profit forecast.

(g) Merger benefits statements

A quantified statement about the expected financial benefits of a proposed take-over or merger (for example, a statement by an offeror that it would expect the offeree company to contribute an additional $x million of profit post acquisition) is deemed to be a profit forecast for the purpose of this Rule. In addition to meeting the standards of information required under Rule 8, a person issuing such a statement must provide:-

(i) the bases of the belief (including sources of information) supporting the statement;

(ii) reports by financial adviser and auditor or reporting accountant on the statement as required by Rule 25.3;

(iii) an analysis and explanation of the constituent elements sufficient to enable shareholders to understand the relative importance of these elements; and

(iv) a base figure for any comparison drawn.

These requirements may also be applicable to statements to the effect that an acquisition will enhance an offeror's earnings per share where such enhancement depends in whole or in part on material merger benefits.

Parties wishing to make earnings enhancement statements which are not intended to be profit forecasts must include an explicit and prominent disclaimer to the effect that such statements should not be interpreted to mean that earnings per share will necessarily be greater than those for the relevant preceding financial period.

Parties should also be aware that the inclusion of earnings enhancement statements, if combined with merger benefits statements and/or other published financial information, may result in the market being provided with information from which the prospective profits for the offeror or the enlarged offeror group or at least a floor or ceiling for such profits can be inferred. Such statements would then be subject to this Rule. If parties are in any doubt as to the implications of the inclusion of such statements, they should consult the Council in advance.

NOTE ON RULE 25.6

Statement of prospects

The statements "profits are expected to increase in the next financial year", "the next year is going to be better", "hotel operations are expected to continue showing a loss in the current year", and "we expect the China venture to break-even in year 2002 or earlier" etc, constitute profit forecasts for the purpose of this Rule. However, as a point forecast has not been made, it will suffice for a statement of prospects (setting out all the bases and commercial assumptions) for that financial year to be included in the offeree circular. The statement of prospects must be examined and reported on by the auditors or reporting accountant and the financial adviser must examine the statement of prospects and state whether in their view, the statement has been made after due and careful enquiry.

25.7 Taxation, exceptional items and minority interests

When a profit forecast appears in a document addressed to shareholders, there should be included, where possible, forecasts of profit before taxation, taxation, minority interests and exceptional items.

25.8 When a forecast relates to a period which has commenced

When there is a profit forecast made for a period in which trading has already commenced, the latest published profit figures for any expired part of that trading period together with comparable figures for the corresponding period in the preceding year must be stated. If there are no such published profit figures, that fact must be stated.

26 ASSET VALUATIONS

26.1 Valuations to be reported on if given in connection with an offer

When there is a valuation of assets given in connection with an offer, such valuation must be supported by the opinion of a named independent professional expert. The directors must state in the document containing the asset valuation the basis of the valuation. The document must also state that the expert has given and not withdrawn his consent to the publication of his valuation.

NOTES ON RULE 26.1

1. *Type of asset*

This Rule applies not only to land and buildings but also to other assets, e.g. plant and machinery, ships, TV rental contracts and individual parts of a business.

2. *In connection with an offer*

Sometimes, directors' estimates of asset values which are published with a company's accounts in accordance with the Companies Act, are reproduced in an offer document or offeree board circular. The Council would not regard such estimates as "given in connection with an offer" unless asset values are a particularly significant factor in assessing the relevant take-over or merger transaction and the estimates are accordingly given considerably more prominence in the appropriate circulars than merely being referred to in a note to a statement of assets in an appendix. In those circumstances, of course, such estimates must be supported (subject to Rule 26.5 below) by a named independent expert in accordance with this Rule.

3. *Where no report is required*

If the net book value of the assets to be valued represents less than 30% of the offer value, the Council will normally waive the requirement under this Rule.

26.2 Basis of Valuation

(a) The basis of valuation must be stated and for non-specialised properties this will normally be open market value. A property which is occupied for purposes of the business must be valued at open market value for the existing use. Assumptions should be kept to a minimum and should be fully explained.

(b) For land which is being developed or with development potential, the valuation should include, in addition to the open market value of the land in its existing state at the date of valuation, the following:-

(i) the value after the development has been completed and is ready for occupation;

(ii) the estimated total cost including carrying charges of completing the development and the expected dates of (i) completion, and (ii) letting or occupation; and

(iii) a statement whether planning consent has been obtained and, if so, the date thereof and the nature of any conditions attaching to the consent which affect the value.

(c) Where a property which is occupied for the purposes of the business is valued at open market value for an alternative use, the costs of conversion and/or adaptation should be estimated and shown.

26.3 Potential tax liability

When a valuation is given in connection with an offer, there should be a statement regarding any potential tax liability which would arise if the assets were to be sold at the amount of the valuation, accompanied by an appropriate comment as to the likelihood of any such liability crystallising.

26.4 Current valuation

A valuation must state the date on which the assets were valued and the professional qualifications and address of the valuer. If a valuation is not current, the valuer must state whether a current valuation would be materially different. If the current valuation would be materially different, the valuation must be updated.

26.5 Waiver in certain circumstances

In exceptional cases, companies, in particular property companies, which are the subject of an unexpected bid may encounter difficulty in obtaining the opinion of an independent professional expert to support an asset valuation, as required by Rule 26.1, before the circular to shareholders containing the board's recommendations has to be sent out. In such cases, the Council may consider waiving strict compliance with Rule 26.1. The Council will only do so where the interests of shareholders seem, on balance, to be best served by permitting informal valuations to appear in the circular together with such substantiation as is available. Advisers to offeree companies who wish to make use of this procedure should consult the Council in good time.

26.6 Inspection

Where a valuation of assets is given in an offer document, the valuation should be made available for inspection.

27 LODGEMENT OF DOCUMENTS

In order to facilitate the work of the Council, copies of all public announcements made and all documents bearing on a take-over or merger transaction must be lodged with the Council at the same time as they are made or despatched.

28 ACCEPTANCES

28.1 Timing and contents

By 8.00 am at the latest on the dealing day ("the relevant day") immediately after the day on which an offer is due to expire, or becomes or is declared unconditional as to acceptances, or is revised or extended, the offeror must announce the total number of shares (as nearly as practicable):-

(a) for which acceptances of the offer have been received;

(b) held before the offer period; and

(c) acquired or agreed to be acquired during the offer period,

and specify the percentages of the relevant classes of share capital represented by these figures.

If the offeree company is quoted on the Securities Exchange, the offeror must also inform the Securities Exchange of the above.

NOTES ON RULE 28.1

1. *Adequate measures to ensure accurate reporting*

The Code requires all offers to be conditional upon a prescribed level of acceptance. It is therefore essential that the offeror adopts the necessary measures and procedures so that all parties to the offer may be confident that the result of the offer is arrived at by an objective procedure which, as far as possible, eliminates errors or uncertainty.

2. *Acceptances*

An acceptance may not be counted towards fulfilling an acceptance condition unless:-

(a) *it is received by the offeror's receiving agent on or before the closing time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the*

acceptance and any relevant documents required by this Note have been so received; and

(b) the acceptance form is duly completed and:-

(i) accompanied by share certificates in respect of the relevant shares and, if those certificates are not in the name of the acceptor, such other documents (e.g. a duly stamped transfer of the relevant shares in blank or in favour of the acceptor executed by the registered holder) in order to establish the right of the acceptor to become the registered holder of the relevant shares;

(ii) is from a registered holder or his personal representatives (but only up to the amount of the registered holding and only to the extent that the acceptance relates to shares which are not taken into account under another sub-paragraph of this paragraph (b)); or

(iii) is certified by the offeree company's registrar, the Securities Exchange, or a depository agent of the Securities Exchange.

If the acceptance form is executed by a person other than the registered holder or a person who is capable of becoming a registered holder, appropriate evidence of authority (e.g. certified copy of grant of probate, letters of administration or power of attorney) must be produced.

3. <u>Offeror's receiving agent's certificate</u>

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must deliver to the offeror or its financial adviser a certificate which states the number of acceptances received which comply with Note 2 on this Rule. Such certificate need not include those shares:-

(i) held by the offeror and its concert parties before the offer period; or

(ii) acquired or agreed to be acquired by the offeror and its concert parties during the offer period.

The offeror or its financial adviser must send copies of the receiving agent's certificate to the Council and the offeree company's financial adviser as soon as possible after it is issued.

4. *Instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights*

In situations where the offeree company has outstanding instruments convertible into, rights to subscribe for, or options in respect of, securities which carry voting rights, an offeror who pursuant to a take-over offer acquires more than 50% of the voting rights of the offeree company before the closing date of the offer might find that its holdings of voting rights in the offeree company may be diluted to below 50% on the closing date if such instruments, subscription rights or options not acquired by the offeror are exercised. Accordingly, in cases where the offeree company has such instruments, subscription rights or options, the offer will become or can be declared unconditional as to acceptances only if:-

(a) *before the closing date, the offeror and persons acting in concert with it have acquired or agreed to acquire (either before, or during the offer period, through the exercise of such instruments, subscription rights or options or otherwise) offeree company shares carrying more than 50% of the voting rights attributable to the maximum potential share capital of the offeree company on the date of such declaration. For this purpose, the maximum potential share capital will be the total number of offeree company shares which would then be in issue had all the outstanding instruments convertible into, rights to subscribe for, and options in respect of, securities which carry voting rights of the offeree company (other than those acquired or agreed to be acquired by the offeror and person acting in concert with it) have been exercised as at the date of such declaration; or*

(b) *on the closing date, the offeror and persons acting in concert with it have acquired or agreed to acquire (either before or during the offer period, through the exercise of these instruments, such number of offeree company shares which, when taken together with the offeree company shares owned or controlled by the offeror and persons acting*

in concert with it, result in the offeror holding shares of the offeree company carrying over 50% of the voting rights then attributable to the offeree shares issued or to be issued pursuant to instruments convertible into, rights to subscribe for and options in respect of securities which carry voting rights which have been validly exercised by the closing date.

5. *Purchases of shares*

Purchases made through the Securities Exchange by the offeror and parties acting in concert with it with no pre-agreement or collusion between the parties to such transactions or their agents, may be counted towards satisfying the acceptance condition. All other purchases by the offeror and parties acting in concert with it (i.e. off market purchases) may only be counted when fully completed and settled.

6. *General statements about acceptance levels*

If, during an offer, any statements, either oral or in writing, are made by an offeror or any of its concert parties, advisers or agents about the level of acceptances of the offer or the number or percentage of shareholders who have accepted the offer, an immediate announcement must be made in conformity with this Rule.

7. *Securities not dealt in on the Securities Exchange*

In the case of companies whose securities are not dealt in on the Securities Exchange, it would normally be appropriate to write to all shareholders or issue a paid press notice instead of making an announcement.

8. *Statements about withdrawal*

When the offeree company is proposing to draw attention to withdrawals of acceptance, the Council must be consulted before an announcement is made. The Council will normally allow such announcements if the level of acceptances of an offer, which has been declared unconditional as to acceptances previously, later falls below that level needed for the offer to become or be declared unconditional as to acceptances.

9. *Persons acting in concert*

An announcement made under this Rule must make it clear to what extent acceptances have been received from persons acting in concert with the offeror and must state the number of shares and rights over shares (as nearly as practicable) held before the offer period and acquired or agreed to be acquired during the offer period by persons acting in concert with the offeror.

10. *Borrowed shares*

Shares which have been borrowed by the offeror or any person acting in concert with it may not be counted towards fulfilling an acceptance condition except with the consent of the Council. In the case where a person triggers a mandatory bid obligation under Rule 14 as a result of shareholdings that include shares that are borrowed (see Note 15 on Rule 14.1), the Council should be consulted on how the borrowed shares should be treated for the purpose of the acceptance condition.

28.2 Consequences of failure to announce

(a) If the offeror is unable within the time limit to comply with any of the requirements of Rule 28.1, the Council will consider requesting the Securities Exchange to suspend dealings in the offeree company's shares and, where appropriate, in the offeror's shares until the relevant information is given.

(b) If an offer has become or been declared unconditional as to acceptances, but the offeror fails by 3.30 pm on the relevant day to comply with any of the requirements of Rule 28.1, then immediately thereafter any acceptor will be entitled to withdraw his acceptance. Subject to Rule 22.9 (Final day rule), this right of withdrawal may be terminated not less than 8 days after the relevant day by the offeror confirming (if that be the case) that the offer is still unconditional as to acceptances and complying with Rule 28.1.

(c) For the purpose of Rule 22.6, the period of 14 days referred to therein will run from the date of such confirmation, or the date on which the offer would otherwise have expired, whichever is later.

29 ACCEPTORS' RIGHT TO WITHDRAW

An acceptor will be entitled to withdraw his acceptance after 14 days from the first closing date of the offer, if the offer has not by then become unconditional as to acceptances. Such entitlement to withdraw will be exercisable until the offer becomes unconditional as to acceptances. In a competitive situation, if one offer becomes unconditional as to acceptances, then offeree company shareholders who have tendered their acceptances for the other offer (the "unsuccessful offer") can, if they so wish, immediately withdraw their acceptances for the unsuccessful offer. This means that offeree company shareholders who have accepted the unsuccessful offer do not have to wait until the expiry of 14 days from the first closing date of the unsuccessful offer before they are entitled to withdraw their acceptances.

NOTE ON RULE 29

Council would normally regard a competitive situation to have arisen if a competing offer has been announced. In the case where a pre-conditional offer or a proposal to acquire materially all of the assets and/or businesses is announced, the Council should be consulted.

30 SETTLEMENT OF CONSIDERATION

Shares represented by acceptances in any offer, other than a partial offer (see Rule 16.6), must not be acquired by the offeror until the offer has become or been declared unconditional in all respects. Such shares must be paid for by the offeror as soon as practicable, but in any event within 7 business days after:-

(a) the offer becomes or is declared unconditional in all respects; or

(b) receipt of valid acceptances where such acceptances were tendered after the offer has become or been declared unconditional in all respects.

NOTE ON RULE 30

Equality of treatment

All shareholders should be treated equally. Any commitment or arrangement to pay or settle the consideration for certain shareholders at a particular time or currency may constitute a special deal prohibited by Rule 10.

31 PROXIES

An offeror may not require a shareholder as a term of his acceptance of an offer to appoint a particular person as his proxy to vote in respect of his shares in the offeree company or to appoint a particular person to exercise any other rights or take any other action in relation to those shares unless the appointment is on the following terms, which must be set out in the offer document:-

(a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is unconditional in all respects or, in the case of voting by the proxy, it will become unconditional in all respects or lapse immediately upon the outcome of the resolution in question;

(b) where relevant, the votes are to be cast as far as possible to satisfy any outstanding condition of the offer;

(c) the appointment ceases to be valid if the acceptance is withdrawn; and

(d) the appointment applies only to shares assented to the offer.

32 PROMPT REGISTRATION OF TRANSFERS

The board and officials of an offeree company should take action to ensure, during a take-over or merger transaction, the prompt registration of transfers so that shareholders can freely exercise their voting and other rights. Provisions in Articles of Association that lay down a qualifying period after registration during which the registered holder cannot exercise his vote are highly undesirable.

33 RESTRICTIONS FOLLOWING OFFERS AND POSSIBLE OFFERS

33.1 Delay before subsequent offer

(a) Except with the Council's consent, where any offer other than a partial offer (see Rule 16.7) has been announced or posted but has not become or been declared unconditional in all respects and has been withdrawn or has lapsed, neither the offeror, any persons who acted in concert with it in the course of the original offer nor any person who is subsequently acting in concert with any of them may within 12 months from the date on which such offer is withdrawn or lapses:-

(i) announce an offer or possible offer for the offeree company, or

(ii) acquire any voting rights of the offeree company if the offeror or persons acting in concert with it would thereby become obliged under Rule 14 to make an offer.

(b) The restrictions in this Rule may also apply where a person had made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that an offer might be made, but does not announce a firm intention either to make or not to make an offer within a reasonable time thereafter.

(c) Where a person makes an announcement that he does not intend to make an offer for a company, the restrictions in this Rule will normally apply for 6 months from the date of the announcement. If that person changes his mind and wants to make an offer within the 6-month period, the person must seek the Council's approval, which will normally not be granted unless there is good reason.

NOTES ON RULE 33.1

1. *Recommended and competing offers*

The Council will normally grant consent under this Rule when:-

(a) *the new offer is recommended by the board of the offeree company and the offeror is not, or is not acting in concert with, a director or substantial shareholder of the offeree company. However, where the announcement in Rule 33.1(c) was made after announcement by a third party of a firm intention to make an offer, the Council will only grant consent under this Rule if:*

(i) *the third party offer has been withdrawn or has lapsed; and*

(ii) *in the period following the making of the announcement in Rule 33.1(c) and prior to the third party offer being withdrawn or lapsing, neither the person who made the announcement in Rule 33.1(c) nor any person acting in concert with that person has acquired an interest in any shares of the offeree company; or*

(b) *the new offer follows the announcement of an offer by a third party for the offeree company.*

2. *Rule 33.1 (b)*

Paragraph (b) of Rule 33.1 applies irrespective of the precise wording of the announcement and the reason it was made. For example, it is relevant in the case of an announcement that a person is "considering his options" if, in all the circumstances, those options may reasonably be understood to include the making of an offer. However, the Council envisages that this provision will only be applied occasionally and usually only if the Council is persuaded by the potential offeree company that the damage to its business from the uncertainty outweighs the disadvantage to its shareholders of losing the prospect of an offer.

The question as to what is "a reasonable time" has to be determined by reference to all the circumstances of the case: the stage which the offeror's preparations had reached at the time the announcement was made is likely to be relevant.

33.2 6 months delay before acquisition at above offer price

Except with the Council's consent, if a person, together with any person acting in concert with him, holds shares carrying more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous offer other than a partial offer (see Rule 16.4(b)(iv)) made by him to the shareholders of that company which became or was declared unconditional in all respects, make a second offer to, or acquire any shares from, any shareholder in that company on terms better than those made available under the previous offer. They must also not enter into any special deals with any shareholder (see Rule 10).

NOTES ON RULE 33.2

1. *Issue of new shares*

For the avoidance of doubt the issue of new shares by placing, subscription or in exchange for assets does not need the Council's consent under this Rule.

2. *Instruments convertible into, rights to subscribe for and options in respect of securities being offered for or which carry voting rights*

The exercise of instruments convertible into, rights to subscribe for, and options in respect of, securities being offered for or which carry voting rights will be considered to be an acquisition of shares for the purpose of this Rule. The acquisition of such instruments, subscription rights or options at a price based on the acquisition price and the relevant conversion and exercise terms, above the offer price may be relevant for the purposes of this Rule. In any such case, the Council must be consulted.

3. *Securities exchange offers*

For the purposes of this Rule, the value of a securities exchange offer should be calculated as at the day the offer is declared to have closed or lapsed.

34 FEES LEVIABLE BY THE COUNCIL

The Minister may prescribe the fees that will be leviable by the Council in respect of the lodgement and processing of offer documents. See Schedule 1.

APPENDIX 1
WHITEWASH GUIDANCE NOTE

(See Note 1 of Notes on Dispensation from Rule 14)

1 Introduction

(a) This note sets out the procedures to be followed if Council is to be asked to waive the obligation to make a general offer under Rule 14 which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or a cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquire shares which give rise to an obligation to make a general offer.

(b) Where the word "offeror" is used, it should be taken in the context of a whitewash as a reference to the potential controlling shareholders. Similarly, the phrase "offeree company" should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.

(c) For the purposes of this Appendix, the word “convertibles” refers to instruments convertible into, rights to subscribe for and options in respect of new shares in the offeree company which carry voting rights.

2 Specific grant of waiver required

In each case, specific grant of a waiver from the Rule 14 obligation is required. Such grant will be subject to: -

(a) a majority of holders of voting rights of the offeree company approve at a general meeting, before the issue of new securities to the offeror, a resolution (the 'Whitewash Resolution") by way of a poll to waive their rights to receive a general offer from the offeror and parties acting in concert with the offeror;

(b) the Whitewash Resolution is separate from other resolutions;

(c) the offeror, parties acting in concert with them and parties not independent of them abstain from voting on the Whitewash Resolution;

(d) the offeror and its concert parties did not acquire or are not to acquire any shares or instruments convertible into and options in respect of shares of the offeree company (other than subscriptions for, rights to subscribe for, instruments convertible into or options in respect of new shares which have been disclosed in the circular):-

(i) during the period between the announcement of the proposal and the date shareholders' approval is obtained for the Whitewash Resolution; and

(ii) in the 6 months prior to the announcement of the proposal to issue new securities but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to such issue;

(e) the offeree company appoints an independent financial adviser to advise its independent shareholders on the Whitewash Resolution;

(f) the offeree company sets out clearly in its circular to shareholders:-

(i) details of the proposed issue of new securities or convertibles;

(ii) the dilution effect of issuing the new shares, or upon the exercise or conversion of the convertibles to be issued, to existing holders of voting rights;

(iii) the number and percentage of voting rights in the offeree company as well as the number of instruments convertible into, rights to subscribe for and option in respect of shares in the offeree company (other than the convertibles to be issued) held by the offeror and its concert parties as at the latest practicable date;

(iv) the number and percentage of voting rights to be issued to the offeror, or to be acquired by the offeror upon the exercise or conversion of the convertibles to be issued;

(v) in the case where the proposal could result in the offeror holding shares carrying over 49% of the voting rights of the offeree company, there must be specific and prominent reference to this and the fact that the offeror will be free to acquire further shares without incurring any obligation under Rule 14 to make a general offer;

(vi) that shareholders, by voting for the Whitewash Resolution, are waiving their rights to a general offer from the offeror at the highest price paid by the offeror and parties acting in concert with it for the offeree company shares in the past 6 months preceding the commencement;

(vii) for a Whitewash Resolution involving convertibles, that shareholders by voting for the Whitewash Resolution, could be forgoing the opportunity to receive a general offer from another person who may be discouraged from making a general offer in view of the potential dilution effect of the convertibles;

(g) the circular by the offeree company to its shareholders states that the waiver granted by Council to the offeror and parties acting in concert with them from the requirement to make a general offer under Rule 14 is subject to the conditions stated at (a) to (f) above;

(h) the offeror obtains Council's approval in advance for those parts of the circular that refer to the Whitewash Resolution; and

(i) to rely on the Whitewash Resolution, the acquisition of new shares or convertibles by the offeror pursuant to the proposal must be completed within 3 months of the approval of the Whitewash Resolution. For a Whitewash Resolution involving convertibles, the acquisition of new shares by the offeror upon the exercise or conversion of the convertibles must be completed within 5 years of the date of issue of the convertibles. (See Note 2 on Section 2.)

NOTE ON SECTION 2

1. *Early consultation*

   Consultation with Council at an early stage is essential. Late consultation may well result in delays to planned timetables.

2. *Convertibles*

   For the purposes of a Whitewash waiver for the issue of convertibles, the Whitewash Resolution must be approved by independent shareholders of the offeree company prior to the issue of the convertibles. Subsequently, the issue of new shares upon the exercise or conversion of the convertibles issued pursuant to such Whitewash Resolution need not be approved again by independent shareholders of the offeree company.

   Details of any valid Whitewash waiver must be disclosed or made available via the following avenues or documents, where applicable, for as long as any of the convertibles issued pursuant to the Whitewash waiver and held by the offeror and its concert parties remain outstanding:-

   (a) the interim and full-year financial statements of the offeree company for release through SGXNET and to be posted on the web-site of the Securities Exchange;

   (b) the annual report of the offeree company;

   (c) public documents of the offeree company including circulars to shareholders, abridged prospectuses, prospectuses or information memoranda;

   (d) periodic announcements made by the offeror and its concert parties pursuant to Sections 82, 83, 84, 85, 165 and 166 of the Companies Act (as well as Section 137 of the Securities and Futures Act), and the listing rules of the Securities Exchange whenever the offeror or any of its concert parties buys or sells shares or exercises or converts convertibles in the offeree company;

   (e) at the offeree company's registered office;

(f) at the offeree company's web-site (if any); and

(g) the web page setting out the offeree company's corporate information on the web-site of the Securities Exchange.

[Note: For items (e), (f), and (g), the required information should be updated within 2 days of any change in the voting rights held by the offeror and its concert parties in the offeree company upon the exercise or conversion of the convertibles.]

The disclosures should be clear and prominent. As a guide, the font size of the disclosure should not be smaller than that for the rest of the document in which the disclosure is made and should in any case be at least 8-point Times New Roman or the equivalent. The following must be disclosed in all cases:-

(a) details of the Whitewash Resolution, including the time period for which the waiver has been approved;

(b) the number and percentage of voting rights in the offeree company, the number of instruments convertible into, rights to subscribe for and options in respect of shares in the offeree company (other than the convertibles to be issued), and the number of convertibles held by the offeror and its concert parties as at the latest practicable date prior to the disclosure;

(c) the maximum potential voting rights of the offeror and its concert parties in the offeree company, assuming that only the offeror and its concert parties (but not other shareholders) exercise their convertibles in full;

(d) that, having approved the Whitewash Resolution, shareholders have waived their rights to receive a general offer from the offeror at the highest price paid by the offeror and parties acting in concert with it for offeree company shares in the past 6 months preceding the commencement of the offer; and

(e) *that, having approved the Whitewash Resolution, shareholders could be forgoing the opportunity to receive a general offer from another person who may be discouraged from making a general offer in view of the potential dilution effect of the convertibles.*

3 Waiver is not transferable

Only the person(s) whose name(s) appear in the circular to shareholders on the Whitewash Resolution as the offeror can avail himself of the Whitewash waiver if the Whitewash Resolution is approved subject to the conditions at Section 2 above. A Whitewash waiver cannot be transferred or assigned to another person. If the offeror is a company and there is a change in statutory control of the offeror on or after the date of shareholders' approval of the Whitewash Resolution, the Whitewash waiver will normally cease to be valid. In cases of doubt, the Council should be consulted.

4 Underwriting and placing

In cases involving the underwriting or placing of offeree company securities, the Council must be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of the implementation of the proposals.

5 Announcements following shareholders' approval

Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of offeree company shares to which the offeror have become entitled as a result.

6 Subsequent acquisitions by the offeror

Immediately following approval of the proposals at the shareholders' meeting, the offeror will be free to acquire shares in the offeree company, subject to the provisions of Rule 14.

NOTES ON SECTION 6

1. *Offeror with 49% or less*

   Where, as a result of the implementation of the proposals, the offeror holds shares representing between 30% and 49% of the votes of the company, they will be subject to Rule 14.1(b) as regards to purchases totalling, in the aggregate, more than 1% in any 6 month period following the shareholders' meeting.

2. *Offeror with over 49%*

   Where, as a result of the implementation of the proposals, the offeror hold over 49%, they are free to purchase any number of shares, subject to Notes 3 and 4 below.

3. *Concert party group*

   In the case of a concert party group, Council will also look at the position of each individual member. Thus, a member holding under 30% will be entitled to make acquisitions taking his total holding to just under 30% without triggering a Rule 14 obligation whilst a member holding between 30% and 49% will be permitted to purchase no more than 1% in any 6 month period without triggering a similar obligation. Notwithstanding the foregoing, purchases by individual members of a concert party group holding 49% or less have to be kept within the aggregate total permitted for the group as a whole as set out in Note 1 above.

4. *Switching between members of a concert party group*

   The Council must be consulted before any switch takes place; however, acquisitions made by one member of a concert party from another will generally be permitted to the extent that no significant change in the nature of the concert party is thereby affected. The Council will take into account the factors stated in Note 4 on Rule 14.1 in examining proposals for such switching.

APPENDIX 2

SHARE BUY-BACK GUIDANCE NOTE

(See Note 6 of Notes on Dispensation from Rule 14)

1 Increases in percentage shareholding deemed to be acquisitions

When a company buys back its shares, any resulting increase in the percentage of voting rights held by a shareholder and persons acting in concert with him will be treated as an acquisition for the purpose of Rule 14. Consequently, a shareholder or group of shareholders acting in concert could obtain or consolidate effective control of the company and become obliged to make an offer under Rule 14. The Council should be consulted at the earliest opportunity as to whether an obligation to make an offer would arise.

2 A shareholder not acting in concert with the directors

A shareholder, who is not acting in concert with the directors, will not be required to make an offer under Rule 14 if, as a result of a company buying back its own shares, the voting rights of the shareholder in the company would increase to 30% or more, or, if the shareholder holds between 30% and 50% of the company's voting rights, would increase by more than 1% in any period of 6 months, as a result of the company buying back its shares. Such a shareholder need not abstain from voting on the resolution to authorise the share buy-back, unless so required under the Companies Act, e.g. for a shareholder whose shares are to be bought via a selective buy-back by an unlisted public company.

3 Directors and persons acting in concert with them

(a) Listed companies

For a market acquisition under Section 76E of the Companies Act or an off-market acquisition on an equal access scheme under Section 76C of the Companies Act by a listed company, directors and persons acting in concert with them will be exempted from the requirement to make an offer under Rule 14, subject to the following conditions:-

(i) the circular to shareholders on the resolution to authorise a buy-back to contain advice to the effect that by voting for the buy-back resolution, shareholders are waiving their right to a general offer at the required price from directors and parties acting in concert with them who, as a result of the company buying back its shares, would increase their voting rights to 30% or more, or, if they together hold between 30% and 50% of the company's voting rights, would increase their voting rights by more than 1% in any period of 6 months; and the names of such directors and persons acting in concert with them, their voting rights at the time of the resolution and after the proposed buy-back to be disclosed in the same circular;

(ii) the resolution to authorise a share buy-back to be approved by a majority of those shareholders present and voting at the meeting on a poll who could not become obliged to make an offer as a result of the share buy-back;

(iii) directors and/or persons acting in concert with them to abstain from voting for and/or recommending shareholders to vote in favour of the resolution to authorise the share buy-back;

(iv) within 7 days after the passing of the resolution to authorise a buy-back, each of the directors to submit to the Council a duly signed form as prescribed by the Council;

(v) directors and/or persons acting in concert with them not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-

- the date on which the authority of the share buy-back expires; and

- the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase to 30% or more; and

(vi) directors and/or persons acting in concert with them, together holding between 30% and 50% of the company's voting rights, not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-

- the date on which the authority of the share buy-back expires; and

- the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase by more than 1% in the preceding 6 months.

It follows that where the aggregate voting rights held by a director and persons acting in concert with him increase by more than 1% solely as a result of the share buy-back and none of them has acquired any shares during the relevant period defined above, then such director and/or persons acting in concert with him would be eligible for an exemption from the requirement to make a general offer under Rule 14, or where already exempted, would continue to be exempted.

(b) Unlisted public companies

For a selective off-market acquisition under Section 76D of the Companies Act or an off-market acquisition on an equal access scheme under Section 76C of the Companies Act by an unlisted public company, any exemption from the requirement to make an offer under Rule 14 granted by the Council to directors and persons acting in concert with them will be subject to the following conditions:-

(i) the notice to shareholders on the resolution to authorise a buy-back to contain advice to the effect that by voting for the buy-back resolution, shareholders are waiving their right to a general offer at the required price from directors and parties acting in concert with them who, as a result of the company buying back its shares, would increase their voting rights to 30% or more, or, if they together hold between 30% and 50% of the company's voting rights, would increase their voting rights by more than 1% in any period of 6 months; and the names of such directors and persons acting in concert with them, their voting rights at the time of the resolution and after the proposed buy-back to be disclosed to shareholders in the same notice;

(ii) the resolution to authorise a share buy-back to be approved by a simple three-fourths majority, as the case may be, of those shareholders present and voting at the meeting on a poll who could not become obliged to make an offer as a result of the share buy-back;

(iii) directors and/or persons acting in concert with them to abstain from voting for and/or recommending shareholders to vote in favour of the resolution to authorise the share buy-back;

(iv) directors and/or persons acting in concert with them not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-

- the date on which the authority of the share buy-back expires; and

- the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase to 30% or more; and

(v) directors and/or persons acting in concert with them, together holding between 30% and 50% of the company's voting rights, not to have acquired and not to acquire any shares between the date on which they know that the announcement of the share buy-back proposal is imminent and the earlier of:-

- the date on which authority of the share buy-back expires; and

- the date on which the company announces it has bought back such number of shares as authorised by shareholders at the latest general meeting or it has decided to cease buying back its shares, as the case may be,

if such acquisitions, taken together with the buy-back, would cause their aggregate voting rights to increase by more than 1% in the preceding 6 months.

It follows that where the aggregate voting rights held by a director and persons acting in concert with him increase by more than 1% solely as a result of the share buy-back and none of them has acquired any shares during the relevant period defined above, then such director and/or persons acting in concert with him would be eligible for Council's exemption from the requirement to make a general offer under Rule 14, or where such exemption had been granted, would continue to enjoy the exemption.

NOTE ON SECTION 3

Requirement for directors and their concert parties to make an offer

If directors and parties acting in concert with them could become obliged to make an offer under Rule 14 as a result of a company's share buy-back and is there is no exemption from the offer requirement or an exemption obtained is subsequently invalidated, an obligation to make an offer will arise after the company has bought back the relevant number of shares which are deemed cancelled on purchase or when the exemption is invalidated, as the case may be.

4 Consideration

For directors and parties acting in concert with them, the offer must be in cash or be accompanied by a cash alternative at the higher of:

(a) the highest price paid by the directors and/or persons acting in concert with them for the company's shares in the preceding 6 months, or

(b) the highest price paid by the company for its own shares in the preceding 6 months.

5 Validity and expiry of exemption

An exemption under this Rule (whether or not voting shares have in fact been bought back by a company) will be valid only for such buy-back authority pursuant to a resolution approved by shareholders at a general meeting. The exemption will expire at the earlier of:-

(a) the date such authority for the share buy-back expires under Section 76C (for off-market acquisition on equal access scheme), Section 76D (for selective off-market acquisition) and Section 76E (for market acquisition) of the Companies Act; or

(b) when the company has bought back such number of shares as authorised by shareholders at the latest general meeting or when the company has decided to cease buying back its shares, as the case may be.

6 Cessation of buy-back

(a) Companies which have decided to cease buying back their shares before they have purchased such number of shares as authorised by shareholders at the latest general meeting should promptly inform their shareholders of such cessation. This will assist shareholders in determining whether they can buy more shares without incurring an obligation to make an offer under Rule 14.

(b) Where a director and his concert parties held in aggregate less than 30% of the voting rights of the company immediately prior to the buy-back

If a company has bought back such number of its shares as authorised by its shareholders at the latest general meeting or has ceased to buy back its shares and the aggregate voting rights held by the director and his concert parties at such time have increased to 30% or more as a result of the buy-back, the director and his concert parties will incur a bid obligation for the company if they acquire additional voting rights in the company (other than as a result of the company's share buy-back) before the date of the company's next annual general meeting is or is required to be held.

If a company has ceased to buy back its shares and the aggregate voting rights held by the director and his concert parties at the such time are less than 30%, the director and his concert parties will incur a general offer obligation for the company if they acquire additional voting rights (other than as a result of the company's share buy-back) that cause them to hold 30% or more of the voting rights of the company.

(c) Where a director and his concert parties held in aggregate not less than 30% but not more than 50% of the voting rights of the company immediately prior to the buy-back

If a company has bought back such number of its shares as authorised by its shareholders at the latest general meeting or has ceased to buy back its shares and the aggregate voting rights held by the director and his concert parties at such time have increased by 1% or more as a result of the buy-back, the director and his concert parties will incur a bid obligation for the company if they acquire additional voting rights in the company (other than as a result of the company's share buy-back) before the date of the company's next annual general meeting is or is required to be held.

If a company has ceased to buy back its shares and the increase in the voting rights held by the director and his concert parties as a result of the company repurchasing its shares at such time is less than 1%, the director and his concert parties may acquire further voting rights in the company. However, any increase in the director's and his concert parties' percentage voting rights as a result of the company's share repurchase will be taken into account together with any voting rights acquired by the director and his concert parties (by whatever means) in determining whether the director and his concert parties

have increased their aggregate voting rights in the company by more than 1% in any 6-month period.

7 Acquisitions of shares after the buy-back

Shareholders will be subject to the provisions of Rule 14 if they acquire voting shares after the company's share buy-back. For this purpose, an increase in the percentage of voting rights as a result of the share buy-back will be taken into account in determining whether a shareholder and persons acting in concert with him have increased their voting rights by more than 1% in any period of 6 months.

8 Share buy-backs during the offer period

(a) Buy-backs by the offeree company

During the course of an offer or if the board of the offeree company has reason to believe that a bona fide offer is imminent, no buy-back by the offeree company of its own shares may, except pursuant to an agreement authorised in advance by shareholders under Section 76D of the Companies Act, be made without the approval of the shareholders at a general meeting which should be held during the offer period or after the board of the offeree company has reason to believe that a bona fide offer is imminent. Directors and persons acting in concert with them are not to vote for and/or recommend shareholders to vote in favour of such a resolution. However, the Council will normally waive the requirement for such shareholders' approval if the offeror has informed the Council in writing that the offeror has no objection to the offeree company buying back its shares during the offer period.

(b) Buy-backs by the offeror or its concert parties

During an offer where the consideration includes securities of the offeror or any body corporate, the offeror and its concert parties may not engage in share repurchases of those securities, until the offeror abandons its intention to conduct the offer or the offer period expires, whichever is later.

NOTES ON SECTION 8

1. Withdrawal of offer

An offer made other than under Rule 14 may be subject to the condition that such an offer may be withdrawn if, at any time during the offer period but prior

to the posting of the offer document, the offeree company passes a resolution in a general meeting to buy back its shares during the offer period. The offeror cannot invoke this condition if he and/or parties acting in concert with him have shareholdings in the offeree company and he and/or they have voted for the resolution to authorise the share buy-back at that general meeting.

2. *Disclosure of dealings*

For the purpose of Rule 12, purchase of shares includes the purchase of its own shares by the offeree company. The total amount of shares of the relevant class remaining in issue following the share buy-back must also be disclosed.

3. *Offeror document*

The offeror document must state (in the case of a securities exchange offer only) the amount of the relevant securities of the offeror which the offeror has purchased during the period commencing 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document and details of such purchases, including the total number of shares purchased, the purchase price per share or the highest and lowest prices paid for the purchases, where relevant, and the total consideration paid for the purchases.

4. *Offeree circular*

The offeree board's circular advising shareholders on an offer must state the amount of the relevant securities of the offeree company which the offeree company has purchased during the period commencing 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the circular, and details of such buy-back including the total number of shares purchased, the purchase price per share or the highest and lowest prices paid for the purchases, where relevant, and the total consideration paid for the purchases.

APPENDIX 3

GUIDANCE NOTE ON THE MERGER PROCEDURES OF THE COMPETITION COMMISSION OF SINGAPORE ("CCS")

(See Rule 14.2(c) and Rule 15.1)

1 Introduction

An offer which is subject to the Singapore Code on Take-overs and Mergers (the "Code") may also fall within the ambit of the merger provisions of the Competition Act (Chapter 50B) (the "Act"). In such cases, parties to the take-over offer will need to comply with the requirements under both the Code and the Act.

2 Pre-conditional Offers

To comply with both the Code and the Act, an offeror may announce:

(a) a pre-conditional share purchase or put and call option agreement which, when the pre-conditions are fulfilled, will result in the offeror triggering a mandatory offer; or

(b) a pre-conditional voluntary offer,

where one of the pre-conditions includes the condition that the CCS issues a favourable decision on the offer permitting it to proceed.

3 Conditional Offers

In the case where an offeror announces an offer without prior clearance by the CCS by way of a pre-conditional offer as described above, the following apply:

Mandatory offers

(a) A mandatory offer under Rule 14 is required to be subject (in addition to the acceptance condition) to the condition that the offer lapses when the CCS (i) makes a decision to proceed to a Phase 2 review or (ii) issues a direction that prohibits the offeror from acquiring voting rights in the offeree company, before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later (the "Relevant Condition").

(b) In the event the mandatory offer lapses pursuant to the Relevant Condition, the obligation under Rule 14 does not lapse. Accordingly, if the CCS subsequently issues a favourable decision, the mandatory offer must be reinstated on the same terms and at not less than the same price as soon as practicable. On the other hand, if the CCS issues an unfavourable decision prohibiting the mandatory offer, the Council will consider whether, if there is no order to such effect by the CCS, to require the offeror to reduce the percentage of shares carrying voting rights in which it and persons acting in concert with it control to below 30% or a level which is less than the 1% limit on acquisitions in any 6-month period before the mandatory offer was incurred. The Council would normally expect an offeror whose offer has lapsed pursuant to the Relevant Condition to proceed with all due diligence before the CCS. However, if, with the consent of the Council and within a limited period, the offeror reduces the percentage of shares carrying voting rights in which it and persons acting in concert with it control to below 30%, or to a level which is less than the 1% limit on acquisitions in any 6-month period before the mandatory offer was incurred, the Council will regard the obligation as having lapsed.

(c) During the Phase 2 review by the CCS, the offeror and persons acting in concert with it may not acquire any further shares in the offeree company.

Voluntary offers

(d) A voluntary offer is required to include the Relevant Condition as one of the conditions to the offer. In addition, the voluntary offer may be subject to the condition that the CCS issues a favourable decision during the Phase 1 review to allow the voluntary offer to proceed. In this regard, notwithstanding Rule 15.1 (including Notes 1 and 2 on Rule 15.1), the offeror may state that such favourable decision must be on terms satisfactory to it.

(e) In the event the CCS issues a favourable decision permitting the voluntary offer to proceed following the lapse of the voluntary offer pursuant to the Relevant Condition, the offeror may, notwithstanding Rule 33.1(a), announce a new offer within 21 days of the date of issue of such favourable decision. In any case, a new offer period will be deemed to begin following the date of issue of the favourable decision. If there is no announcement of a new offer subsequently, this offer period will last until either the end of 21 days or the day the offeror announces that it does not intend to make an offer, whichever is earlier.

(f) When the new offer period begins upon the CCS' clearance of an offer, the 3-month period referred to in Rule 15.2 will be deemed to be the period between the date the Relevant Condition is invoked and the date of issue of the favourable decision by the CCS.

In the case of both mandatory and voluntary offers, the effect of lapsing an offer pursuant to the Relevant Condition means not only that the offer will cease to be capable of further acceptance but also that shareholders and the offeror will thereafter cease to be bound by prior acceptances. In addition, (i) General Principle 7 and Rule 5 on frustration of offers by an offeree board, and (ii) Rule 9.2 on information to competing offeror will continue to apply until the CCS issues a decision on the offer. For the purposes of Rule 9.2, the Council will normally deem the offeror whose offer is under Phase 1 or Phase 2 review to be a bona fide potential offeror. In the event that there is a delay in the Phase 1 review, the Council may consider extending the offer timetable by deeming "Day 39" (Rule 22.8) to be the second day following the announcement of a decision on the Phase 1 review by the CCS, with consequent changes to the Final Day Rule (Rule 22.9).

APPENDIX 4

AUCTION PROCEDURE FOR THE RESOLUTION OF COMPETITIVE SITUATIONS

1 Definitions and Interpretations

Auction Day 1: The business day immediately following Day 46.

Auction Day 2: The business day immediately following Auction Day 1.

Auction Day 3: The business day immediately following Auction Day 2.

Auction Day 4: The business day immediately following Auction Day 3.

Auction Day 5: The business day immediately following Auction Day 4.

Auction procedure: The procedure set out in Sections 2 to 5 below.

Day 46
The 46th day following the despatch by the second competing offeror of its offer document or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Council shall determine.

Offer announcement
An announcement of a revised offer by a competing offeror during the auction procedure.

Revised offer
Any offer which represents an increase in the level of the consideration offered by a competing offeror (including the introduction of a new form of consideration or an alternative offer).

2 Introduction

(a) This Appendix sets out the procedure normally to be followed pursuant to Rule 20.5 when a competitive situation continues to exist at 5.00 pm on Day 46 and no alternative procedure has been agreed between the competing offerors, the board of the offeree company and the Council.

(b) Prior to the commencement of the auction procedure, the Council will issue written instructions to each competing offeror and the offeree company setting out the detailed procedural requirements which the Council considers are necessary to give effect to the auction procedure.

(c) This Appendix assumes that there are two competing offerors. If a competitive situation involves more than two competing offerors, the Council will modify the auction procedure as it considers appropriate.

3 General

(a) Except with the consent of the Council, the latest time by which either competing offeror may announce or make a revised offer, other than in accordance with the auction procedure, is 5.00 pm on Day 46.

(b) If a competitive situation continues to exist at 5.00 pm on Day 46, a competing offeror may announce a revised offer thereafter only in accordance with the auction procedure.

(c) If, after 5.00 pm on Day 46, a person other than the then competing offerors announces a firm intention to make an offer for the offeree company, the auction procedure will end and the Council must be consulted as to the applicable timetable.

(d) A competing offeror which is permitted to announce a revised offer on any day during the auction procedure may make only one offer announcement on the relevant day.

(e) Any offer announcement must comply with the provisions of Rule 3.5.

(f) A competing offeror must not announce a revised offer the consideration of which is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror.

(g) If a competing offeror announces a revised offer which the Council determines to be contrary to the provisions of the auction procedure, the Council may declare the revised offer to be invalid, and the competing offeror concerned shall not be permitted to proceed with an offer on the terms set out in the announcement.

(h) Except with the consent of the Council, during the auction procedure, the competing offerors, the offeree company and any person acting in concert with any of them must not:

(i) make any public statement which could reasonably be expected to affect the orderly operation of the auction procedure; or

(ii) deal in relevant securities of the offeree company or take any steps to procure an irrevocable commitment or letter of intent from offeree company shareholders in relation to either competing offeror's offer or to amend, vary, update or replace any irrevocable commitment or letter of intent previously procured.

(i) Following the end of the auction procedure at 5.00 pm on any of Auction Days 1 to 5, the Council will make an announcement confirming that the auction procedure has ended.

(j) Between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not place itself in a position where it would be required to revise its offer. See also Notes 3 and 4 on Rule 20.1.

4 Auction Days 1 to 4

(a) The auction procedure will commence on Auction Day 1. Either or both of the competing offerors may announce a revised offer on Auction Day 1. If neither competing offeror announces a revised offer on Auction Day 1, the auction procedure will end at 5.00 pm on Auction Day 1.

(b) A competing offeror may announce a revised offer on Auction Day 2 provided that the other competing offeror announced a revised offer on Auction Day 1. If no such revised offer is announced on Auction Day 2, the auction procedure will end at 5.00 pm on Auction Day 2.

(c) A competing offeror may announce a revised offer on Auction Day 3 provided that the other competing offeror announced a revised offer on Auction Day 2. If no such revised offer is announced on Auction Day 3, the auction procedure will end at 5.00 pm on Auction Day 3.

(d) A competing offeror may announce a revised offer on Auction Day 4 provided that the other competing offeror announced a revised offer on Auction Day 3. If no such revised offer is announced on Auction Day 4, the auction procedure will end at 5.00 pm on Auction Day 4.

(e) If a competing offeror is permitted to announce a revised offer on any of Auction Days 1 to 4 and wishes to do so, that competing offeror must submit an offer announcement to the Council before 4.00 pm on the relevant day.

(f) Unless the Council otherwise consents or directs, if the relevant competing offeror submits an offer announcement to the Council in accordance with paragraph (e), that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Council, on SGXNET before 5.00 pm on the relevant day, embargoed for publication until that time.

(g) If the relevant competing offeror does not submit an offer announcement to the Council in accordance with paragraph (e) on any of Auction Days 1 to 4, that competing offeror may not then announce a revised offer on that day.

5 Auction Day 5

(a) If a competing offeror which is permitted to announce a revised offer on Auction Day 4 does so, either or both of the competing offerors may announce a revised offer on Auction Day 5. In any event, the auction procedure will then end at 5.00 pm on Auction Day 5.

(b) If either competing offeror wishes to announce a revised offer on Auction Day 5, that competing offeror must submit an offer announcement to the Council before 4.00 pm on that day. The offer announcement may be submitted subject to a condition that the revised offer will be announced only if the other competing offeror also submits an offer announcement to the Council before 4.00 pm on that day (but not subject to any other conditions, such as the value of a competing offeror's revised offer). If an offer announcement is submitted to the Council subject to such a condition, the Council will, before 4.30 pm on Auction Day 5, notify the relevant competing offeror whether the condition has been satisfied. If both competing offerors submit an offer announcement subject to a condition as referred to in this paragraph (b), both conditions will be deemed to have been satisfied.

(c) Unless the Council otherwise consents or directs, if a competing offeror submits an offer announcement to the Council on Auction Day 5 in accordance with paragraph (b) and either:

(i) the offer announcement is not subject to a condition as referred to in paragraph (b); or

(ii) the offer announcement is subject to a condition as referred to in paragraph (b) and the Council notifies that competing offeror that the condition has been satisfied,

that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Council, on SGXNET before 5.00 pm on that day, embargoed for publication until that time.

6 Offer Timetable after the End of the Auction

(a) Competing offerors are normally required to post their revised offer documents no later than 7 days after the end of the auction. In consultation with the offeree company, the Council may dispense with the requirement for a competing offeror to post its revised offer document, if it is clear that the value of the competing offeror's offer is lower than the value of the other competing offeror's offer.

(b) The offeree company is required to post its offeree circulars on the revised offers no later than 7 days after the posting of the revised offer documents. Where the Council has dispensed with the requirement for a competing offeror to post a revised offer document, the offeree company is not required to post an offeree circular on that offer.

(c) The latest date which either offer made by the competing offerors may become or be declared unconditional as to acceptances will be 14 days after the posting of the revised offer documents.

SCHEDULE 1
FEES LEVIED FOR LODGEMENT OF DOCUMENT

(See Rule 34)

1 Fees for lodgement of offer document

The amount of fees payable will depend on the value of the offer according to the table below:-

Value of offer ($ million)	Charge ($)
Less than 15	3,000
Over 15 to 30	15,000
Over 30 to 50	30,000
Over 50 to 100	40,000
Over 100 to 250	70,000
Over 250	100,000

2 Fees for lodgement of Whitewash circular

A fee of $2,000 is payable for the lodgement of a Whitewash circular.

3 Value of Offer

For the purposes of this Schedule, value of offer refers to:-

(a) where the shares which are the subject of the offer are to be acquired for cash, the total amount of such cash; and

(b) where the shares which are the subject of the offer are to be acquired for listed securities, the value of such listed securities established by reference to the volume weighted average traded price (of the listed securities on the date of the offer announcement.

The Council should be consulted in the event the shares which are the subject of the offer are to be acquired for a consideration other than cash or listed securities.

In the case where the offer document contains alternative offers to the same offeree company, or contains 2 or more offers of different values to different offeree

companies, the value of the offer used to determine the fee to be levied shall be the lower or lowest value.

4 Payment

Fees must be paid by cheque made payable to “The Monetary Authority of Singapore” at the time of lodgement of the offer document. Subsequently, on the date of posting of any written notification of a revised offer to offeree shareholders, there shall be payable to the Monetary Authority of Singapore a fee equal to the difference between the fee previously paid based on the value of the offer determined on lodgement of the offer document (including any revisions other than the current one) and the fee which would be payable based on the revised offer.