



LAWS OF MALAYSIA

Act 324

COMMODITIES TRADING ACT 1985

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LAWS OF MALAYSIA**Act 324****COMMODITIES TRADING ACT 1985**

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LAWS OF MALAYSIA

Act 324

COMMODITIES TRADING ACT 1985

An Act to establish the Commodities Trading Commission, to provide for the establishment of a commodity exchange, to control the trading in commodity futures contracts and to provide for matters connected therewith and incidental thereto.

[1. 3. 86] Pu(B) 86/8t

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

PART I
PRELIMINARY

1. This Act may be cited as the Commodities Trading Act 1985 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Short title and commencement.
1. 3. 86
(Pu(B) 86/8t)

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

Interpretation.

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

“auditor” means an approved company auditor within the meaning of the Companies Act 1965;

Act 125.

“clearing house” means a clearing house by whatever name or designation, established or arranged to be established by the exchange company for the registration and settlement of futures contracts;

“Commission” means the Commodities Trading Commission established under section 3;

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dings in relation
under repealed
odity Exchange.
f the Act.

“Commissioner” means the Commissioner of Commodities Trading appointed under section 9 and includes the Deputy Commissioner;

“commodity market” means a place provided and maintained by the exchange company for the trading in commodities generally or in particular commodities, whether under futures contracts or otherwise;

“commodity trading adviser” means a person who acts as a commodity trading adviser within the meaning of section 34 and who is registered as such under this Act;

“commodity trading adviser’s representative” means a person who acts as a commodity trading adviser’s representative within the meaning of section 36 and who is registered as such under this Act;

“Compensation Fund” means the compensation fund established under section 80;

“constitution”, in relation to a company, means the memorandum and articles of association of the company;

“corporation” means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign company but does not include—

- (a) any corporation sole;
- (b) any society registered under any written law relating to co-operative societies; or
- (c) any trade union registered under any written law as a trade union;

“dealer” means a person who acts as a dealer within the meaning of section 33 and who is registered as such under this Act;

“dealer’s representative” means a person who acts as a dealer’s representative within the meaning of section 35 and who is registered as such under this Act;

“default”, in relation to the failure of a dealer or a member to perform a legal obligation, means a default arising from any breach of trust, defalcation, fraud or misfeasance committed by the dealer, the dealer’s

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representative or a member or by any director, partner or employee, as the case may be, of the dealer or member in respect of any money, futures contract or other property of a person who is a client of the dealer or member;

“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 of a corporation are accustomed to act and an alternate or substitute director;

“exchange company” means any company approved by the Minister under section 19 to establish and operate a commodity exchange;

“financial year”, in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;

“firm” means an unincorporate body of two or more persons;

“Fund” means the Commodities Trading Commission Fund established under section 13;

“futures contract” means a contract or an option on a contract executed on any commodity exchange to buy or sell a commodity for future delivery;

“legal obligation” includes an obligation arising under a contract, quasi-contract or trust (including a constructive trust);

“licensed bank” means a bank licensed under the Banking Act 1973;

Act 102.

“Management Board” means the management board of the exchange company;

“Minister” means the Minister for the time being responsible for commodities futures trading;

“registered person” means a person who is registered under this Act as a dealer, dealer’s representative, commodity trading adviser or commodity trading adviser’s representative, as the case may be;

“rules of the commodity market” means the rules governing the conduct of the commodity market concerned or persons who trade in commodity futures contracts in the commodity or commodities concerned, by whatever name such rule may be called and wherever contained;

“Specified Commodity Exchange” means any overseas commodity exchange specified by the Minister by order from time to time;

“trading in commodity futures contracts”, in relation to any person, whether acting as principal or agent, means making or offering to make an agreement with any other person in Malaysia or inducing or attempting to induce any other person in Malaysia to enter into or offer to enter into any agreement for the purchase or sale of a commodity under a futures contract or facilitating the conclusion of such an agreement.

(2) For the purposes of this Act, a director or employee of a corporation, or a partner or employee of a firm, shall be deemed to be accredited to the corporation or firm, as the case may be, if he is, in his capacity as such director, partner or employee, duly authorized by the corporation or firm to act for or on behalf of that corporation or firm for the purpose of trading in commodity futures contracts.

PART II

COMMODITIES TRADING COMMISSION

Establishment of the Commodities Trading Commission.

3. (1) There is hereby established a body corporate by the name the “Commodities Trading Commission”, which shall have perpetual succession, a common seal, and power to acquire and hold movable and immovable property and to dispose thereof or otherwise deal therein, and which may sue and be sued in its corporate name.

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

- (a) a Chairman;
- (b) the Secretary-General or Deputy Secretary-General of the Ministry of Primary Industries;
- (c) the Secretary-General or Deputy Secretary-General of the Ministry of Finance;

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(d) the Governor or Deputy Governor of Bank Negara Malaysia; and

(e) not more than six persons with appropriate experience, knowledge or expertise.

(3) Each member of the Commission shall, unless he sooner resigns or his office is sooner revoked, hold office for a period not exceeding two years on such terms and conditions as may be determined by the Minister and shall be eligible for reappointment.

(4) The Minister may appoint any member of the Commission to exercise the functions of the Chairman if during any period owing to absence from Malaysia, illness or any other cause, the Chairman is unable to exercise his powers or perform his duties.

(5) Subject to subsection (4), if the Chairman is absent from any meeting of the Commission or is incapacitated by illness from performing the functions of his office, the remaining members of the Commission may elect one of their number to act as Chairman during the vacancy, absence or incapacity, as the case may be.

(6) A member of the Commission appointed under subsection (4) or elected under subsection (5) shall for the period that he acts as Chairman, have and may exercise all the functions of the Chairman.

(7) The appointment of every member of the Commission shall be published in the *Gazette*.

(8) The Schedule to this Act shall apply to the Commission.

4. The Commission shall—

(a) be responsible for enforcing the provisions of this Act;

(b) be responsible for supervising the activities of the exchange company and of the clearing house and promoting proper conduct amongst their members;

(c) take all reasonable measures to safeguard the interest of persons who trade in commodity futures contracts;

Functions
of the
Commis-
sion.

means the rules
commodity market
commodity futures
activities concerned,
be called and

means any over-
the Minister by

acts", in relation
principal or agent,
agreement with
or attempting
to enter into
the purchase
contract or
agreement.

a director or
or employee
deputed to the
if he is, in his
employee, duly
act for or on
the purpose of

SION

incorporate by
"Commission",
common seal,
immovable
otherwise deal
incorporate

the following
Minister:

Secretary-
Industries;

Secretary-

- (d) suppress illegal and improper practices in relation to trading in commodity futures contracts and price manipulations in a commodity market;
- (e) promote and maintain the integrity of registered persons and encourage the promulgation by dealers and commodity trading advisers of balanced and informed advice to their clients;
- (f) advise the Minister on all matters relating to trading in commodity futures contracts;
- (g) advise the Minister on all matters relating to the purchase or sale of commodities for spot delivery or for deferred shipment or delivery; and
- (h) consider and suggest reforms of the law relating to trading in commodity futures contracts including changes to the constitution, rules and regulations of the exchange company and of the clearing house.

Powers of
the Com-
mission.

5. The Commission shall have all such powers as may be necessary to carry out its functions under this Act and in particular—

- (a) to direct the exchange company or the clearing house to comply with, enforce, or give effect to their respective rules and regulations or to take such action as the Commission considers necessary and expedient, consistent with their rules and regulations;
- (b) subject to notice and after consultation with the exchange company and the clearing house, to fix position limits and limits on the amount of trading in accordance with section 66, for the purpose of diminishing, eliminating or preventing excessive speculation in any market of the exchange company;
- (c) to set up committees, which may consist of or include persons who are not members of the Commission, to advise or assist the Commission on such matters concerning its powers and functions as it considers fit, and the Commission may delegate, subject to such conditions and restrictions as it may impose, such of its powers and functions as it considers fit to any

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of such committees or to the Commissioner, and any act done or decision made by the committee or the Commissioner pursuant to such delegation shall be deemed to be the act or decision of the Commission;

- (d) to authorize the Chairman to set up *ad hoc* committees of the Commission from time to time, for such purposes and upon such terms, conditions and restrictions as the Commission may consider appropriate; and
- (e) to hear and determine whether by itself or through a committee appointed under paragraph (c) of this section, any appeal that is under this Act or pursuant to the rules of the exchange company, appealable to the Commission.

6. (1) Whenever the Commission has reason to believe that an emergency exists, the Commission shall have the power—

Emergency powers of the Commission.

- (a) to take such action as in the Commission's judgement is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including but not limited to, the setting of temporary emergency margin levels on any futures contracts and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action;
- (b) where appropriate and necessary but without prejudice to the rights and interests of innocent third parties, to direct the clearing house not to make payment, refund or release to any person, any monies or securities available to the clearing house in excess after settlement of any contract that is in default under the rules of the clearing house or of the exchange company, until investigation and determination of the default are completed in accordance with the rules of the exchange company.

(2) The term "emergency" as used in this section shall mean in addition to threatened or actual market manipulations and corners, any act of the Government or of a foreign government affecting a commodity, acts

of war, acts of God or physical emergencies which cannot be handled by the exchange company or the clearing house, or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity.

Commission's action not to be vitiated by injunction, etc. without hearing.

7. Notwithstanding any other written law to the contrary, any court reviewing any action of the Commission under section 6 shall not order an injunction or *mandamus* unless it has determined after notice to and hearing of the parties concerned that the action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Power of Minister to give directions.

8. The Minister may give to the Commission such directions as he may deem fit, not inconsistent with the provisions of this Act, as to the exercise or performance by the Commission of its functions under this Act.

PART III

COMMISSIONER OF COMMODITIES TRADING AND OTHER STAFF OF THE COMMISSION

Appointment of Commissioner and other staff of the Commission.

9. (1) The Commission shall, with the approval of the Minister, appoint a Commissioner of Commodities Trading.

(2) The Commission shall also appoint a Deputy Commissioner of Commodities Trading and such number of other officers and servants, including Commodities Trading Inspectors, as the Commission considers necessary for the purpose of discharging its functions under this Act.

(3) The Commission shall, before establishing or modifying any scheme of service for the Commissioner, Deputy Commissioner and its officers and servants or of any class thereof, including the terms and conditions of service, salaries, allowances and other remuneration payable and facilities for loans for the purchase of conveyances, obtain the approval of the Public Services Department and the Treasury for the scheme or its modification.

(4) The appointments of the Commissioner, Deputy Commissioner and Commodities Trading Inspectors shall be published in the *Gazette*.

10. (1) In addition to the functions expressed under this Act, the Commissioner shall—

Duties of
the Com-
missioner.

- (a) be responsible for executing the decisions of the Commission, the management of its funds, the general administration of its affairs and perform such other duties as the Commission may from time to time determine or as the Chairman may from time to time direct;
- (b) be present at every meeting of the Commission unless he is excused from doing so by the Chairman, but he shall have no right to vote at the meeting;
- (c) conduct an annual audit and review of the exchange company and of the clearing house and submit a report thereon to the Commission for its consideration.

(2) In the exercise of his powers and the performance of his duties, the Commissioner may be assisted by the Deputy Commissioner or by any officer of the Commission.

(3) Where the Commissioner is unable to exercise his functions on grounds of sickness, absence or any other cause, the Deputy Commissioner shall exercise the functions of the Commissioner provided that the consent of the Minister shall be obtained where the deputation for the Commissioner exceeds or is likely to exceed a continuous period of three months.

11. The Commissioner shall have the power—

Powers of
the Com-
missioner.

- (a) to require the chief executives of the exchange company and of the clearing house to keep him fully informed of such activities and developments in the exchange company and the clearing house as may be specified by him in writing;
- (b) to communicate to the Management Board the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgement of the Commissioner disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers or investors, or which is necessary or appropriate to effectuate the

purposes of this Act provided that any information furnished by the Commissioner under this paragraph shall not be disclosed by the Management Board, except in any self-regulatory action or proceedings;

- (c) to require the exchange company and the clearing house—
 - (i) to produce any books of accounts, records or documents kept by them in connection with or for the purposes of their respective business; and
 - (ii) to provide any other information relating to their respective business as he may consider necessary for the discharge of his functions;
- (d) to require the Management Board to direct any committee of the exchange company constituted under the rules of the exchange company which has failed or neglected to perform or to discharge a duty under those rules forthwith to perform or to discharge that duty; and
- (e) to issue such administrative guidelines and instructions to registered persons as are necessary to accomplish any of the purposes of this Act.

Official
secrecy.

12. (1) Except as may be necessary for the exercise or performance of any function under this Act or for carrying into effect the provisions of this Act, every person who has been appointed under or who is or has been employed in carrying out or in assisting any person to carry out the provisions of this Act—

- (a) shall preserve and aid in preserving secrecy with regard to all matters coming to his knowledge in the exercise or performance of any function under this Act;
- (b) shall not communicate any such matter to any person or use it to the pecuniary advantage of himself or of any other person; and
- (c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.

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(2) Subsection (1) does not apply—

(a) to the disclosure of any information authorized to be disclosed or furnished by the Commissioner; or

(b) to the disclosure of information for the purpose of any legal proceedings brought under this Act or for the purpose of any report of any such proceedings.

(3) Any person who—

(a) contravenes subsection (1); or

(b) aids, abets, counsels or procures any person to contravene subsection (1),

commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit and to imprisonment for a term not exceeding one year.

PART IV

FINANCIAL PROVISIONS

13. (1) There shall be established a fund to be known as the "Commodities Trading Commission Fund" which shall be administered by the Commission.

Commo-
dities
Trading
Commis-
sion Fund.

(2) There shall be paid into this Fund—

(a) such sums as may be provided to the Commission from time to time by Parliament;

(b) all monies collected by the Commissioner by way of fees prescribed under this Act;

(c) all monies borrowed by the Commission under section 15;

(d) all monies earned or arising from any investment under section 16, or from any property, mortgages, charges, or debentures acquired by or vested in the Commission;

(e) all sums collected by way of penalty under section 28 or 44; and

(f) all other sums or property that may in any manner become payable to, or vested in the Commission in respect of any matter incidental to its functions and powers.

(3) The Fund may be applied for—

- (a) defraying such expenditure as the Commission may incur in carrying out its functions and exercising its powers under this Act;
- (b) meeting such allowances payable to members of the Commission or of committees established under section 5 as may be determined by the Minister;
- (c) repayment of monies borrowed by the Commission pursuant to section 15;
- (d) lending to employees of the Commission for the purposes of purchasing conveyances, on such terms and conditions as may be prescribed.

Futures
Trading
Deposits
Account.

14. (1) The Commission shall also establish and maintain an account to be known as the "Futures Trading Deposits Account" which shall be administered by the Commissioner.

(2) There shall be paid into this Account—

- (a) all monies received by the Commissioner as deposits under section 38; and
- (b) all monies earned by way of interest on the deposits.

(3) The monies in this Account shall be applied by the Commissioner solely for the purposes set out in section 40, and in accordance with the regulations made thereunder.

Power to
borrow.

15. The Commission may, after consultation with the Minister, and upon such terms and conditions as may be approved by the Minister of Finance, borrow money for the purposes of carrying out its functions under this Act.

Power to
invest.

16. (1) The Commission may, from time to time, with the approval of the Minister given after obtaining the concurrence of the Minister of Finance, invest the Commodities Trading Commission Fund or any part thereof not being immediately required for meeting

COMMODITIES TRADING

the Commission's obligations or carrying out its duties—

- (a) in investments or securities authorized for the investment of trust funds by any written law for the time being in force; or
- (b) in such other investments or securities as the Commission thinks fit.

(2) The Commission may invest the monies in the Futures Trading Deposits Account or any part thereof which is not immediately required for the purpose provided for in subsection (3) of section 14—

- (a) in fixed deposits with a licensed bank; or
- (b) in securities in which trustees are authorized by law to invest trust funds.

17. The Commodities Trading Commission Fund and the Futures Trading Deposits Account shall be subject to account and audit in accordance with the provisions of the Statutory Bodies (Accounts and Annual Reports) Act 1980.

Statutory Bodies (Accounts and Annual Reports) Act 1980 to apply. Act 240.

PART V

COMMODITY EXCHANGE

18. (1) No person shall establish or maintain or assist in establishing or maintaining or hold himself out as providing or maintaining a commodity market that is not the commodity market of a commodity exchange established and operated by an exchange company that has been granted approval under subsection (1) of section 19.

Establishment, etc. of commodity market and commodity exchange not allowed without approval.

(2) No company shall establish and operate a commodity exchange unless it has been granted approval under subsection (1) of section 19.

(3) Any person who contravenes the provisions of subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding one year or to both.

Power of
Minister
to approve
establish-
ment of a
commodity
exchange.

19. (1) The Minister may, on application made to him by a company, approve in writing the establishment and operation by the company of a commodity exchange if he is satisfied that the company complies with the requirements specified in subsection (3).

(2) An application under subsection (1) shall be in a prescribed form and accompanied by—

(a) a copy of the constitution of the company; and

(b) such other documents and information as may be required by the Minister for the purposes of approval under subsection (1).

(3) The requirements referred to in subsection (1) are—

(a) that the objects contained in the constitution of the company include a provision for the establishment and operation of a commodity exchange;

(b) that at least ten members of the company will carry on business dealing in commodities independently or in competition with each other;

(c) that the company shall—

(i) maintain to the satisfaction of the Minister an adequate and properly equipped place of business;

(ii) establish and operate commodity markets only at places approved by the Minister;

(iii) establish or make arrangements for the establishment of a clearing house for the registration and settlement of futures contracts and the day-to-day adjustment of the financial position of such contracts;

(iv) make arrangements to guarantee that futures contracts registered by the clearing house shall be fulfilled in the event of default by either of the two parties to such contracts;

COMMODITIES TRADING

- (d) that the constitution of the company provides for the making of rules applicable to the exchange company in its capacity as an exchange organisation and rules of commodity markets;
- (e) that the company shall make arrangements for the establishment of a Compensation Fund under Part IX;
- (f) that the constitution of the exchange company shall have been approved by the Commission.

20. (1) For the purposes of this Act, the constitution, rules and regulations of the exchange company and of the clearing house or any amendment thereto, shall require the approval in writing of the Commission.

Approval of the constitution, rules and regulations of the exchange company, etc.

(2) The exchange company and the clearing house, as the case may be, shall submit or cause to be submitted to the Commission for its approval—

- (a) the constitution of the exchange company, the clearing house and every amendment thereto; and
- (b) the rules including the rules of the commodity market and regulations of the exchange company; the rules and regulations of the clearing house and every amendment thereto.

(3) The Commission shall within thirty days after receipt of any submission under subsection (2), give notice in writing to the exchange company or the clearing house, as the case may be, of—

- (a) its approval of; or
- (b) its refusal to approve,

the constitution, rules and regulations or amendments thereto or any part thereof.

21. (1) For the purposes of this Act, the Commission shall have the power after proper notice and an opportunity for reasonable hearing, to require the exchange company or the clearing house, as the case may be, to make such changes to their constitutions, rules, including rules of the commodity market or regulations, as in the judgement of the Commission are

Power of the Commission to require changes to the constitution, rules, etc.

necessary to attain the objectives of this Act as well as for the betterment of the commodity futures trading industry, and the exchange company or the clearing house, as the case may be, shall comply accordingly.

(2) The Commission shall, before making the requisition under subsection (1), take full account of the views expressed by all concerned during the hearing referred to in subsection (1).

Management Board to manage the exchange company.

22. (1) The management of the exchange company shall be vested in a board to be called the "Management Board".

(2) The Management Board shall consist of—

(a) not more than three members to represent each commodity who shall be elected from amongst members of the exchange company by the members; and

(b) not more than three members to represent public interest who shall be appointed by the Minister after consultation with the Commission.

(3) Members of the Management Board other than those appointed by the Minister, shall hold office for such period as shall be determined by the constitution of the exchange company.

(4) Members of the Management Board appointed by the Minister pursuant to subsection (2), shall hold office for such period as may be determined by the Minister.

Duties of the exchange company and the clearing house.

23. (1) It shall be the responsibility of the exchange company and the clearing house to prevent violations of their rules and regulations as well as of this Act and for this purpose, the Commission may, by rules or order, *inter alia*, require the Management Board and where appropriate the board of the clearing house to—

(a) conduct surprise audits of its member firms especially those which deal with the public and hold customer funds;

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- (b) establish and enforce minimum capital and other financial requirements for all member firms which deal with the public and hold customer funds; and
- (c) establish an early warning system for monitoring undesirable situations and practices in the market.

(2) The exchange company and the clearing house shall—

- (a) provide such assistance to the Commissioner as he reasonably requires for the performance of his functions and duties;
- (b) where they reprimand, fine, suspend, expel or otherwise take disciplinary action against one of their members, within seven days give to the Commissioner in writing particulars of the name of the member concerned, the reason for and nature of the action taken, the amount of fine, if any, and the period of the suspension, if any; and
- (c) allow the Commissioner at all reasonable times full and free access to the trading floor of any commodity market of the exchange, for any of the purposes of this Act.

24. The trading in commodity futures contracts in a commodity market shall be in respect of such commodities as may be specified by the Minister by order from time to time.

Restriction on business in commodity market.

25. (1) Subject to subsection (2), the Minister may revoke the approval granted to an exchange company under section 19 if—

Revocation of approval.

- (a) the exchange company has ceased to comply with any of the requirements specified in subsection (3) of that section;
- (b) the exchange company has ceased to operate the commodity exchange;
- (c) the exchange company is being wound up; or
- (d) he receives a recommendation from the Commission under section 29 for the revocation of the approval so granted.

(2) The Minister shall give to the exchange company not less than fourteen days' notice in writing of his intention to revoke the approval under subsection (1) and the notice shall specify the grounds for revocation.

Suspension
of trading
in lieu of
revocation
of approval.

26. (1) Where the exchange company has ceased to comply with any requirement specified in subsection (3) of section 19, or where the Minister receives a recommendation from the Commission under section 29 the Minister may, instead of revoking the approval under section 25, direct that trading in all or any commodity market of the exchange be suspended until such time as the exchange company has, to the satisfaction of the Minister, complied with such requirement, or rectified the matter forming the basis of the recommendation by the Commission, or until the Minister revokes the direction.

(2) The Minister shall give to the exchange company not less than fourteen days' notice in writing of his intention to direct suspension of trading under subsection (1) and the notice shall specify the grounds for the suspension.

Closure
of the
commodity
exchange
in an
emergency.

27. (1) The Minister may, with the concurrence of the Minister of Finance, direct the exchange company that the commodity exchange be closed for a period not exceeding five trading days for the transaction of any trading in commodity futures contracts in any commodity specified in the direction if the Minister is of the opinion that the orderly transaction of such trading is being or is likely to be prevented because—

(a) an emergency or natural disaster has occurred in Malaysia; or

(b) there exists an economic or financial crisis or any other circumstance, whether in Malaysia or elsewhere.

(2) The Minister may, with the concurrence of the Minister of Finance, extend the closure of the commodity exchange under subsection (1) for further periods each not exceeding five trading days.

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(3) The Minister shall specify the grounds for the closure in the direction given under subsection (1) and the grounds for any extension of the closure under subsection (2).

28. (1) Where it is shown that—

(a) the exchange company or the clearing house—

(i) has failed to comply with or observe its own rules and regulations;

(ii) has contravened any provision of this Act or any regulations, rules or orders made thereunder; or

(iii) has failed to comply with any directive given by the Commission under this Act; or

(b) the exchange company, clearing house, any member of their respective Boards or any officer or employee of the exchange company or clearing house has acted in any way relating to the operation of the commodity exchange, any commodity market or the clearing house which has prejudiced or is likely to be prejudicial to the public interest,

the Commission may, after notice to and hearing of the parties concerned, take one or more of the following actions:

(i) suspend trading in all or any commodity market of the exchange until such time as the exchange company has to the satisfaction of the Commission, complied with, or rectified the matter forming the basis of the suspension, or until the Commission cancels the suspension;

(ii) make an order directing the exchange company, clearing house or individual concerned, to comply with or cease and desist from any such acts; and in the case of the exchange company or clearing house, impose a penalty not exceeding one hundred thousand ringgit, and in the case of a member of the Board or an officer or employee, impose a penalty not exceeding twenty thousand ringgit; or

Action
against
exchange
company,
clearing
house, etc.
for failure
to comply
with rules,
regulations,
etc.

(iii) reprimand the exchange company, clearing house or the individual concerned.

(2) A suspension, penalty or reprimand given under subsection (1) shall be conclusive unless within fourteen days thereafter, the exchange company, clearing house or individual concerned appeals to the Minister in writing against the suspension, penalty or reprimand, as the case may be.

(3) An appeal under subsection (2) shall not act as a stay of the order of suspension made under subsection (1) (i) unless otherwise determined by the Commission.

(4) The Minister may affirm, set aside any of the actions of the Commission made under subsection (1) or direct the Commission to modify its order.

Commis-
sion may
recommend
revocation
of approval.

29. Where the Commission is of the opinion that the act or omission by the exchange company, any member of the Management Board or any officer of the exchange company under section 28, is of such a serious nature as to warrant a revocation of the approval granted to the exchange company under section 19, the Commission may, instead of suspending trading under section 28, make a recommendation to the Minister to revoke the approval granted by him to the exchange company.

Publication
of notice of
revocation,
suspension
of trading
or closure.

30. Where—

(a) approval is revoked under section 25; or

(b) the exchange company is directed to suspend trading under section 26 or 28, or to close the commodity exchange under section 27,

the Commissioner shall publish a notice of the revocation of the licence or the direction for the suspension of trading or for the closure of the commodity exchange, as the case may be.

31. (1) Notwithstanding any other provision of this Act, no person shall in any manner transact any trading in commodity futures contracts of the type specified in a direction under section 26 or 28 during the period of suspension of trading or under section 27 during the closure of the commodity exchange.

Dealings in commodities prohibited during suspension of trading or closure of the commodity exchange.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

32. (1) Where trading in any commodity is suspended under section 26 or 28 or where the commodity exchange is closed under section 27 for the transaction of any trading in commodity futures contracts, the Commissioner or any police officer not below the rank of Inspector may, during the period of suspension or closure, take such steps as may be necessary to ensure that the premises of the commodity exchange provided for the transaction of such trading are locked and secured.

Prevention of entry into the commodity exchange.

(2) Any person who, without the authority of the Commissioner or a police officer not below the rank of Inspector, enters any premises which are locked and secured under subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

PART VI

REGISTRATION OF DEALERS, COMMODITY TRADING ADVISERS AND REPRESENTATIVES

33. (1) Subject to subsections (2), (3) and (4), no person, whether as principal or agent, shall—

Dealers to be registered.

(a) carry on a business of trading in commodity futures contracts; or

(b) hold himself out as carrying on such a business, unless such person is registered as a dealer under this Act.

(2) No corporation that is a dealer shall carry on business as a dealer unless every director or employee who is accredited to the corporation is registered as a dealer under this Act.

(3) No firm that is a dealer shall carry on business as a dealer unless every partner is registered as a dealer under this Act.

(4) Subsection (1) shall not apply to a person who trades in commodity futures contracts only through a dealer registered under this Act.

(5) Any person who knowingly contravenes this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine of one thousand ringgit for each day during which the offence continues.

(6) Any futures contract made by any person, whether as principal or agent, who is required to be registered under subsection (1) and who is not registered as so required, may be rescinded by any other party to the contract who, upon so doing, shall be entitled to recovery of any money or other thing he may have paid or delivered under the contract.

Commodity
trading
advisers
to be
registered.

34. (1) Subject to subsections (2) and (3), no person shall—

- (a) for direct remuneration, carry on a business of advising any other person concerning the purchase or sale of futures contracts;
- (b) for direct remuneration, as part of a regular business, issue or circulate analyses or reports concerning the purchase or sale of futures contracts;
- (c) for direct remuneration, pursuant to a contract or arrangement with a client, undertake on behalf of the client the management of a portfolio of commodities, including the arranging of purchase, sale, exchange or storage of commodities,

unless such person is registered as a commodity trading adviser under this Act.

(2) Paragraph (a) of subsection (1) shall not apply to the giving of advice concerning the purchase or sale of futures contracts by a dealer to his client, if such activity is incidental to his carrying on business as a dealer.

(3) Paragraphs (a) and (b) of subsection (1) shall not apply to the proprietor or publisher of, or contributor to, a publication that is generally available to the public otherwise than on subscription who only in that publication advises other persons concerning the purchase or sale of futures contracts, or issues or circulate analyses or reports concerning the purchase and sale of futures contracts, not being a proprietor or publisher of, or contributor to, a publication whose principal or only object is to advise others concerning the purchase or sale of futures contracts, or to issue or circulate analyses or reports concerning the purchase and sale of futures contracts.

(4) For the purposes of subsection (3), "publication" means a *bona fide* newspaper, magazine, journal or other periodical publication.

(5) Any person who knowingly contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine of one hundred ringgit for each day during which the offence continues.

35. (1) No person shall perform for a dealer any of the functions of a dealer within the meaning of section 33, other than work ordinarily performed by an accountant, clerk or cashier, for remuneration by way of salary, commission or otherwise unless such person is registered as a dealer's representative under this Act in respect of such a dealer.

Dealer's
representatives
to be
registered.

(2) Any person who knowingly contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand ringgit and, in the case of a continuing offence, to a further fine of one hundred ringgit for each day during which the offence continues.

Commodity trading adviser's representatives to be registered.

36. (1) No person shall perform for a commodity trading adviser any of the functions of a commodity trading adviser within the meaning of section 34, other than work ordinarily performed by an accountant, clerk or cashier, for remuneration by way of salary, commission or otherwise unless such person is registered as a commodity trading adviser's representative under this Act in respect of such commodity trading adviser.

(2) Any person who knowingly contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand ringgit and, in the case of a continuing offence, to a further fine of one hundred ringgit for each day during which the offence continues.

Registration of persons under this Part.

37. (1) Subject to sections 38 and 39 the Commissioner shall, on application made to him by any person in the prescribed manner and on payment of the prescribed fee, register that person as—

(a) a dealer;

(b) a commodity trading adviser;

(c) a dealer's representative; or

(d) a commodity trading adviser's representative,

as the case may be.

(2) The Commissioner shall issue to a person registered under subsection (1) an appropriate certificate of registration which shall—

(a) be valid for a period of twelve months beginning with the day on which it is issued; and

(b) be subject to such conditions as the Commissioner thinks fit.

(3) A certificate of registration issued under subsection (2) shall specify the name of the person authorized to carry on a business as a dealer, commodity trading adviser, dealer's representative, or commodity trading adviser's representative, as the case may be.

(4) The issue of a certificate of registration to a person shall not authorize such person to carry on the business under any name other than that specified in the certificate.

38. Subject to subsection (2), the Commissioner shall refuse to register an applicant as a dealer under section 37 unless—

Deposits
to be paid
by dealers.

(a) (i) he is a member of the exchange company; and

(ii) he has paid to the Commissioner a deposit of not less than one hundred thousand ringgit in cash or in such other form as the Commissioner may, in the particular case, allow, if he intends to trade on any Specified Commodity Exchange;

(b) in the case of an applicant who is a director of a corporation, or a partner of a firm, or an employee of a corporation or firm who is accredited to the corporation or firm, as the case may be, as a dealer—

(i) the corporation or firm is a member of the exchange company; and

(ii) the corporation or firm has paid to the Commissioner a deposit of not less than one hundred thousand ringgit in cash or in such other form as the Commissioner may, in the particular case, allow on the registration of the corporation or firm as a dealer if he intends to trade on any Specified Commodity Exchange;

(c) in the case of an applicant that is a corporation or firm—

(i) the corporation or firm is a member of the exchange company; and

(ii) the corporation or firm has paid to the Commissioner a deposit of not less than one hundred thousand ringgit in cash or in such other form as the Commissioner may, in the particular case, allow on the registration of the corporation or firm as a dealer, if it intends to trade on any Specified Commodity Exchange.

Refusal of
registration.

39. (1) The Commissioner may refuse to register an applicant under section 37—

(a) in the case of an applicant who is an individual, on the grounds that—

(i) the applicant has not provided the Commissioner with such information relating to him or any person employed by or associated with him for the purposes of his business, and to any circumstances likely to affect his method of conducting business, as may prescribed under this Act;

(ii) the applicant is an undischarged bankrupt or has committed an act of bankruptcy within the meaning of the Bankruptcy Act 1967 or has made a composition or arrangement with his creditors;

(iii) it appears to the Commissioner that, by reason of the applicant, or any person employed by or associated with him for the purposes of his business, having been convicted, whether in Malaysia or elsewhere, of an offence the conviction for which involved a finding that he acted fraudulently or dishonestly, or having been convicted of an offence against this Act or any Act superseded by this Act, or having committed a breach of any regulations made under this Act or any Act superseded by this Act relating to registered persons, the applicant is not a fit and proper person to be registered;

(iv) it appears to the Commissioner that, by reason of any other circumstances whatsoever which either is likely to lead to the improper conduct of business by, or reflect discredit on the method of conducting business of, the applicant or any person employed by or associated with him for the purpose of his business, the applicant is not a fit and proper person to be registered; or

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- (v) the applicant is unable to satisfy such minimum financial requirements as may be prescribed by the Commission by order from time to time;
- (b) in the case of an applicant that is a corporation, on the grounds that—
- (i) the applicant has not provided the Commissioner with such information 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 method of conducting business, as may be prescribed under this Act;
 - (ii) any director or employee of the applicant who applies to be registered as a dealer in his capacity as such director or employee, as the case may be, would be refused registration under subparagraph (ii) of paragraph (a);
 - (iii) the applicant has at any time prior to the application entered into any composition or arrangement with its creditors;
 - (iv) it appears to the Commissioner that, by reason of the applicant, or any director or employee of the applicant, having been convicted, whether in Malaysia or elsewhere, of an offence the conviction for which involved a finding that it or he acted fraudulently or dishonestly, or having been convicted of an offence against this Act or any Act superseded by this Act, or having committed a breach of any regulations made under this Act or any Act superseded by this Act relating to registered persons, the applicant is not a fit and proper person to be registered;
 - (v) it appears to the Commissioner that, by reason of any other circumstances whatsoever which either is likely to lead to the improper conduct of business by, or reflect discredit on the method of conducting business of, the applicant or any

director or employee of the applicant, the applicant is not a fit and proper person to be registered; or

(vi) the applicant is unable to satisfy such minimum financial requirements as may be prescribed by the Commission by order from time to time;

(c) in the case of an applicant that is a firm, on the grounds that—

(i) the applicant has not provided the Commissioner with such information 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 methods of conducting business, as may be prescribed under this Act;

(ii) any partner or employee of the applicant who applies to be registered as a dealer in his capacity as such partner or employee, as the case may be, would be refused registration under subparagraph (ii) of paragraph (a);

(iii) the applicant has at any time prior to the application entered into any composition or arrangement with its creditors;

(iv) it appears to the Commissioner that, by reason of the applicant, or any partner or employee of the applicant, having been convicted, whether in Malaysia or elsewhere, of an offence the conviction for which involved a finding that it or he acted fraudulently or dishonestly, or having been convicted of an offence against this Act or any Act superseded by this Act, or having committed a breach of any regulations made under this Act or any Act superseded by this Act relating to registered persons, the applicant is not a fit and proper person to be registered;

(v) it appears to the Commissioner that by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or reflect discredit on the method of conducting business of, the applicant or any partner or employee of the applicant, the applicant is not a fit and proper person to be registered; or

(vi) the applicant is unable to satisfy such minimum financial requirements as may be prescribed by the Commission by order from time to time.

(2) The Commissioner shall not refuse to register an applicant under subsection (1) without first giving the applicant an opportunity of being heard.

(3) Where the Commissioner refuses to register an applicant under subsection (1), he shall notify the applicant in writing to that effect stating the reasons for the refusal.

40. (1) Where—

(a) an individual who is a dealer becomes bankrupt, the Commissioner shall transfer the deposit paid by or in respect of such individual under section 38 to his trustee in bankruptcy;

(b) a corporation or firm that is a dealer is ordered to be wound up or dissolved by or under the supervision of a court, the Commissioner shall transfer the deposit paid by or in respect of such corporation or firm under section 38 to the liquidator of the corporation or firm; or

(c) the Commissioner has reason to believe that any person has sustained pecuniary loss because of a default committed in the course of or in connection with the commodity futures trading business of a dealer, by the dealer or any director, partner or employee, as the case may be, accredited to the dealer, the Commissioner may forfeit all or any part of the deposit paid by or in respect of the dealer under section 38.

Disposal
of deposits
paid under
section 38.

(2) Where a deposit is transferred to a trustee in bankruptcy under paragraph (a) of subsection (1), or liquidator under paragraph (b) of subsection (1), such deposit shall be applied by the trustee or liquidator, as the case may be, in accordance with regulations made under this Act.

(3) In the event of a deposit or any part of a deposit being forfeited under paragraph (c) of subsection (1), the deposit or part thereof so forfeited shall be applied by the Commissioner in accordance with regulations made under this Act.

(4) Where any deposit is transferred or forfeited under subsection (1), the Commissioner shall notify in writing the person who paid the deposit of such transfer or forfeiture.

(5) A deposit lodged under section 38 shall be applied by the Commissioner in accordance with regulations made under this Act.

(6) No deposit paid to the Commissioner under section 38 shall be available to compensate any person who has sustained pecuniary loss in consequence of trading on an exchange that is not a Specified Commodity Exchange.

Renewal of
registra-
tion.

41. (1) Subject to subsection (3), the Commissioner shall on application made to him by a registered person in the prescribed manner not later than one month before the day on which his registration, if not renewed, would expire and on payment of the prescribed fee, renew the registration of that person.

(2) The Commissioner may require an applicant under subsection (1) to supply him with any further information that he considers necessary to deal with the application.

(3) The Commissioner may refuse to renew the registration of a registered person under subsection (1)—

(a) on any ground on which the Commissioner may refuse to register under section 39;

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- (b) on any ground on which the Commissioner may revoke the registration of such person under section 42 or 44; or
- (c) on the ground of failure by such person to comply with subsection (1) or with any requirement of the Commissioner under subsection (2).

(4) The Commissioner shall issue to a registered person whose registration is renewed under subsection (1) an appropriate certificate of registration which shall—

- (a) be valid for a period of twelve months beginning with the day of the expiry of the certificate of registration held by the registered person at the time of his application for renewal; and
- (b) be subject to such conditions as the Commissioner thinks fit.

(5) Nothing in this section shall be construed as preventing a renewal of the registration of a registered person that has been renewed from being further renewed under this section.

(6) The Commissioner shall not refuse to renew the registration of a registered person under subsection (3) without first giving such person an opportunity of being heard.

(7) Where the Commissioner refuses to renew the registration of a registered person under subsection (3), he shall notify such person in writing to that effect stating the reasons for the refusal.

42. (1) The registration of a registered person is deemed to be revoked, in the case of—

Revocation
of registra-
tion.

- (a) an individual, if the individual dies;
- (b) a corporation, if the corporation is wound up;
- (c) a firm, if the partnership is dissolved;
- (d) any one of the above, who has ceased to be a member of the exchange company.

(2) The Commissioner may revoke the registration of a registered person—

(a) in the case of a registered person who is an individual—

- (i) on any ground on which the Commissioner may refuse to register under paragraph (a) of subsection (1) of section 39;
- (ii) if a levy of execution in respect of him has not been satisfied;
- (iii) if he fails or ceases to carry on the business for which he was registered; or
- (iv) if, in the case of a representative, the registration of the dealer or commodity trading adviser, in relation to whom the certificate of registration of the representative was granted, is revoked;

(b) in the case of a registered person that is a corporation—

- (i) on any ground on which the Commissioner may refuse to register under paragraph (b) of subsection (1) of section 39;
- (ii) if it is being or will be wound up;
- (iii) if a levy of execution in respect of it has not been satisfied;
- (iv) if it has entered into any composition or arrangement with its creditors; or
- (v) if it fails or ceases to carry on the business for which it was registered;

(c) in the case of a registered person that is a firm—

- (i) on any ground on which the Commissioner may refuse to register under paragraph (c) of subsection (1) of section 39;
- (ii) if the partnership is being or will be dissolved;
- (iii) if a levy of execution in respect of it has not been satisfied;

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- (iv) if it has entered into any composition or arrangement with its creditors; or
- (v) if it fails or ceases to carry on the business for which it was registered.

(3) The Commissioner may revoke the registration of a registered person at the request of such person.

(4) The Commissioner shall not revoke the registration of a registered person under subsection (2) without first giving such person an opportunity of being heard.

(5) Where the Commissioner revokes the registration of a registered person under subsection (2) he shall notify such person in writing to that effect stating the reasons for the revocation and specifying the date on which the revocation shall take effect.

43. The registration of a registered person is deemed to be suspended when that registered person is suspended from membership of the exchange company under the rules of the exchange company and the suspension shall continue until his membership in the exchange company is restored or until his registration is determined in accordance with the provisions of this Act, whichever is earlier.

Registration of registered person deemed to be suspended when membership in exchange company is suspended.

44. (1) The Commissioner may inquire into any allegation made by any person including an officer of the Commission—

Powers of Commissioner in cases of misconduct, etc.

(a) that a registered person—

- (i) is committing or has committed an act of misconduct;
- (ii) is no longer a fit and proper person to continue to remain registered by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by him or to reflect discredit on the method of conducting his business; or

(b) that, in the case of a registered person that is a corporation or firm, a director, partner or employee accredited to the corporation or firm, as the case may be, who is a registered person—

(i) is committing or has committed an act of misconduct; or

(ii) is no longer a fit and proper person to continue to remain registered by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by him or to reflect discredit on the method of conducting his business.

(2) If after inquiring into an allegation under subsection (1) against a registered person, the Commissioner is of the opinion that the allegation is proved, he may if he thinks fit—

(a) revoke the registration of the person;

(b) suspend the registration of the person for such time, or until the happening of such event, as the Commissioner may determine;

(c) reprimand the person; or

(d) impose a penalty not exceeding five thousand ringgit.

(3) The Commissioner shall, at the hearing of an inquiry into an allegation under subsection (1) against a registered person, give the person an opportunity of being heard.

(4) Where the Commissioner imposes any of the penalties specified under subsection (2), he shall notify the registered person concerned and the corporation or firm to which he is accredited and the exchange company, in writing to that effect stating the reasons therefor and, in the case of a revocation or suspension of registration, specifying the date on which the revocation or suspension shall take effect.

(5) For the purpose of this section, “misconduct” means—

(a) any failure to comply with the requirements of this Act with respect to registered persons;

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- (b) any failure to observe terms and conditions of a certificate of registration;
- (c) any act or omission relating to the conduct of business of a registered person which is or is likely to be prejudicial to the public interest.

(6) Any sum ordered by the Commissioner to be paid by way of penalty under subsection (2), shall be deemed to be a debt due from the registered person concerned to the Commission and shall be recoverable accordingly in a court.

45. (1) A person whose registration is revoked under section 42, suspended pursuant to section 43 or revoked or suspended under section 44 shall, for the purpose of section 33, 34, 35 or 36, as the case may be, be deemed not to be registered.

Effect of
revocation
or sus-
pension of
registration.

(2) A revocation or suspension of the registration of a person does not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in commodity futures contracts entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the registration; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(3) A person whose registration is revoked under section 42 (other than subparagraph (iii) or (iv) of paragraph (a), subparagraph (ii) or (v) of paragraph (b), or subparagraph (ii) or (v) of paragraph (c), of subsection (2) of that section) or section 44 or suspended pursuant to section 44 but which has not been lifted before the expiry of his registration under this Act may not apply to be registered under this Part as a registered person until the expiration of at least twelve months from the date of revocation.

Appeal to the Commission against refusal of applications, etc.

46. Where—

- (a) the Commissioner refuses to register an applicant under section 38 or 39;
- (b) a deposit is transferred or forfeited by the Commissioner under section 40 or applied in accordance with regulations made under this Act;
- (c) the Commissioner refuses to renew the registration of a registered person under section 41;
- (d) a certificate of registration is issued by the Commissioner under subsection (2) of section 37 or subsection (4) of section 41 subject to conditions;
- (e) the registration of a registered person is revoked by the Commissioner under section 42; or
- (f) the registration of a registered person is revoked or suspended, or a registered person is reprimanded or fined by the Commissioner under section 44,

any person who is aggrieved by the decision of the Commissioner may, within one month after he is notified of the decision, appeal to the Commission whose decision shall be final.

False representation in obtaining registration.

47. (1) Any person who for the purpose of obtaining registration or renewal of registration under this Part, whether for himself or for any other person, makes any representation whether in writing or orally, which he knows to be false or misleading as to a material particular commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) For the purpose of subsection (1), "representation" means a representation or statement—

- (a) of a matter of fact, either past or present;
- (b) about a future event; or
- (c) about an existing intention, opinion, belief, knowledge or other state of mind.

48. (1) Every registered person shall forthwith notify the Commissioner in the prescribed form of any change which, while his certificate of registration is in force, may occur—

Information to be provided by registered persons.

- (a) in the address in Malaysia at which he carries on the business as a registered person;
- (b) in the business name or the name of the corporation or firm; or
- (c) in any information supplied in or in connection with his application for registration or renewal of registration,

as the case may be.

(2) Every registered person shall forthwith, on ceasing to carry on the business for which he was registered, notify the Commissioner in the prescribed form of that fact.

(3) If, at any time while a corporation or a firm is registered as a dealer or commodity trading adviser, any director, partner or employee of the corporation or firm becomes or ceases to be accredited to the corporation or firm, as the case may be, the corporation or firm shall within seven days after that event notify the Commissioner in the prescribed form of the name and address of that director, partner or employee and such other particulars as may be specified in the form.

(4) If a dealer's representative or commodity trading adviser's representative becomes or ceases to be the representative of a dealer or commodity trading adviser, that representative and the dealer or commodity trading adviser, as the case may be, shall within seven days after that event notify the Commissioner in the prescribed form of that fact.

(5) Any person who without reasonable excuse contravenes this section commits an offence and is liable on conviction to a fine not exceeding one thousand ringgit.

49. (1) The Commissioner shall establish and maintain at his office separate registers of dealers, commodity trading advisers and their respective representatives in which shall be entered the names of all registered persons and such other particulars as may be prescribed by regulations.

Commissioner to keep registers of registered persons.

(2) The registers kept under this section and all applications made by registered persons for registration or renewal of registration shall, during such hours as may be prescribed and on payment of any prescribed fee, be open to inspection by members of the public.

(3) A copy of any extract of an entry in any register kept under this section, purporting to be certified by the Commissioner, shall be admissible as evidence in any legal proceedings, whether under this Act or otherwise.

Publication
of names
and
addresses of
registered
persons.

50. (1) The Commissioner shall cause to be published in the *Gazette*, in such manner as he thinks fit, the names and addresses of all registered persons.

(2) The information required to be published under subsection (1) shall be published at least once in each year.

(3) If the Commissioner at any time amends any register kept by him under this Part by adding or removing the name of any person, he shall cause particulars of the amendments to be published in the *Gazette*.

PART VII

ACCOUNTS AND AUDIT

Interpre-
tation.

51. In this Part, unless the context otherwise requires, "client" means a person on whose account a dealer carries on any trading in commodity futures contracts as an agent.

Accounts
to be
kept by
dealers.

52. (1) A dealer shall—

(a) cause to be kept such accounting and other records as will sufficiently explain the transactions and reflect the financial position of the business of trading in commodity futures contracts carried on by him and will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(b) cause those records to be kept in such a manner as will enable them to be conveniently and properly audited.

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(2) Without prejudice to the generality of subsection (1), a dealer shall cause records to be kept—

(a) in sufficient detail to show particulars of—

(i) all amounts received and paid by the dealer, including amounts paid to and disbursed from a segregated account;

(ii) all purchases and sales of futures contracts made by the dealer, and the charges and credits arising from them; and

(b) in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of—

(i) the clients of the dealer; and

(ii) the dealer himself.

(3) A dealer shall retain—

(a) for a period of not less than five years, the records kept in accordance with this section; and

(b) for a period of not less than two years—

(i) a copy of each futures contract made out by him as agent of a client; and

(ii) each futures contract received by him or made out to himself as principal.

(4) Records required to be kept by a dealer by this section shall be kept either by making entries in a bound book or by recording or storing the relevant matters in any other manner as may be approved by the Commissioner, and anything so entered, recorded or stored shall be deemed to have been effected by, or with the authority of, the dealer.

(5) The dealer shall take reasonable precautions for guarding against falsification and damage or loss and for facilitating discovery of any falsifications.

(6) Any dealer who, without reasonable excuse, contravenes this section commits an offence and is liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(7) If, in any records kept in accordance with this section a person wilfully—

- (a) enters, records or stores, or causes to be entered, recorded or stored, in any manner whatsoever any matter that he knows to be false or misleading in a material particular;
- (b) destroys, removes or falsifies, or causes to be destroyed, removed or falsified, in any manner whatsoever any matter that is entered, recorded or stored; or
- (c) fails to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter,

he commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Monies
to be
paid into
segregated
account.

53. (1) A dealer shall establish and keep, with an organization approved by the Commissioner for the purposes of this subsection or with a licensed bank, one or more segregated accounts into which he shall pay, not later than the next business day after their receipt, all amounts (less brokerage and other proper charges relating to the requirement of a clearing house or other clearing organization) which are received from, or for the account of, any client in respect of the purchase or sale of futures contracts, except those amounts paid to that client, or in accordance with his directions, not being directions for the payment into an account of the dealer which is not a segregated account.

(2) All amounts required to be paid into a segregated account under subsection (1) shall be retained there by the dealer until they are paid to the client on whose behalf they are being held or in accordance with his directions or until they are required to complete payment in respect of the purchase or sale of futures contracts on behalf of such client.

(3) Every dealer shall keep a record of—

- (a) all amounts paid into a segregated account kept by him specifying the clients on whose behalf the amounts are held and the dates on which they were paid into the account;
- (b) all withdrawals from the segregated account, the dates of such withdrawals, and the names of the clients on whose behalf the withdrawals are made; and
- (c) such other particulars as the Commissioner may require.

(4) A dealer shall not apply or permit or suffer any monies or securities standing to the credit of his clients in a segregated account to be applied against the debits to his own trading account (which expression would include accounts of his partners, directors and employees) or for the benefit of trading accounts of any other client of the dealer.

(5) Any dealer or any employee or agent of the dealer who—

- (a) without reasonable excuse, contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both;
- (b) in contravention of this section, embezzles, steals or otherwise converts to his own use or the use of another, any money or securities received by such person for the purpose of margining, guaranteeing or securing the trades or contracts of any client or accruing to such client as a result of such trades or contracts or otherwise was received from any client in connection with the business of trading in commodities futures contracts, commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Monies in segregated accounts not available for payment of debts, etc.

54. (1) Except as otherwise provided in this Part, money held in a segregated account shall not be available for payment of the debts of a dealer or be liable to be paid or taken in execution under the order or process of any court.

(2) Any payment made in contravention of subsection (1) shall be void *ab initio*, and no person to whom the money is paid shall obtain any title to it.

(3) Subsections (1) and (2) shall not affect the validity of any payment made from a segregated account by a dealer to the clearing house in fulfilment of the dealer's obligations under the regulations of the clearing house.

Claims and liens on segregated accounts not affected.

55. Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any person has in respect of any money held in a segregated account or in respect of any money received for the purchase of futures contracts or from the sale of futures contracts before the money is paid into a segregated account.

Dealers to appoint auditors.

56. (1) A dealer shall appoint an auditor to audit his accounts (including all segregated accounts required to be kept by the dealer under section 53) and, where for any reason the auditor ceases to act for the dealer, the dealer shall, as soon as practicable thereafter, appoint another auditor to replace him.

(2) An auditor is not eligible for appointment under subsection (1) if—

(a) where the dealer is an individual, he is an employee of the dealer or is in the employment of any employee of the dealer;

(b) where the dealer is a corporation, he is a director or employee of the corporation or is in the employment of any director or employee of the corporation; or

(c) where the dealer is a firm, he is a partner or employee of the firm or is in the employment of any partner or employee of the firm.

(3) The name and particulars of every auditor appointed under this section shall be given to the Commissioner in writing within one month of the appointment being made.

57. (1) A dealer shall in respect of each financial year after the coming into force of this Act prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year and lodge the account and balance sheet with the Commissioner within six months or such extension thereof permitted by the Commissioner under subsection (2) after the end of the financial year together with an auditor's report on the account and balance sheet.

Dealers to lodge annual accounts, etc.

(2) Where an application for the extension of the period of six months specified in subsection (1) is made by a dealer to the Commissioner and the Commissioner is satisfied that there are special reasons for requiring the extension, the Commissioner may extend that period by one month subject to such conditions as the Commissioner thinks fit to impose.

(3) Any dealer who fails to comply with subsection (1) or with any condition imposed under subsection (2) commits an offence and is liable on conviction to a fine not exceeding two thousand five hundred ringgit.

58. If during the performance of his duties as auditor for a dealer, an auditor—

Reports by auditor to the Commissioner in certain cases.

(a) becomes aware of any matter which in his opinion adversely affects the financial position of the dealer to a material extent; or

(b) discovers evidence of a contravention by the dealer of section 52 or 53,

he shall, as soon as practicable thereafter, send to the Commissioner and to the dealer a report in writing of the matter or the contravention.

59. (1) Where—

(a) a dealer fails to lodge an auditor's report under section 57;

(b) the Commissioner receives a report under section 58; or

Power of Commissioner to appoint auditor.

(c) the Commissioner has reason to believe that an offence against this Act or regulations or rules made thereunder has been committed or that a contravention of any of the conditions of registration has been committed,

the Commissioner may, if he is satisfied that it is in the interests of the dealer, dealer's clients, 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, accounts and records of the dealer.

(2) Where the Commissioner is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by him under subsection (1) should be borne by the dealer, the Commissioner may, by order in writing, direct the dealer to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

(3) Where a dealer fails to comply with an order under subsection (2), the amount specified in the order may be sued for and recovered by the Commissioner as a debt in a court.

Power of Commissioner to appoint an auditor on application of client.

60. (1) On receipt of an application in writing from a client who alleges that a dealer has failed to account to him in respect of any money held or received, or any futures contract bought or sold, by the dealer for him or on his behalf, the Commissioner may, after first giving the dealer an opportunity to give an explanation of the failure, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books, accounts and records of that dealer.

(2) Every application under subsection (1) shall state—

(a) the particulars of the circumstances in respect of which the dealer is alleged to have failed to account;

(b) the particulars of the moneys and the dealings in futures contracts in respect of which the failure has occurred; and

(c) such other particulars as the Commissioner may require.

(3) The statements in an application under subsection (1) shall be verified by a statutory declaration made by the applicant and shall, if made in good faith and without malice, be privileged.

(4) The Commissioner shall not appoint an auditor under subsection (1) unless he is satisfied that—

(a) the applicant has good reason for making the application; and

(b) it is in the interests of the dealer, applicant or general public that the books, accounts and records of the dealer should be examined, audited and reported on.

(5) Where the Commissioner is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by him under subsection (1) should be borne by the dealer or applicant, the Commissioner may, by order in writing, direct the dealer or applicant to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

(6) Where a dealer or applicant fails to comply with an order under subsection (5), the amount specified in the order may be sued for and recovered by the Commissioner as a debt in a court.

61. An auditor appointed under section 59 or 60 shall on the conclusion of the examination and audit in respect of which he was appointed, make a report thereon to the Commissioner.

Auditor to report to the Commissioner.

62. (1) An auditor appointed under section 59 or 60 to examine and audit the books, accounts and records of a dealer may for the purpose of carrying out the examination and audit—

Power of auditors appointed by the Commissioner.

(a) examine on oath the dealer and, where the dealer is a corporation or firm, any director of the corporation or partner of the firm, as the case may be, and any of the dealer's employees and agents and any other auditor appointed under this Act in relation to those books, accounts and records;

- (b) require the dealer and, where the dealer is a corporation or firm, any director of the corporation or partner of the firm, as the case may be, and the dealer's employees and agents, to produce any books, accounts and records held by or on behalf of the dealer relating to his business;
- (c) require an auditor appointed by the dealer to produce any books, accounts and records held by him relating to the business of the dealer;
- (d) require the clearing house to produce any books, accounts and records kept by it relating to the business of the dealer;
- (e) require the clearing house to provide any information in its possession relating to the business of the dealer;
- (f) employ such persons as he considers necessary to assist him to carry out the examination and audit; and
- (g) by instrument in writing under his hand, authorize any person employed by him to do, in relation to the examination and audit, any act or thing that he could do himself as an auditor, except the examination of any person on oath, under this subsection.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 59 or 60 or person authorized under paragraph (g) of subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) If the clearing house, without reasonable excuse, fails to comply with any request made to it by an auditor appointed under section 59 or 60 or person authorized under paragraph (g) of subsection (1), the clearing house commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit.

63. (1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Part—

Offence to destroy, alter, etc. records.

- (a) destroys, conceals or alters any book, account or record relating to the business of a dealer; or
- (b) sends, or conspires with any other person to send, out of Malaysia any such book, account or record, or any property of any description belonging to or in the possession or under the control of a dealer,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) If, in a prosecution of an offence under subsection (1), it is proved that the person charged—

- (a) destroyed, concealed or altered any book, account or record mentioned in paragraph (a) of that subsection; or
- (b) sent, or conspired to send, out of Malaysia any such book, account or record, or any property mentioned in paragraph (b) of that subsection,

the onus of proving that in so doing he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

64. 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 59 or 60 or any employee of such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as such auditor or employee, as the case may be, to any person other than—

Restriction on auditor's and employee's right to communicate certain matters.

- (a) the Minister or any person approved or designated by the Minister;
- (b) the Commissioner; and
- (c) in the case of an employee, the auditor by whom he is employed.

Exchange company may impose additional obligations on members.

65. Nothing in this Part shall prevent the exchange company or Commissioner from imposing on dealers any further obligations or requirements which it or he thinks necessary with respect to—

- (a) the audit of accounts;
- (b) the information to be given in reports by auditors; or
- (c) the keeping of accounts, books and records.

PART VIII

TRADING PRACTICES

Fixing of trading and position limits.

66. (1) The Commission may, after consultation with the exchange company, by notification published in the *Gazette* establish and fix limits on the amount of trading which may be done, or positions which may be held, by any person under futures contracts in respect of a specified commodity on, or subject to the rules of, the relevant commodity market.

(2) Nothing in subsection (1) shall be construed as prohibiting the Commission from fixing different trading or position limits for different specified commodities, commodity markets or delivery months or from exempting certain transactions specified in the notification.

Offence to exceed limits.

67. Where under section 66 the Commission has established any limits, no person shall—

- (a) directly or indirectly, buy or sell or agree to buy or sell, under futures contracts for such specified commodity on, or subject to the rules of, the commodity market to which the notification apply, any amount of such specified commodity during any one business day in excess of any trading limit fixed for one business day or other stated period by the Commission; or
- (b) directly or indirectly hold or control a net long or net short position in such specified commodity for future delivery on, or subject to the rules of, the relevant commodity market in excess of any position limit fixed by the Commission for or with respect to such specified commodity.

68. (1) The Commission may by the same notification referred to in section 66 or otherwise establish and fix for each commodity a reportable level in respect of a person's trading position in a commodity market.

Reportable position level.

(2) Where a person's aggregate trading position in respect of any commodity, is equal to or exceeds the reportable level fixed by the Commission under subsection (1), such person shall each day that the level is equalled or exceeded, file or cause to be filed with the Commissioner a report of the position, on such forms as may be prescribed by the Commission.

(3) Every dealer shall each day that any account held by him in respect of any person, is equal to or exceeds the level fixed by the Commission under subsection (1), file or cause to be filed with the Commissioner a report of the position, in such account, on such forms as may be prescribed by the Commission.

(4) For the purpose of subsection (3), if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered as a single account.

69. No person shall transact on or through any commodity market, or hold himself out as being prepared to transact on or through any commodity market, any dealing which confers on any person an option to purchase or sell any commodity, except as provided in the rules of the commodity market.

Dealing in options prohibited.

70. (1) No person shall intentionally create or cause to be created or do anything with the intention of creating a false or misleading appearance of active trading in any commodity on any commodity market.

False trading, bucketing, etc.

(2) No dealer shall knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a commodity in a futures market, without having effected a *bona fide* purchase or sale of such commodity for the specified delivery date in such market.

(3) No person shall circulate, disseminate, or authorize, or be concerned in, the circulation or dissemination of, any statement or information to the effect that the price of any futures contract will or is

likely to rise or fall because of the market operations of one or more persons which, to his knowledge are conducted in contravention of subsection (1).

Wash sales and similar transactions prohibited.

71. No person shall enter into, offer to enter into or confirm the execution of any transaction involving any commodity which is of the character of or is commonly known to the trade as "wash sale", "cross trade", "accommodation trade" or "fictitious sale" except as is permitted in the rules of any commodity market.

Manipulation or cornering to be an offence.

72. Any person who—

(a) manipulates or attempts to manipulate the price of any commodity in a commodity market; or

(b) corners or attempts to corner a commodity market,

commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit and to a term of imprisonment not exceeding five years.

Commissioner may prohibit manipulator from trading.

73. (1) Where the Commissioner has reason to believe that any person is manipulating or attempting to manipulate the price of any commodity in a commodity market, the Commissioner may serve a notice on such person requiring such person to show cause why an order should not be made prohibiting him, his nominees or any body whether corporate or unincorporate in which he has interests either directly or indirectly, from trading in any commodity market and directing that the exchange company refuse all trading privileges to such person until further notice of the Commissioner and to show cause why the registration of such person, if registered under this Act in any capacity, should not be suspended or revoked.

(2) Any person who is aggrieved by any decision of the Commissioner under subsection (1) may appeal to the Commission within one month of the notification of the decision, and the decision of the Commission shall be final.

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74. No person shall, directly or indirectly, in connection with any transaction with any other person involving the purchase or sale of a futures contract—

Employment of fraudulent or deceptive devices, etc.

- (a) employ any device, scheme or artifice to defraud that other person; or
- (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, of that other person.

75. No person shall, directly or indirectly, for the purposes of inducing the purchase or sale of a futures contract, make—

False or misleading statements.

- (a) any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable grounds for believing is false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which he knows or has reasonable grounds for believing is rendered false or misleading by reason of the omission of that fact.

76. (1) Subject to subsection (4), any dealer or dealer's representative who makes or offers to make a futures contract, whether on his own behalf or otherwise, with two or more individuals, or with a single individual knowing or having reason to believe that the individual is acting on behalf or for the benefit of two or more individuals, commits an offence and is liable on conviction to a fine not exceeding fifteen thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Syndicated trading.

(2) Subject to subsection (4), any person who—

- (a) invites or offers to arrange for any individual to participate in a futures contract in which two or more other individuals also participate or are likely to participate; or

- (b) invites or offers to arrange for any individual to make a futures contract knowing or having reasonable cause to believe that the individual will do so on behalf or for the benefit of two or more other individuals,

commits an offence and is liable on conviction to a fine not exceeding fifteen thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) For the purposes of subsections (1) and (2)—

- (a) an individual who makes a futures contract acts for the benefit of every individual who shares in the profit or loss on the contract; and
- (b) an individual participates in a futures contract if he shares in the profit or loss on the contract.

(4) The Minister may, by order published in the *Gazette*, exempt any person or contract or class or description of person or contract from subsections (1) and (2).

Dealers
to keep
books, etc.
open for
inspection.

77. For the purposes of this Part, every dealer shall keep open at all times for inspection by the Commissioner or by any person authorized by him, books and records of all transactions and positions in any commodity traded, and inventories and purchase and sale commitments of such commodity and such books and records shall show complete details concerning all such transactions, positions, inventories and commitments including the names and addresses of all such persons having any interest therein.

Offences.

78. (1) Any person who contravenes section 67, 68 or 69 commits an offence and is liable on conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Any person who contravenes section 70, 71, 74, 75 or 77 commits an offence and is liable on conviction to a fine not exceeding fifty thousand ringgit and to imprisonment for a term not exceeding five years.

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PART IX

COMPENSATION FUND

79. In this Part, unless the context otherwise requires— Interpretation.

“a claimant” includes, in the event of his death, insolvency or other disability, his personal representative or any other person having authority to administer his estate;

“Committee” means the Business Conduct Committee of the exchange company established under the rules of the exchange company;

“default”, in addition to the interpretation given to it in section 2, includes a default arising from the bankruptcy or winding up, as the case may be, in relation to the business of trading in commodity futures contracts of the dealer;

“member” means a member of the exchange company.

80. The exchange company shall establish and maintain a compensation fund, to be known as the “Compensation Fund”, for the purposes set out in this Part. Establishment of Compensation Fund.

81. (1) The Compensation Fund shall be administered by the Committee in accordance with the provisions of this Part. Administration of the Compensation Fund.

(2) The Committee shall be responsible to the Management Board and shall exercise on behalf of the Management Board such of the powers, duties and functions of the Management Board under this Part as may be delegated to the Committee by the Management Board.

(3) Subject to any direction of the Management Board, the Committee may regulate its procedure in such manner as it thinks fit.

82. (1) The Compensation Fund shall consist of— Money constituting the Compensation Fund.
(a) all amounts paid to or collected by the exchange company in accordance with the provision of this Part;

- (b) all amounts recovered by or on behalf of the exchange company by the exercise of any right of action conferred by this Part;
- (c) all amounts borrowed under subsection (2);
- (d) any income derived from investments made pursuant to section 87;
- (e) all other amounts lawfully paid into the Compensation Fund.

(2) The exchange company may borrow for the purposes of the Compensation Fund from any lender and may charge any investments acquired under section 87 by way of security for any such loan but the aggregate sum owing at any one time in respect of such loans shall not exceed five hundred thousand ringgit.

Money to be kept in bank account.

83. The exchange company shall open at one or more licensed banks a separate bank account or accounts and shall, pending their application in accordance with this Part, pay into or transfer to such bank account or accounts all amounts forming part of the Compensation Fund.

Account of Compensation Fund.

84. (1) The exchange company shall keep proper accounts of the Compensation Fund in respect of each financial year and prepare a revenue and expenditure account and a balance sheet made up to the last day of the financial year.

(2) The exchange company shall appoint an auditor to audit the Compensation Fund.

(3) The auditor so appointed shall annually audit the accounts of the Compensation Fund and shall audit and prepare an auditor's report in respect of each revenue and expenditure account and balance sheet prepared under subsection (1) and shall submit the report to the exchange company.

(4) Not later than six months after the end of each financial year the exchange company shall cause a copy of the audited revenue and expenditure account and balance sheet to be sent to the Commission together with the auditor's report.

85. (1) Each member shall upon admission to membership of the exchange company, pay to the exchange company for the purposes of the Compensation Fund, an amount of thirty thousand ringgit or such other amount as may be determined by the exchange company after approval thereof by the Commission.

Members to make contribution.

(2) The payment required under subsection (1) shall be in cash and shall not be refundable.

(3) Any amount due from the members of the exchange company under this section may be sued for and recovered by the exchange company as a debt in a court.

86. (1) For the purpose of supplementing the resources of the Compensation Fund, the Management Board shall establish in accordance with the rules of the exchange company, a system of levy on trades concluded in a commodity market.

Additional resources of the Compensation Fund.

(2) The rules shall specify the nature, amount and rate of levy and the manner of collection of the levy, provided that the determination of the rate or of any variation thereof, shall be subject to the prior approval of the Commission.

(3) The rules may provide for an exemption of the levy or of any part thereof in respect of any commodity or of any member or class of members.

(4) The levy or any part thereof may with the approval of the Commission, be varied, suspended or cancelled by order made and published by the Management Board.

87. The exchange company may invest any money which forms part of the Compensation Fund and which is not immediately required for any other purposes provided for by this Part—

Investment of money in the Compensation Fund.

(a) on fixed deposit with a licensed bank; or

(b) in securities in which trustees are authorized by law to invest trust funds.

Management Board may introduce other method of financing the Compensation Fund.

88. The Management Board may, with the approval of the Commission, by rules—

- (a) introduce any other method of financing the Compensation Fund either in substitution for or in addition to the resources referred to in section 86; or
- (b) establish in lieu of the Compensation Fund, any other system of providing compensation required under this Part.

Payment out of the Compensation Fund.

89. Subject to this Part, there shall be paid out of the Compensation Fund as required and in the following order—

- (a) all legal and other expenses incurred in investigating or defending claims made under this Part, or incurred in relation to the Compensation Fund or in the exercise by the exchange company of the rights, powers and authority vested in it by this Part in relation to the Compensation Fund;
- (b) the expenses incurred in the administration of the Compensation Fund;
- (c) the amounts of all claims, including costs, allowed by the exchange company or established against the exchange company under this Part; and
- (d) all other amounts payable out of the Compensation Fund in accordance with this Part.

Claims against the Compensation Fund.

90. (1) Where a person sustains pecuniary loss because of a default committed in the course of or in connection with trading in commodity futures contracts in a commodity market by a member or by any director, partner or employee, as the case may be, of the member in respect of any money, futures contract or other property—

- (a) which was entrusted to or received by the member or any director, partner or employee of the member for or on behalf of that person; and

(b) to which that person is entitled or in which he has a beneficial interest whether existing or contingent,

he shall be entitled, subject to this Part, to claim compensation from the Compensation Fund for such pecuniary loss.

(2) Subsection (1) does not entitle any member to make a claim against the Compensation Fund.

(3) The exchange company shall not be obliged to consider and determine a claim against the Compensation Fund unless the person making the claim has satisfied the exchange company that he had made all efforts (other than by an action in court) to recover his loss from the member in relation to whom the claim arose or from any other person who is liable in respect of the loss.

(4) Subject to this Part, the amount of compensation which any person is entitled to claim from the Compensation Fund is the amount of the actual pecuniary loss suffered by him, including the reasonable costs of and disbursements incidental to the making and proving of his claim, less any amount or value of money or other benefits received or receivable by him in reduction of the loss from any source other than the Compensation Fund.

(5) In addition to any compensation payable under this Part, interest shall be payable out of the Compensation Fund on the amount of the compensation, less any amount attributable to costs and disbursements, at such rate as may be determined by the exchange company, which shall be calculated from the day on which the default was committed or believed to be committed and continue until the day on which the claim is satisfied.

91. The amount that may be paid to any person, and the amount or the aggregate of the amounts that may be paid in respect of any one member as compensation under subsection (1) of section 93, shall be limited to the amounts specified in the rules of the exchange company.

Limits on compensation.

Notice calling for claims against the Compensation Fund.

92. (1) The exchange company may cause to be published a notice specifying a date, not being earlier than three months after publication of the notice, on or before which claims for compensation from the Compensation Fund may be made in relation to the person specified in the notice.

(2) Where any person wishes to claim compensation under this Part, he shall lodge his claim in writing with the exchange company—

(a) if a notice under subsection (1) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within three months after the claimant became aware of the default giving rise to the claim, but which shall in no case exceed twelve months from the date of the default.

(3) Any claim which is not lodged within the time limited by subsection (2) shall, unless the exchange company otherwise determines, be barred.

(4) An action for damages shall not lie against the exchange company or against any member of the Management Board by reason of any notice published for the purposes of this section in good faith and without malice.

Power of the exchange company in respect of claims.

93. (1) Where the exchange company is satisfied that a claim for compensation under this Part is a proper claim, it shall, subject to this Part, make a determination allowing the claim.

(2) If the exchange company is not satisfied as to the propriety of a claim for compensation under this Part, it shall make a determination disallowing the claim or, if it is satisfied as to the propriety of a part of such a claim, it shall make a determination allowing the claim as to that part.

(3) Where the exchange company makes a determination under subsection (1) or (2), it shall forthwith serve a notice in writing of its determination on the claimant or on his counsel and deliver a copy of the notice to the Commission.

(4) If the exchange company disallows, or allows partially, a claim under subsection (2), the determination of the exchange company shall specify the reasons for the disallowance or partial allowance, as the case may be.

(5) Notwithstanding that the exchange company has made a determination allowing a claim or part of a claim under this section in respect of a default committed by any member, payment of the amount allowed from the Compensation Fund shall not be made until after the expiry of the period allowed for appeal under section 95 and where an appeal is made to the Commission in accordance with section 95 by any person against any determination by the exchange company, no payment shall be made to any claimant until after the determination of the appeal.

94. (1) The exchange company may require any person to produce any futures contracts, documents or statements of evidence necessary—

Exchange company may require production of documents, etc.

- (a) in order to substantiate any claim for compensation under this Part;
- (b) for the purpose of exercising its rights against any member or against any other person; or
- (c) for the purpose of enabling criminal proceedings to be brought against any person in respect of a default which is or involves the commission of a criminal offence.

(2) Where any claimant required to produce any futures contracts, documents or statements of evidence under subsection (1) fails to produce them, the exchange company may, if it is satisfied that the futures contracts, documents or statements of evidence are in the possession of, or available to, the claimant, refuse to allow the claimant's claim until such time as he produces them in accordance with the rules of the exchange company.

95. Any person who is aggrieved by a determination made by the exchange company under section 93 may, within one month after he is notified of the determination, appeal to the Commission whose decision shall be final.

Right of appeal against determination of the exchange company.

Subroga-
tion of the
exchange
company
to rights,
etc. of
claimant
on payment
from the
Compensa-
tion Fund.

96. On the exchange company making any payment out of the Compensation Fund in respect of any claim for compensation under this Part—

(a) the exchange company shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in respect of the pecuniary loss sustained by reason of the default on which the claim was based; and

(b) the claimant shall have no right under any bankruptcy or legal proceedings or otherwise to receive in respect of the pecuniary loss any sum out of the assets of the member concerned, or where the pecuniary loss was caused by the default of a director, partner or employee, until the exchange company has been reimbursed the full amount of the payment made by it out of the Compensation Fund.

Payment of
claims
from the
Compensa-
tion Fund
only.

97. No money or other property belonging to the exchange company, other than the Compensation Fund, shall be available for the payment of any claim for compensation under this Part.

Provision
where the
Compensa-
tion Fund
is insuffi-
cient to
meet
claims

98. (1) Where the amount at credit in the Compensation Fund is insufficient to enable the payment of the whole amount of all claims against it which have been allowed under this Part then the amount at credit shall, subject to subsection (2), be apportioned between the claimants in such manner as the exchange company thinks equitable; and any such claim shall, so far as it remains unpaid, be charged against further receipts of the Compensation Fund and paid out of the Compensation Fund when there is again money available in the Compensation Fund.

(2) Where the aggregate of all claims for compensation which have been allowed under this Part in respect of the default giving rise to the claims exceeds the total amount which may be paid under this Part in respect of any member concerned in the default, that total amount shall be apportioned between the claimants in such manner as the exchange company

thinks equitable; and on payment out of the Compensation Fund of that total amount in accordance with that apportionment—

- (a) all such claims; and
- (b) all other claims for compensation which may subsequently arise or be made in connection with the default,

shall be absolutely discharged.

99. In the event of the exchange company being wound up under the Companies Act 1965 the exchange company shall, after the satisfaction of all outstanding liabilities against the Compensation Fund, make available to the liquidator of the exchange company the balance of the amount available in the Compensation Fund which shall form part of the assets of the exchange company and be available to the liquidator for distribution in accordance with the Companies Act 1965.

Monies in the Compensation Fund upon winding-up of the exchange company.

PART X

ENFORCEMENT AND INVESTIGATION

100. For the purposes of this Part, "books" includes any register or other record of information, any accounts or accounting records, however compiled, recorded or stored and any document.

Interpretation.

101. The Commissioner may, at any time, if he considers there is sufficient reason to do so, by writing give a direction to a registered person requiring him to produce to the Commissioner or to any person authorized by the Commissioner, at such time and place as is appointed, such books as are specified in the direction being books relating to—

Power of Commissioner to require production of books from registered persons.

- (a) the business or affairs of the registered person, in so far as they relate to the business for which such a person was registered;
- (b) any trading in commodity futures contracts;
- (c) any advice concerning trading in commodity futures contracts or the issuing or publication of a report or analysis concerning such trading;

- (d) the character of financial position of, or any business carried on by, the registered person; or
- (e) an audit of, or any report of an auditor concerning trading in commodity futures contracts or any accounts or records of the registered person.

Power of Commissioner to require production of books from unauthorized persons.

102. The Commissioner may, where he has reason to suspect that any person who is not a registered person is directly or indirectly carrying on the business of a registered person, by writing give a direction to such person, requiring him to produce to the Commissioner or to any person authorized by the Commissioner at such time and place as is appointed, such books as are specified in the direction being books relating to—

- (a) the business or affairs of the person in so far as they relate to the business of trading in commodity futures contracts;
- (b) any trading in commodity futures contracts;
- (c) any advice concerning trading in commodity futures contracts or the issuing or publication of a report or analysis concerning such trading; or
- (d) the character of financial position of, or any business carried on by him.

Power to take possession of books, etc.

103. (1) Where the Commissioner exercises a power under this Part to require the production of books—

- (a) if the books are produced, the person to whom the books are produced—
 - (i) may take possession of the books and make copies of, or take extracts from, them;
 - (ii) may require the other person or any person who was a party to the compilation of the books, to make a statement providing an explanation of any of the books; and

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(iii) may retain possession of the books for as long as the Commissioner may consider necessary; and

(b) if the books are not produced, the Commissioner may require the other person—

(i) to state, to the best of his knowledge and belief, where the books may be found; or

(ii) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(2) A power conferred by this section to make a requirement of a person shall in the case of a body corporate, extend to a body corporate that is in the course of being wound up, or that has been dissolved, including any person who is or has been an officer or employee of such body corporate.

104. (1) Whenever it appears to any magistrate, upon written information on oath, and after any enquiry he may think necessary, that there are reasonable grounds for suspecting that there are on particular premises any books the production of which has been required pursuant to section 101 or 102 and which have not been produced in compliance with that requirement, such magistrate may issue a warrant authorizing the Commissioner or any person named therein with or without assistance—

Search and seizure.

(a) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises; and

(b) to take possession of, or secure against interference, any books that appear to be books the production of which was so required.

(2) Whenever it appears to the Commissioner that there are reasonable grounds for suspecting that in any premises there are books, the production of which has been required by virtue of section 101 or 102 and which have not been produced in compliance with that requirement and that a delay in obtaining a search

warrant under subsection (1) may cause evidence of the contravention to disappear or to be tampered with, the Commissioner may exercise in, upon or in respect of the premises, all the powers mentioned in the subsection in as full and ample a manner as if he were authorized to do so by warrant issued under that subsection.

(3) A list of all things seized in the course of a search made under this Part and of the places in which they are respectively found shall be prepared by the Commissioner or other officer making the search and signed by him.

(4) In this section "premises" includes any structure, building, aircraft, vehicle, vessel or place.

(5) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by law.

Offences,

105. (1) Any person who refuses or fails to comply with a requisition made under section 101, 102 or subsection (1) of section 103, commits an offence and is liable on conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) A person who, in purported compliance with a requisition made under subsection (1) of section 103, furnishes information or makes a statement that is false or misleading in a material particular, commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(3) A person who obstructs or hinders the Commissioner or any authorized person in the exercise of any power under section 101, 102, 103 or 104 commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power of investigation.

106. (1) Where the Commissioner has reason to believe that a person has committed an offence under this Act or any regulations or rules made thereunder he may make or cause to be made such investigation as he thinks expedient for the due administration of

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this Act and in carrying out such investigation he shall comply as closely as possible with the procedures as laid down under the Criminal Procedure Code in relation to police investigation.

*F.M.S.,
Cap. 6.*

(2) For the purposes of carrying out investigations under this Part, the Commissioner or any officer of the Commission authorized in writing in that behalf by the Commission shall be deemed to be a police officer.

107. (1) Where it appears to the Minister that it is in the national or public interest that an investigation be carried out into any matter relating to trading in commodity futures contracts, the Minister may, by instrument in writing, direct the Commissioner to arrange for an investigation into that matter.

Minister may direct investigation.

(2) The instrument of direction—

(a) shall specify the matters that are to be investigated; and

(b) may require the investigation to be carried out by the Commissioner or by any person to be appointed by the Commissioner.

(3) Where the Commissioner receives a direction under subsection (1), he shall comply with the requirements specified in the direction and shall report to the Minister the results of his investigation.

108. (1) The Commissioner may with the prior written consent of the Central Bank, by notice in writing request the Manager of any bank to provide him with information on the bank accounts or banking transactions of any dealer or any person trading in commodity futures contract, if the Commissioner considers that such information might disclose evidence of the commission of any offence under this Act.

Power of Commissioner to obtain information on bank accounts of dealers, etc.

(2) For the purpose of this section, "bank accounts" includes the accounts maintained by a dealer in respect of his clients.

Concealing,
etc. of
books
relating
to trading.

109. A person who, with intent to defeat the purposes of this Act or to delay or obstruct the carrying out of an investigation under this Part—

(a) conceals, destroys, mutilates or alters a book relating to a matter that is the subject of investigation; or

(b) where such a book is in Malaysia, sends the book out of Malaysia,

commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Powers of
the Com-
missioner
exercisable
by another
officer of
the Com-
mission or
police
officer.

110. The powers of the Commissioner under this Part may be exercisable by any officer of the Commission authorized in writing in that behalf by the Commission and by any police officer not below the rank of Inspector.

PART XI

MISCELLANEOUS PROVISIONS

Financial
assistance,

111. The Minister may, with the concurrence of the Minister of Finance, provide such assistance, financial or otherwise, to the exchange company upon such terms and conditions as he thinks fit.

Report of
certain
matters
regarding
members.

112. Where the Management Board becomes aware of any matter which adversely affects or is likely to adversely affect the ability of a member to meet his legal obligations as a dealer, the Management Board shall report the matter to the Commissioner in writing as soon as practicable after it becomes aware of the matter.

Notification
by dealers
of their
financial
year.

113. Every dealer, other than a director, partner or employee of a corporation or firm who is accredited to the corporation or firm as a dealer, shall notify the Commissioner in writing of the period of the financial year of that corporation or firm or any changes thereof.

114. (1) No person other than the exchange company shall—

Prohibition
of use of
title
"commodity
exchange".

(a) take or use the title "commodity exchange"; or

(b) take or use, or have attached to or exhibited at any place, any title which resembles the title specified in paragraph (a) or so closely resembles such title as to be calculated to deceive.

(2) A person who is not a dealer shall not—

(a) take or use the title or description "commodity dealer"; or

(b) take or use, or have attached to or exhibited at any place, any title or description that resembles the title specified in paragraph (a) or so closely resembles such title as to be calculated to deceive.

(3) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit and in the case of a continuing offence, to a further fine of two thousand five hundred ringgit for each day during which the offence continues.

115. (1) No commodity trading adviser shall enter into, extend or renew a commodity trading advisory contract with any client or in any way perform any such contract if the contract—

Commodity
trading
advisory
contract.

(a) provides for remuneration to be paid by the client to the commodity trading adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;

(b) does not include a provision to the effect that an assignment of the contract by the commodity trading adviser shall be made only with the consent of the client;

(c) does not include a provision to the effect that the commodity trading adviser—

(i) if a corporation, will notify the client of any change in the directors of the corporation; or

(ii) if a firm, will notify the client of any change in the partners of the firm,

within a reasonable time after the change.

(2) Paragraph (a) of subsection (1) does not prohibit a commodity trading advisory contract which provides for remuneration based on the total value of the funds of a client averaged over a definite period or on definite dates, or taken on a definite date.

(3) For the purpose of this section, “commodity trading advisory contract” means a contract or agreement whereby a person agrees to act as a commodity trading adviser or to manage any commodity trading or trading account of a client, not being a company carrying on business as a commodity trading company and registered as such under the Companies Act 1965.

(4) Any commodity trading adviser who knowingly enters into any contract in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand ringgit.

(5) Any commodity trading advisory contract entered into in contravention of subsection (1) shall, notwithstanding anything in the contract, be voidable at the option of the client.

Power of
High Court
to make
certain
orders.

116. (1) Where—

(a) on the application of the Commissioner, it appears to the High Court that a person has contravened any of the provisions of this Act, or has contravened the conditions or restrictions of a registration under this Act, the rules of the exchange company or clearing house or is about to do an act with respect to trading in commodity futures contracts that, if done, would be such as to constitute an offence or contravention; or

- (b) on the application of the exchange company or clearing house, it appears to the High Court that a person has contravened the rules or regulations of the exchange company or clearing house, as the case may be,

the Court may without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders :

- (i) in the case of persistent or continuing breaches of this Act, or the conditions or restrictions of a registration under this Act, or of the rules of the exchange company or clearing house, an order restraining a person from carrying on a business of trading in commodity futures contracts, from acting as a dealer's representative, commodity trading adviser or commodity trading adviser's representative, or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise trading in commodity futures contracts that is specified in the order;
- (iii) an order restraining a person from disposing, transferring, or taking out or sending out of Malaysia, any property;
- (iv) an order appointing a receiver of property of a dealer or of property that is held by a dealer for or on behalf of another person, whether as trustee or otherwise;
- (v) an order declaring a futures contract to be void or voidable;
- (vi) an order requiring a person referred to in subparagraphs (i), (ii), (iii) and (iv) to deliver up to the Court, his passport or such other documents as the Court thinks fit or an order prohibiting that person from leaving Malaysia without the consent of the Court;
- (vii) 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;

(viii) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) Where an application is made to the High Court for an order 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 order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(3) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission, the exchange company or the clearing house as a condition of granting an interim order under subsection (2), to give any undertaking as to damages.

(4) The Court may not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice a person.

(5) 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.

(6) A person appointed by order of the Court under subsection (1) as a receiver of property of a dealer—

(a) may require the dealer to deliver to him any property of which he has been appointed receiver or to give to him all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

(c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and

(d) shall have such other powers in respect of the property as the Court specifies in the order.

(7) For the purposes of subparagraphs (iii) and (iv) of subsection (1), and subsection (6), "property", in relation to a dealer, includes money or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of trading in commodity futures contracts carried on by the dealer.

(8) Any person who, without reasonable excuse, contravenes or fails to comply with—

(a) an order under this section that is applicable to the person; or

(b) a requirement of a receiver appointed by order of the Court under subsection (1),

commits an offence and is liable on conviction to a fine of twenty-five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

117. (1) Where an offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or employee of the corporation, or any person who was purporting to act in any such capacity he, as well as the corporation, commits the offence and is liable to be proceeded against and punished accordingly.

Offence by corporations.

(2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a corporation if he occupies the position of a director by whatever name he may be called or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act.

(3) A person shall not, by reason only that the directors of a corporation act on advice rendered by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

Conduct affecting reputation or goodwill or public confidence in the exchange, etc.

118. Save in accordance with the law, no person shall act in any way which adversely affects or tends to affect the reputation or goodwill of, or public confidence in the exchange, or to conduct himself in any manner as to cause a nuisance to or disruption of orderly trading in any commodity market.

Restriction against employees of exchange company and clearing house.

119. (1) No employee of the exchange company or clearing house shall—

(a) engage directly or indirectly in commodity futures trading; or

(b) directly or indirectly make unauthorized disclosure of any confidential, financial or other information that may come into his possession as a result of his functions as an employee of the exchange company and of the clearing house.

(2) Any person who contravenes or fails to comply with the provisions of this section commits an offence, and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Prohibition on abuse of information obtained in official capacity.

120. (1) Any member of the Management Board or of the board of the clearing house or any member of any committee established under the rules of the exchange company or of the clearing house who, in relation to commodities futures trading, has any confidential information which if generally known might reasonably be expected to affect materially the price of the commodity in a market of the exchange company and which—

(a) he acquires by virtue of his official capacity or former official capacity; and

(b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attaching to that official capacity,

shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

(2) Any person who contravenes or fails to comply with the provisions of this section commits an offence, and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

121. Where any corporation operates or undertakes the operation of the clearing house, all duties and obligations imposed by this Act upon, and all penalties that apply under this Act to, the clearing house are imposed upon and apply to the corporation and for this purpose references in this Act to the clearing house shall be deemed to be references to the corporation.

Liability of corporation operating clearing house.

122. For the purposes of this Act, an act, omission or failure of any employee, agent or other person acting for or on behalf of any individual, corporation or firm within the scope of his office or employment shall be deemed to be the act, omission or failure of such individual, corporation or firm, as well as of such employee, agent or other person.

Liability of principal for act of agent.

123. Any person who wilfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this Act, or any of the regulations or orders made or issued pursuant to this Act, or who acts in combination or concert with any other person in such violation, or who wilfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this Act or such regulations or orders, commits an offence and shall be liable on conviction to suffer the same penalty as prescribed for the principal offender.

Aiding, abetting, etc.

124. Any dispute arising out of the business of futures trading in a commodity market—

Settlement of disputes.

- (a) between members of the exchange company;
- (b) between members of the clearing house;
- (c) between members of the exchange company and of the clearing house; or

(d) between clients and members of the exchange company,

shall not be taken to court unless all the facilities for the settlement thereof as provided under the rules of the exchange company and the regulations of the clearing house or under this Act, have been exhausted.

General provisions relating to penalties.

125. Any person guilty of an offence against this Act for which no penalty is provided is liable on conviction—

(a) to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months, or to both;

(b) where the offence continues after the person has been convicted thereof, to a fine not exceeding one-fifth of the maximum fine to which that person was liable on the earlier conviction for each day during which the offence continues.

Public servants.

F.M.S.
Cap. 45.

126. The members of the Commission, the Commissioner, the Deputy Commissioner and all officers and servants of the Commission shall be deemed to be public servants for the purposes of the Penal Code.

Protection against legal proceedings.

127. A member of the Commission, the Commissioner, the Deputy Commissioner or any officer or servant of the Commission shall not incur personal liability for any loss or damage caused to any person by reason of any act or omission or statement made in pursuance of execution or intended execution of their functions under this Act, unless the act, omission or statement was made *mala fide* or through recklessness or gross negligence.

Prosecution of offences.

128. Without prejudice to the provisions of any other law relating to the prosecution of criminal offences and without prejudice to the powers of the Public Prosecutor in relation to the prosecution of such offences, the Commissioner or any officer of the Commission authorized in writing by the Commission, may institute and conduct proceedings in respect of any offence against this Act.

129. (1) Where a prosecution in respect of an offence against this Act has been instituted, or where the Commissioner or any person authorized to conduct a prosecution under section 128 is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted against a person (in this section referred to as the "defendant"), the Commissioner or such other authorized person may—

Certain persons to assist in prosecutions.

(a) if the defendant is a natural person, require any person who is or was a partner, employee or agent of the defendant; or

(b) if the defendant is a body corporate, require any person who is or was an officer, employee or agent of the defendant,

to assist in the prosecution, and the person who is so required shall give all assistance in connection with the prosecution that person is reasonably able to give.

(2) The Commissioner or such other authorized person shall not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of the Commissioner or such other authorized person, is or is likely to be a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person.

(3) If a person to whom paragraph (a) or (b) of subsection (1) relates, fails to give assistance as required by that subsection, he is guilty of an offence and, without affecting any penalty to which he may be liable for the offence, the court may, on the application of the Commissioner or such other authorized person, order that person to comply with the requirement within such time, and in such manner, as the court orders.

(4) In this section, "agent", in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is an employee or an officer of the defendant or not.

Trial of offences.

130. Notwithstanding the provision of any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act or any regulations or rules made thereunder and to award the full punishment for the offence.

Power of the Commissioner to compound.

131. (1) The Commissioner may, without instituting proceedings against any person for an offence under this Act or any regulation made thereunder other than offences under sections 33 (5), 53 (5) (b), 63 (1), 70, 71, 72, 74, 75, 76, 105 (2) and (3), 109 and 116 compound any offence by demanding and receiving from such person, a sum not exceeding the amount prescribed by the Minister by notification in the *Gazette* subject to such terms and conditions as may be prescribed therein whereupon—

(a) if such person pays such amount to the Commissioner within fourteen days after the demand, proceedings shall not be taken against him in relation to the offence; or

(b) if such person does not pay the amount so demanded within fourteen days, the Commissioner may cause proceedings to be instituted in relation to the offence.

(2) All monies received by the Commissioner in the exercise of his power under subsection (1) shall be paid into the Federal Consolidated Fund.

Regulations and rules.

132. (1) The Minister may, after consultation with the Commission, make regulations for the better carrying out of the purposes and provisions of this Act, and in particular and without prejudice to the generality of the foregoing, for all or any of the following matters:

(a) the applications for registration or renewal of registration as registered persons and matters incidental thereto;

(b) prescribing the fees to be paid for registration or renewal of registration as registered persons;

(c) prescribing the appropriate standards with respect to the qualifications, experience and training of applicants for registration as registered persons;

(d) providing for the examination of applicants as registered persons;

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- (e) providing for the exemption of such applicants from taking examinations subject to such terms and conditions as may be prescribed;
- (f) prescribing the particulars to be recorded in registers kept under this Act and the inspection of such registers;
- (g) empowering the Commissioner to correct any errors in any register kept under this Act;
- (h) empowering the Commissioner, on payment of the prescribed fee, to issue duplicate certificates of registration in the event of loss or destruction of the original certificates of registration or duplicate certificates of registration;
- (i) requiring dealers and commodity trading advisers to exhibit their certificates of registration at their places of business;
- (j) providing for the application of deposits made by or in respect of dealers;
- (k) prescribing the particulars to be recorded in, or in respect of, accounts kept by dealers under this Act;
- (l) prescribing 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 dealers;
- (m) prescribing the trading practices to be observed by registered persons;
- (n) providing for the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
- (o) prescribing any forms for the purposes of this Act;
- (p) prescribing anything which is to be or may be prescribed by regulations.

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties of a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding one year or both.

(3) The Commission may, with the approval of the Minister, make rules for all or any of the following purposes:

- (a) to prescribe the duties and functions of its employees;
- (b) to prescribe the schemes and terms of service including the conduct and discipline of its employees;
- (c) to prescribe the terms and conditions of loans that may be made to its employees pursuant to subsection (3) of section 9;
- (d) to prescribe the financial procedures for the administration of the Fund;
- (e) to provide for the custody of the property of the Commission and the custody and use of the common seal of the Commission;
- (f) to provide for the procedure in respect of appeals to the Commission under this Act and for the hearing and determination thereof; and
- (g) to provide for such other matters as may be necessary or expedient for the administration of the affairs of the Commission or of any committee appointed under section 5.

PART XII

REPEAL, SAVING AND TRANSITIONAL PROVISIONS

Repeal.
Act 229.

133. The Commodities Trading Act 1980 (hereinafter referred to as the "repealed Act") is hereby repealed.

Saving.

134. All regulations, instructions, orders and decisions made under or in accordance with the repealed Act shall remain valid and binding and shall be deemed to have been made under the provisions of this Act until they are amended or repealed or until the date upon which they expire.

Continuance
of powers,
rights,
liabilities
and duties
of the
Council
and Com-
missioner.

135. Subject to the provision of this Act, all powers, rights, privileges, duties, liabilities or obligations which immediately before the coming into operation of this Act were those of the Commodities Trading Council (hereinafter referred to as the "Council") or of the Commissioner, shall as from that day, continue to be those of the Commission or of the Commissioner respectively.

136. (1) Subject to the provisions of this Act, neither the repealed Act nor anything contained in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act before the coming into operation of this Act, or any proceedings brought or sentence imposed before that day in respect of such offence.

Continuance of criminal and civil proceedings in relation to the Council or Commissioner.

(2) Subject to the provisions of this Act, any proceedings, whether civil or criminal, or cause of action pending or existing immediately before the coming into operation of this Act by or against the Council or Commissioner or any person acting on behalf of the Council or Commissioner may be continued or instituted by or against the Commission or the Commissioner as it might have been by or against the Council or Commissioner or such person if this Act had not been passed.

(3) Any appeal brought or any leave to appeal applied on or after the appointed day against a decision given in any legal proceedings before that day may be brought by or against the Commission.

137. Subject to the provisions of this Act, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act and any legal proceedings or remedy in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings or remedy may be instituted, continued or enforced as if this Act had not been made.

Continuance of other rights, liabilities, etc. under repealed Act.

138. The Kuala Lumpur Commodity Exchange approved and established pursuant to section 10 of the repealed Act shall continue in being as if approved and established pursuant to the provision of this Act.

Continuance of the Kuala Lumpur Commodity Exchange.

139. Every person including the Commissioner and the Deputy Commissioner who, immediately before the appointed day, was seconded by the Government to serve the Council as an officer or servant in the Secretariat of the Council, may on that day be employed as

Continuance of officers and servants.

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an officer or servant, as the case may be, of the Commission pursuant to subsection (2) of section 9 of this Act, upon terms and conditions not less favourable than those obtaining immediately before the appointed day, unless the officer or servant elects to return to the service of the Government.

Validation
of acts
done in
anticipation
of the Act.

140. (1) All acts and things done by any person in preparation for or in anticipation of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Act, provided that the acts and things done are not inconsistent with the general intention and purposes of this Act, and all rights and obligations acquired or incurred as a result of the doing of those acts or things including any expenditure incurred in relation thereto shall be deemed to be the rights and obligations of the Commission.

(2) For the avoidance of doubt it is declared that subsection (1) does not authorize the appointment of members, officers or servants of the Commission except in so far as to authorize the temporary appointment of such persons until proper appointments are made under this Act.

Prevention
of
anomalies.

141. (1) If any difficulty arises in connection with the transitional provisions contained in this Part, the Minister may by order, subject to subsection (2), make such modifications therein as may appear to him to be necessary for preventing anomalies.

(2) The Minister shall not exercise the power conferred by subsection (1) after the expiration of two years from the appointed day.

SCHEDULE

(Section 3 (8))

1. A member of the Commission who—

- (a) has failed to be present at three consecutive meetings of the Commission without reasonable cause or the permission in writing of the Chairman;
- (b) has been found or declared to be of unsound mind;
- (c) has become bankrupt or made an arrangement with his creditors; or

(d) has been convicted of any offence involving fraud, dishonesty or moral turpitude, or any offence under this Act or any regulation made thereunder,

shall cease to hold office.

2. (a) The Commission shall meet in regular sessions at least once every three months.

(b) The Commission shall also meet—

- (i) at the request of the Chairman; or
- (ii) at the request of any of the members referred to under paragraph (b), (c) or (d) of subsection (2) of section 3; or
- (iii) at the written request of any five members of the Commission.

3. (a) The date for a meeting of the Commission convened pursuant to subparagraph (b) of paragraph 2 shall be determined by the Chairman and in his absence by the member appointed to act as Chairman under subsection (4) of section 3.

(b) Unless otherwise decided by the Commission, all meetings of the Commission shall be held at the office of the Commission.

(c) Meetings of the Commission shall be convened by the Commissioner who shall, except in cases of urgency, give at least fourteen days' notice of the meeting and of the business to be transacted at the meeting.

4. (a) At all meetings of the Commission, five members shall form a quorum.

(b) At any meeting of the Commission, the Chairman shall have a deliberative vote and in the case of an equality of vote, shall also have a casting vote.

(c) Subject to the provisions in this Schedule, the procedure for meetings of the Commission shall be determined by the Commission and for that purpose it may make standing orders.

