

# SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) BILL 1991

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## A BILL

*intituled*

An Act to provide for the regulation of central depositories, and the deposit, holding, withdrawal of, and dealings in, securities deposited therewith and to provide formatters incidental thereto.

[ ]

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. (1) This Act may be cited as the Securities Industry (Central Depositories) Act 1991. Short title and commencement.

(2) This Act shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

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

"access", in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

"Act" includes any regulations made under this Act;

"authorised depository agent", in relation to any central depository, means a person appointed under section 13 to be an agent of that central depository;

"bearer security" means a security the title to which is transferable by delivery (with or without endorsement) of the scrip representing such security;

"buying in" means the buying effected by a stock exchange or its clearing house, according to the rules of the stock exchange, of securities which a seller has failed to deliver on a day fixed for settlement;

"central depository" means a company approved by the Minister under section 5—

- (a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange,—
  - (i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of those securities are effected by means of entries in securities accounts without the physical delivery of scrips; or
  - (ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and
- (b) to provide other facilities and services incidental thereto;

"charge" includes a mortgage;

"computer system", in relation to a central depository, means the computer system established by a central depository forming part of the system for the central handling of securities which *inter alia* consists of—

- (a) the central equipment comprising hardware, and software associated with that hardware, located at the premises of the central depository; and
- (b) the terminals located at the premises of the users;

"dealer" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

*Act 280.*

"dealing", in relation to any deposited security, includes the charging or pledging of the deposited security by a depositor;

"debt securities" means debentures, bonds, notes, or other similar instrument representing or evidencing indebtedness, whether secured or otherwise;

"deposited security" means a security standing to the credit of a securities account and includes a security in a securities account that is in suspense;

"depositor" means a holder of a securities account;

"information" includes data recorded in a form which can be processed by equipment operating automatically in response to instructions given for a particular purpose;

"issuer", in relation to any deposited security, means the public company, corporation, government, or the body, corporate or unincorporate, which issued the security, and includes any person performing the functions of a registrar or an issuing house for such issuer in respect of such security;

"listed deposited security" means a deposited security quoted on an official list of a stock exchange;

"member company" has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

"Minister" means the Minister of Finance;

"nominee company", in relation to a central depository, means a company appointed by the central depository for the purpose of holding any deposited security;

"non-bearer security" means a security other than a bearer security;

"official list", in relation to a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock exchange;

"record" includes, in addition to a record in writing—

- (a) any photograph;
- (b) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom; and
- (c) any film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom,

and any reference to a copy of a record includes—

- (i) in the case of a record falling within paragraph (b) but not paragraph (c) of this definition, a transcript of the sounds or other data embodied therein;
- (ii) in the case of a record falling within paragraph (c) but not paragraph (b) of this definition, a still reproduction of the images embodied therein, whether enlarged or not; and
- (iii) in the case of a record falling within both paragraph (b) and paragraph (c) of this definition, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein;

*Act 125.* "Registrar" means the Registrar of Companies appointed under the Companies Act 1965 and includes any Regional, Deputy or Assistant Registrar of Companies;

"rules" means the rules of a central depository established and maintained, or proposed to be established and maintained, by a company and includes the rules contained in the memorandum of association and the articles of association of the company;

"scrip" means any document that is, or is a document of title to, a security;

"security" means debenture, note, stock and share in a public company or corporation, or bond of any government or of any body, corporate or unincorporate, and includes any right or option in respect thereof and any interest as defined in section 84 of the Companies Act 1965;

"securities account" means an account established by a central depository for a depositor for the recording of deposit or withdrawal of securities and for dealings in such securities by the depositor;

"selling out" means the selling effected by a stock exchange or its clearing house, according to the rules of the stock exchange, of securities which a buyer has failed to accept and to pay for when delivered on a day fixed for settlement;

"stock exchange" has the same meaning as is assigned to that expression under subsection 2 (1) of the Securities Industry Act 1983;

"stock market" has the same meaning as is assigned to that expression under subsection 2 (1) of the Securities Industry Act 1983;

"unlisted deposited security" means a deposited security other than a listed deposited security;

"user" means an authorised depository agent, an issuer, a stock exchange, a body corporate acting as a clearing house of a stock exchange, or such other person as may be prescribed by the Minister, who may be given access to a computer system of a central depository.

(2) A reference to writing shall be deemed to include any mode of representing or reproducing letters, figures or marks in a visible form.

(3) A reference to a security being deposited, or required to be deposited, with a central depository shall be construed as a reference to a deposit of or a requirement for the deposit of—

- (i) the scrip;
- (ii) the instrument of transfer, if any; or
- (iii) any other document representing the security,

with the central depository.

## PART II

### CENTRAL DEPOSITORY

3. (1) No person shall establish and maintain or hold himself out as maintaining a central depository unless an approval in writing has been given by the Minister under section 5. Restriction on establishment of a central depository

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

4. (1) Any company incorporated under the Companies Act 1965 which proposes to establish and maintain a central depository shall apply to the Minister in writing for approval. Application for approval to establish and maintain a central depository

(2) An application made under subsection (1) shall be accompanied with the following:

- (a) a copy of the memorandum and articles of association, duly verified by a statutory declaration made by a director of the applicant;
- (b) a copy of the latest audited balance sheet, profit and loss account (together with any note thereon) and the reports, if any, of the auditors and the directors of the applicant;
- (c) a statement on the following:
  - (i) the name, place and date of incorporation of the applicant;
  - (ii) the registered office and place or proposed place of business of the applicant;
  - (iii) the names and addresses of the directors of the applicant and its related corporations, and of the substantial shareholders within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and
  - (iv) the name of the stock exchange, if any, in respect of which the central depository will be established and maintained;
- (d) operational information on the system to be established and maintained by the central depository;
- (e) a copy of the rules that will apply to the central depository;
- (f) the proposed fees and charges which will be imposed by the applicant in respect of the facilities and services to be provided by the central depository, including fees and charges for—
  - (i) the establishment and maintenance of securities accounts;
  - (ii) the deposit and withdrawal of securities;
  - (iii) the issuance of statements of accounts under section 26;

- (iv) the effecting of entries in securities accounts in respect of off-market transactions under section 31;
  - (v) the issuance of records of depositors under section 34;
  - (vi) the effecting of entries in securities accounts pursuant to any charges or pledges of deposited securities under section 40; and
- (g) such other information or documents as may be required by the Minister for the purposes of determining the application and the suitability of the applicant to establish and maintain a central depository.
- (3) At any time after receiving an application the Minister may, by written notice, require the applicant to provide additional information or documents.

5. (1) The Minister may, in writing, approve an application made under section 4 for the establishment and maintenance of a central depository if he is satisfied—

Power of Minister to approve the establishment of a central depository.

- (a) that a stock exchange is a shareholder of the applicant;
- (b) that the rules of the applicant make satisfactory provision—
  - (i) with respect to the conditions under which securities may be deposited with, held by, withdrawn from, or transferred within, the central depository;
  - (ii) for the holding of securities deposited with the central depository or its nominee company;
  - (iii) for the processing of dealings in deposited securities;
  - (iv) for facilitating the settlement of deposited securities;
  - (v) for the protection of the interests of depositors and the protection and control of information on deposited securities and dealings therein;

- (vi) for the monitoring of compliance with, and for the enforcement of, the rules of the central depository;
  - (vii) with respect to the maintenance of a policy or policies of insurance, and the establishment and maintenance of compensation funds, for the purpose of settling claims by depositors against the central depository, its nominee companies and authorised depository agents; and
  - (viii) generally for the carrying on of the business of the central depository with due regard to the interests of the public; and
- (c) that the establishment and maintenance of the central depository would promote the positive development of the capital market in Malaysia and that the interests of the public dealing with deposited securities (whether or not listed on a stock exchange) will be served by the granting of his approval.

(2) The Minister may, in approving any application under subsection (1), impose—

- (a) requirements with respect to the paid-up or authorised capital of the central depository;
- (b) conditions relating to the shareholdings of the members of the central depository; and
- (c) any other requirements or conditions as he considers appropriate.

Minister may establish advisory committees.

6. (1) The Minister may establish an advisory committee in respect of a central depository whose function shall be—

- (a) to advise the central depository on matters relating to the services provided by such depository;
- (b) to make recommendations or proposals for improving the efficiency of the central depository; and
- (c) to perform such other functions as may be prescribed by the Minister by regulations made under this Act.

(2) An advisory committee established under subsection (1) shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) a representative each from—
  - (i) the Capital Issues Committee established under the Securities Industry Act 1983;
  - (ii) the Ministry of Trade and Industry;
  - (Hi) the Central Bank of Malaysia;
  - (jv) a stock exchange; and
  - (v) the central depository;
- (d) not less than six but not more than eight other members who have had experience of, and have shown capacity in, matters relating to the capital market, finance or investment.

(3) The Minister may appoint a person to be a temporary member of the committee during the temporary incapacity through illness, or during the temporary absence from Malaysia, of any member.

(4) A member of the committee shall hold office for two years and shall be eligible for re-appointment.

(5) The appointment of a member may be revoked by the Minister at any time without assigning any reason therefor.

(6) A member may at any time resign his office by letter addressed to the Minister.

7. (1) Where an amendment is made to the rules of a central depository, the central depository shall forward a written notice thereof to the Minister.

Minister to be notified of amendment to rules and power of Minister to amend rules.

(2) If the notice in accordance with the provisions of subsection (1) is not given within twenty-one days after the making of an amendment, that amendment shall cease to have effect.

(3) The Minister may within twenty-one days after receipt of the notice under subsection (1) give notice to the central depository concerned that he disallows the whole or any specified part of the amendment in question and thereupon such whole or specified part, as the case may be, shall cease to have force and effect.

(4) Notwithstanding the provisions of any other written law, the Minister may from time to time, after consultation with the central depository, amend the rules of the central depository by written notice specifying the amendments and the dates such amendments shall come into force.

(5) Any notice under this section may be served personally or by post.

Duty of a central depository to ensure orderly dealings in deposited securities.

8. (1) A central depository shall take all steps and do all things necessary to ensure orderly dealings in securities deposited or lodged with it.

(2) A central depository may, in performing its function under subsection (1), give to an issuer of any deposited security directions—

(a) to do a particular act or thing; or

(b) to refrain from doing a particular act or thing.

(3) An issuer who fails to comply with any direction given by a central depository under subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Authorised depository agents, issuers, etc. 10 comply with rules of a central depository.

9. (1) Any person who is an authorised depository agent, an issuer, a depositor, or a user shall comply with, enforce or give effect to the rules of a central depository to the extent to which those rules purport to apply to such person.

(2) For the purposes of this section, "rules" includes any direction given, from time to time, by a central depository to any person pursuant to any provision of this Act.

Central depository to provide assistance to the Registrar.

10. (1) A central depository shall provide such assistance to the Registrar as he reasonably requires for the performance of his functions and duties under this Act.

(2) The Registrar is entitled at all reasonable times to full and free access to any part of the premises of a central depository for the purpose of ensuring compliance with this Act.

(3) A person who refuses or fails, without lawful excuse, to allow the Registrar access to any premises mentioned in subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### PART III

#### PROVISIONS RELATING TO DEPOSITED SECURITIES

##### DIVISION I—DEPOSIT OF SECURITIES

11. In this Part, unless the context otherwise requires— Inter-pretation

"approved company auditor" has the same meaning as is assigned to that expression under subsection 4(1) of the Companies Act 1965;

"jumbo certificate", in relation to a deposited security, means a certificate comprising not less than fifty thousand units of securities of an issuer which is registered in the name of a central depository or its nominee company, as nominee for depositors;

"market day", in relation to a stock exchange, means a day on which a stock market of the stock exchange is open for trading in securities;

"notification date" means the date on which the notice pursuant to subsection 14(2) is given by a stock exchange;

"prescribed date", in relation to any prescribed security, means the date specified in the notice given by a stock exchange under section 14 as being the last day on which the prescribed security may be traded on a stock market of the stock exchange unless such security has been deposited with the central depository;

"prescribed security" means a security which has been prescribed by a stock exchange to be deposited with a central depository under section 14;

"record of depositors" means a record provided by a central depository to an issuer under section 34 which contains the particulars specified in subsection (3) of the said section.

Duties of  
a central  
depository.

**12.** (1) A central depository shall provide or cause to be provided all such facilities as may be necessary—

- (a) to facilitate efficient deposit and withdrawal of securities;
- (b) to facilitate registration of dealings in deposited securities;
- (c) to ensure the safe custody of scrips and other documents representing deposited securities;
- (d) to guard against falsification of any records or accounts required to be kept or maintained under the Act; and
- (e) to establish a proper and efficient system for the verification, inspection, identification and recording of all securities deposited with the central depository.

(2) The Minister may, from time to time, prescribe other duties to be performed by a central depository as he considers appropriate.

Authorised  
depository  
agent.

**13.** (1) Subject to this Act, a central depository may appoint any of the persons referred to in subsection (2) to be its authorised depository agent for all or any of the following purposes:

- (a) to facilitate the deposit and withdrawal of securities;
- (b) to open, maintain and close securities accounts;
- (c) to make entries in securities accounts;
- (d) to collect such fees and charges imposed by the central depository as may be provided for under its rules; and
- (e) such other incidental and ancillary purposes as may be prescribed by the Minister under this Act.

(2) A central depository may appoint as its authorised depository agent any of the following:

- (a) a stock exchange;
- (b) a body corporate acting as a clearing house of a stock exchange;
- (c) a member company;
- (d) a bank, merchant bank or finance company licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989; *Act 372.*
- (e) an Islamic bank licensed under the Islamic Banking Act 1983; *Act 276*
- (f) a bank established under an Act of Parliament; or
- (g) a body corporate of a type prescribed by the Minister under this Act,

and any authorised depository agent so appointed, in carrying out all or any of the purposes mentioned in subsection (1), shall, when so required by the central depository or the Registrar, in respect of such purposes, be authorised to give, divulge, reveal or disclose to the central depository or the Registrar any information or document relating to a securities account.

(3) A person shall not act as an authorised depository agent or hold himself out to be an authorised depository agent unless he has been so appointed in writing by a central depository,

(4) A person who contravenes subsection (3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

14. (1) Subject to subsections (2) and (3), a stock exchange may, from time to time after consultation with a central depository, prescribe that any security, listed or proposed to be listed for quotation on its official list, be deposited with the central depository. Stock exchange to prescribe securities that may be deposited with a central depository.

(2) A stock exchange shall give notice to the public of all securities prescribed by it to be deposited with the central depository by advertisement in not less than three daily

national newspapers, one of which shall be in the national language and one in the English language.

(3) A notice under subsection (2) shall identify the prescribed security and shall specify a date (not being less than one month from the date of publication of the notice) on or before which those securities shall be deposited.

(4) For the purposes of this Act, the deposit by a person of any prescribed security with an authorised depository agent of a central depository shall be deemed to be a deposit of such security with that central depository.

Transitional provisions relating to trading of prescribed securities.

15. (1) This section shall apply to all trading in prescribed securities during the period beginning on the day immediately following the notification date and ending on the prescribed date.

(2) No person shall trade in any prescribed security on a stock market without having a securities account.

(3) The scrip representing a prescribed security sold on or after the notification date and delivered by, or on behalf of, a seller to an authorised depository agent for the purpose of settling a sale shall, on settlement thereof, be sent by the agent to the issuer of such scrip together with the relevant instrument of transfer, if any.

(4) The provisions of subsections 18(2) to 18(8) shall apply to—

(a) all authorised depository agents; and

(b) issuers with whom the documents mentioned in subsection (3) of this section have been lodged.

Central depository may prescribe last date for receipt of scrips for safe custody.

16. (1) A central depository may, by notice, prescribe a date following which no member company or nominee of a member company may receive a scrip representing a prescribed security merely for safe custody.

(2) A central depository shall give notice to the public of the date prescribed in subsection (1) by advertisement in not less than three daily national newspapers, one of which shall be in the national language and one in the English language.

17. (1) A prescribed security may not, after the prescribed date, be traded on a stock market unless such security has been deposited with a central depository.

Undeposited securities not to be traded on a stock market or utilised to settle market trade.

(2) A prescribed security may, at any time after the prescribed date, be deposited by a depositor with the central depository but such security shall not be capable of being utilised to settle a transaction which took place on a stock market prior to the date of deposit of that security.

18. (1) A central depository or its authorised depository agent, as the case may be, shall, within the period prescribed in the rules-, after the deposit by any person of a scrip representing a prescribed security and the instrument of transfer in respect thereof, if any, lodge the scrip and instrument with the issuer of the security.

Verification of scrips and transfer to a central depository or nominee company.

(2) The issuer shall, on receipt of the scrip and instrument, forthwith do all such acts and things as may be necessary in order to register the transfer of the security underlying such scrip in the name of the central depository or its nominee company.

(3) Without prejudice to the right of an issuer to refuse to register a transfer under any written law, the issuer shall refuse registration of the transfer mentioned in subsection (2) if—

- (a) it ascertains that the scrip is not a genuine scrip or is a scrip that was reported lost or destroyed; or
- (b) in relation to any such security, it discovers that—
  - (i) there has been a duplication in the issuance of the scrip representing that security; or
  - (ii) such scrip is a scrip issued in excess of the issued share capital of the issuer; or
- (c) it has been served with an order of a court of competent jurisdiction prohibiting any dealing in respect of the security underlying such scrip; or
- (d) an order under regulation 8 of the Essential (Protection of Depositors) Regulations 1986 has been made by the Central Bank of Malaysia and published in the *Gazette* preventing the person who deposited the scrip from dealing with any of his monies, properties or assets.

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(4) Within seven market days after a transfer is lodged with an issuer or within such longer period as may be allowed in writing by a central depository, the issuer shall (other than in any of the cases mentioned in subsection (3) above) complete and deliver the appropriate certificate to the central depository.

(5) Section 105 of the Companies Act 1965 shall not apply in relation to any transfer required to be registered by an issuer pursuant to this section and subsection 15(4), but where an issuer refuses registration of such a transfer, it shall serve on the transferor and the central depository (being a transferee) a written notice giving the reasons for such refusal.

(6) Notwithstanding the provisions of section 103 of the Companies Act 1965, an instrument of transfer lodged with an issuer pursuant to subsection (1) shall be capable of registration in the name of a central depository or its nominee company if such instrument has been certificated by an authorised depository agent instead of being executed by the central depository or its nominee company.

(7) For the purposes of this section—

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged for registration in the name of. . . . (name of central depository or its nominee company, as the case may be) . . . ." or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by an authorised depository agent if—
  - (i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the agent's behalf; and
  - (ii) the certification is signed by a person apparently authorised to certificate transfers on the agent's behalf;
- (c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him or were not placed there by any

other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the agent's behalf,

(8) An issuer which fails to comply with subsection (4) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding one thousand ringgit for every day during which the offence continues.

(9) This section shall not apply to bearer securities.

19. (1) A central depository and its authorised depository agent shall not, except in the case of any wilful act, omission, neglect or default on the part of the central depository or its authorised depository agent, be liable for any loss, damage or liability suffered or incurred by any person in respect of a dealing in any security the transfer of which has been refused under section 18.

Central depository and authorised depository agent not liable for loss.

(2) Subsection (1) shall not operate to relieve an authorised depository agent from any obligation imposed on it by the rules of a stock exchange in its capacity as a member company to effect any buying in, whether directly or otherwise, following a refusal to register a transfer under section 18.

20. (1) A central depository may require an issuer of deposited securities to issue in the name of the central depository or its nominee company a jumbo certificate for such securities.

Issuance of jumbo certificates.

(2) The issuer shall, upon receipt of a requirement under this section, forthwith take such action as may be appropriate for the issuance of the jumbo certificate to the central depository.

(3) This section shall not apply to bearer securities.

21. For the purposes of paragraph 6A(9)(a) of the Companies Act J 965, a central depository or its nominee company shall, in relation to deposited securities which are registered in its name, be deemed to be a bare trustee.

Central depository deemed a bare trustee.

## DIVISION II—WITHDRAWAL OF SECURITIES

Right to  
withdraw  
deposited  
securities.

22. (1) Subject to section 24 and the provisions of this section, a depositor may, on application to the central depository, withdraw a security standing to the credit of his securities account.

(2) Where an application is made under this section for withdrawal of a deposited security which is registered in the name of a central depository or its nominee company, the central depository shall lodge with the issuer—

- (a) the scrip representing the security; and
- (b) the instrument of transfer duly executed by the central depository or its nominee company, as the case may be,

for the purpose of effecting the transfer of that security to the depositor or to any person nominated by him.

(3) A depositor shall, on demand made by a central depository, pay to the central depository the appropriate amount of stamp duty payable on the instrument of transfer to be lodged with an issuer under subsection (2).

(4) Notwithstanding the provisions of section 107 of the Companies Act 1965, an issuer shall, within two weeks after the scrip and the instrument of transfer in respect thereof are lodged with it,—

- (a) complete and have ready for delivery to the depositor the appropriate certificate registered in the name of such depositor or in the name of any person nominated by him, and any other document in connection with the security, if any; and
- (b) unless otherwise instructed by the depositor, send or deliver the completed certificate and such other documents, if any, to the depositor or to any person nominated by him.

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(5) For the purposes of subsection (3) and the Stamp Act 1949, the consideration for the transfer of a security to a depositor shall be deemed to be—

- (a) in the case of a listed deposited security, the closing price of such security published by a stock exchange

(on which the security is listed) as on the last market day on which such security was traded prior to the submission of the application under subsection (1); and

- (b) in the case of an unlisted deposited security, the aggregate nominal value of such security.

23. (1) A security which has been withdrawn from a central depository by a depositor may not be traded on a stock market unless it is redeposited with a central depository.

Prohibition against trading of securities withdrawn from a central depository.

(2) A security which is redeposited with a central depository shall not be capable of being utilised to settle a transaction which took place on a stock market prior to the redeposit of that security.

(3) Where a security is redeposited, the provisions of section 18 shall, in relation to that security, apply in the same manner as it would apply in the case of a deposit of a prescribed security under the said section.

24. (1) A stock exchange may, from time to time, after consultation with the Minister, restrict or prohibit the withdrawal of any deposited security or class of deposited securities (which is quoted on its official list) for such period and in such manner as it considers appropriate.

Stock exchange may prohibit withdrawal of securities or class of securities.

(2) A stock exchange shall, immediately after arriving at a decision to restrict or prohibit withdrawal of deposited securities,—

- (a) inform the central depository of such decision; and  
 (b) give notice to the public of—
- (i) the deposited securities restricted or prohibited from being withdrawn; and
  - (ii) the period of such restriction or prohibition,

by advertisement in not less than three daily national newspapers, one of which shall be in the national language and one in the English language.

(3) This section shall not apply to unlisted deposited securities.

## DIVISION III—SECURITIES ACCOUNTS AND RECORDS

Securities  
accounts.

25. (1) No person shall deal in deposited securities without first having a securities account.

(2) An authorised depository agent which deals in deposited securities as principal shall, in relation to such dealing, open and maintain a securities account with the central depository.

(3) A central depository may establish different types of securities accounts for different classes of persons.

Issuance of  
statements  
of accounts

26. (1) A central depository shall issue to all depositors statements of accounts in respect of all deposited securities held in custody by, or registered in the name of, the central depository or its nominee company for the depositors at such time and in such manner as may be prescribed under this Act.

(2) Notwithstanding the provisions of subsection (1), a depositor may, at any time, by written notice, require the central depository to issue to him a statement of account in respect of all or any of the deposited securities for the time being held in custody by, or registered in the name of, the central depository or its nominee company on behalf of the depositor.

(3) A central depository shall, on receipt of a written notice under subsection (2) and upon payment of any charges which may be imposed under the rules, issue to the depositor the statement so required.

(4) A statement of account issued under this section shall be *prima facie* evidence of the truth of the matters specified in the statement.

Duty of  
central  
depository  
to keep  
certain  
records.

27. (1) A central depository shall keep or cause to be kept such records and accounts, in sufficient detail, so as to show particulars of—

(a) all monies received or paid by the central depository, including dividends received in respect of any deposited securities and the disbursement of such dividends to depositors;

(b) all income received from commissions, fees, charges and other sources, and all expenses, commissions,

and other payments made or paid by the central depository;

- (c) *all* assets and liabilities (including contingent liabilities) of the central depository;
- (d) all deposited securities and particulars showing for whom the scrips and the instruments of transfer in respect of such scrips are held, and particulars showing withdrawals of such securities;
- (e) all purchases and sales of deposited securities and particulars of other dealings made in respect thereof, the charges and credits arising therefrom, the identity of the buyer and seller of each of those deposited securities or, in the case of other dealings, the identity of the persons executing such dealings and the persons in whose favour such dealings are executed, as the case may be.

(2) An entry in the records or accounts shall specify the date and time of making such entry and, in the case of an entry made by a person, the identity of such person.

(3) An entry in the records or accounts of a central depository shall, unless the contrary is proved, be deemed to have been made by, or with the authority of, the central depository.

(4) The provisions of this section shall apply, *mutatis mutandis*, to every authorised depository agent.

28. (1) For the purpose of verifying the accuracy of any record or account kept by it pursuant to this Act and for such other purposes as may be prescribed by the Minister by regulations made under this Act, a central depository shall, before or at the end of every quarter during a financial year (in this section referred to as the "prescribed period"), conduct a stock count of all scrips representing deposited securities and any other documents in relation therewith held in custody by, or in the name of, the central depository or its nominee company,

Physical  
stock count  
of scrips.

(2) The central depository shall, within twenty-one days after the end of the prescribed period, submit—

- (a) in the case where any of the deposited securities is a listed deposited security, to the stock exchange (on

which the deposited security is listed), the issuers and the Registrar; and

- (b) in the case where none of the deposited securities is a listed deposited security, to the issuers and the Registrar,

a report on the outcome of such stock count, and such report shall, if applicable, state what action the central depository proposes to take with regard to any deficiency in the number of scrips representing the deposited securities or any other documents in relation therewith or with regard to any other inaccuracies in its records or accounts.

(3) Notwithstanding the provisions of subsection (1), the Registrar may, if he is not satisfied with such report or where he considers it appropriate, at any time, conduct, or appoint an approved company auditor to conduct, a stock count of all scrips representing the deposited securities and any other documents in relation therewith.

(4) Where the Registrar is not satisfied with the report submitted to him by a central depository under subsection (2), and conducts, or appoints an approved company auditor to conduct, a stock count of scrips pursuant to subsection (3), the costs and expenses incurred by the Registrar in respect thereof shall be borne by the central depository.

(5) The Registrar may,—

- (a) upon receipt of a report from the central depository; or  
 (b) upon receipt of a report from an auditor appointed by the Registrar under subsection (3); or  
 (c) after conducting a stock count pursuant to subsection (3),

give to the central depository such directions as he considers appropriate.

(6) A central depository which fails, without lawful excuse, to comply with any direction given by the Registrar under subsection (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

## DIVISION IV—SECURITIES TRANSACTIONS, ENTRIES AND MISCELLANEOUS

29. (1) Notwithstanding the provisions of any written law, a dealing by a depositor in respect of a deposited security shall be effected by means of an entry in the securities account of the depositor.

Dealings effected by means of electronic process.

(2) Subject to this Part, a dealing effected under this section shall be effective—

- (a) in the case of a non-bearer security, without the need for an instrument in writing; and
- (b) in the case of a bearer security, without the need for delivery of the scrip representing the security.

30. An entry in a securities account in respect of a dealing shall—

Entries in securities accounts.

- (a) in the case of a securities account established and maintained directly by a central depository, be deemed to have been made by, or with the authority of, the central depository; and
- (b) in the case of a securities account established through, and maintained by, an authorised depository agent on behalf of a central depository, be deemed to have been made by, or with the authority of, the authorised depository agent,

31. (1) Subject to subsection (2), a central depository or an authorised depository agent, as the case may be, shall, on receipt of a written notice from a depositor, make an entry in the securities account in respect of a dealing in deposited securities executed by the depositor outside a stock market as may be specified by him in the notice.

Entries in securities accounts in respect of off-market transactions.

(2) The central depository or an authorised depository agent, as the case may be, may, before making such entry, require the production by the depositor of any document or instrument evidencing such dealing.

32. An entry in a securities account made under sections 30 and 31 shall specify the date and time of the making of such entry and, in the case of an entry made by a person, the identity of the person making the entry.

Entries in securities accounts to specify date, time and person making the entries.

Record of an entry *prima facie* evidence.

33. A record of an entry in a securities account in respect of a dealing in deposited securities shall *be prima facie* evidence of the truth of the matters so recorded.

Record of depositors to be issued to issuer on request.

34. (1) An issuer of any deposited security may, by written notice, require a central depository to issue to him a record of the depositors in whose securities accounts such securities stand in credit as at the date of the notice or such other date as may be specified in the notice.

(2) The record of depositors required by an issuer under subsection (1) shall be issued by the central depository within the following period:

(a) in a case where the issuer requires the issuance of a record of depositors—

- (i) as at the date of the notice, no later than three market days from that date;
- (ii) as at a date later than the date of the notice (in this section referred to as "the later date"), no later than three market days after the later date;

(b) in a case where the issuer requires the issuance of a record of depositors as at a date earlier than the date of such notice (not being a date earlier than one year), no later than one month after the date of the notice.

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(3) A record of depositors shall contain the names, addresses, the numbers of the identity cards issued under the National Registration Act 1959, if any, race, nationality, and such other information and particulars of the depositors as may be required by the issuer, and in the case of the issuer being a company having a share capital, a statement as to the number of the deposited securities acquired by each depositor.

(4) The record of depositors obtained by an issuer under this section shall be available for inspection by any member of the issuer (including a depositor) without charge and by any other person, on payment of one ringgit or such lesser sum as the issuer may require, in respect of each inspection.

(5) Any member of an issuer or any other person may require the issuer to furnish him with a copy of the record of depositors, or of any part thereof, but only so far as it relates to the names, addresses, and the number of securities held, on payment in advance of one ringgit, or such lesser sum as the issuer may require, in respect of every hundred words or fractional part thereof required to be copied.

(6) The copy of the record of depositors, or any part thereof, required under subsection (5) shall be supplied to the person who required such copy within a period of twenty-one days or within such longer period as the Registrar considers reasonable in the circumstances, commencing from the day after the date of receipt of the request by the issuer.

**35.** (1) Notwithstanding the provisions of the Companies Act 1965, a depositor of any deposited security whose name appears in the record of depositors shall be entitled to all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such security (whether conferred imposed by the Companies Act 1965, or the memorandum or articles of association of the issuer, or otherwise) as if he were a member registered in the register of members maintained by the issuer of such security pursuant to the said Act, instead of the central depository, or its nominee company, in whose name the deposited security is registered.

A depositor to be treated as if he were a member.

(2) Notwithstanding the provisions of subsection (1), nothing in this section shall be construed so as to deem a record of depositors to be a register of members kept pursuant to section 158 of the Companies Act 1965.

(3) For the purposes of this section, "deposited security" does not include a security specified in the securities account as being in suspense pursuant to section 41 or any regulations made thereunder.

**36.** (1) No central depository shall purchase, acquire, or otherwise deal in, any deposited security as principal other than for such purpose and in such manner as may be permitted by the Minister under regulations made under this Act.

Prohibition against acquisition of, or dealings in, deposited securities by a central depository.

(2) A central depository which contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Public offer

37. (1) Where, pursuant to section 14, a stock exchange prescribes that any security proposed to be listed for quotation on its official list be deposited with a central depository, the issuer of such security or the offerer, as the case may be, shall, in the prospectus issued by such issuer or offerer in respect thereof, notify the public of the fact that the security is one that has been so prescribed.

(2) Upon completion of the allotment or allocation of such security, the issuer or offerer, as the case may be, shall immediately deliver or caused to be delivered to the central depository a record of the successful applicants together with such particulars as may be required by the central depository for the purpose of making appropriate entries in the securities accounts of the respective applicants, together with the scrips (in such denominations as may be specified by the central depository) registered in the name of the central depository or its nominee company.

(3) For the purposes of this section, "offerer", in relation to any security, means the owner of the security.

(4) A reference to a security proposed to be listed on a stock exchange in this section shall be construed as a reference to a security which has been approved by the stock exchange to be listed for quotation on the official list of the stock exchange.

(5) Without prejudice to subsection (2), the provisions in section 107 of the Companies Act 1965 shall not, in relation to the securities mentioned in subsection (1), apply to the issuer of such security.

Bonus, rights issues, etc.

38. (1) Where an issuer, in relation to any deposited security,—

- (a) makes a bonus issue, or issues securities pursuant to a rights issue or the conversion of any debt securities; or
- (b) issues securities pursuant to an exercise of any right or option to acquire securities in the share capital of the issuer,

the issuer shall notify the central depository of the names of the allottees together with such particulars as may be required by the central depository for the purpose of making appropriate entries in the securities accounts of the respective allottees, and shall deliver to the central depository the appropriate scrips (in such denominations as may be specified by the central depository) registered in the name of the central depository or its nominee company.

(2) Unless he already has an existing securities account, a person shall open a securities account before acquiring any of the securities mentioned in subsection (1).

39. Any person intending to underwrite any security proposed to be listed on a stock exchange or any rights issue in respect of any deposited security shall open a securities account.

Underwriters  
to open  
securities  
accounts.

40. (1) Where a deposited security is charged or pledged by a depositor (in this section referred to as "charger" or "pledgor") in favour of any person (in this section referred to as "chargee" or "pledgee"), a central depository or an authorised depository agent, with or through whom the securities account of the depositor is maintained, shall, on a request in writing made by the depositor, chargee or pledgee, as the case may be, transfer or cause to be transferred such security into the securities account of the chargee or pledgee, as the case may be, maintained for such purpose.

Charging or  
pledging of  
securities

(2) Where a request is made by a chargee or pledgee as provided under subsection (1), such request shall be supported by documents evidencing such charge or pledge in his favour.

(3) The securities account maintained by the chargee or pledgee pursuant to subsection (1) shall be designated as the "Pledged Securities Account".

(4) Where a charge or pledge over a deposited security has been discharged or released, the central depository or its authorised depository agent, as the case may be, shall, upon receipt of a notice in writing from the chargee or pledgee confirming the same, transfer the deposited security into the securities account of the chargor or pledgor.

(5) The provisions relating to the transfer or withdrawal of deposited securities shall apply, *mutatis mutandis*, to securities in the Pledged Securities Account.

Securities  
in suspense.

41. A central depository may specify that any deposited security in a securities account is in suspense in any of the following circumstances:

- (a) where the transfer of such security in the name of the central depository or its nominee company has not been, or cannot be, registered by its issuer under section 18;
- (b) where the central depository has been served with an order of a court of competent jurisdiction prohibiting any dealing in respect of a deposited security;
- (c) where an order under regulation 8 of the Essential (Protection of Depositors) Regulations 1986 has been made by the Central Bank of Malaysia and published in the *Gazette*;
- (d) where an application under section 22 for withdrawal of such security has been made by a depositor; or
- (e) in such other circumstances as may be prescribed by the Minister by regulations made under this Act.

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## PART IV

### SECURITY PROVISIONS

Duty to take  
reasonable  
security  
measures.

42. Every central depository and authorised depository agent shall take all reasonable security measures to protect information and documents relating to the affairs of the depositors, and in particular, relating to their securities accounts, against any unauthorised access, alteration, disclosure or dissemination.

Duty to  
maintain  
secrecy.

43. (1) Except as provided in this Act, no director or officer of a central depository or an authorised depository agent, whether during his tenure of office or during his employment or thereafter, and no other person who has by any means access to any information or document whatsoever relating to the affairs of any of the depositors, and in particular, relating to their securities accounts, shall give, divulge, reveal or

otherwise disclose such information or document to any person.

(2) No person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.

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

44. Except as provided in subsection 13(2), nothing in this Act shall authorise an authorised depository agent who is—

- (a) a licensed institution as defined in the Banking and Financial Institutions Act 1989; or
- (b) an Islamic bank licensed under the Islamic Banking Act 1983,

Restrictions on disclosure of information by authorised depository agents.  
Act 372  
Act 276,

to give, divulge, reveal or otherwise disclose any information or document to any person in contravention of those Acts.

45. (1) Subject to the provisions of this Act, nothing in any other law or section 43 shall entitle any person to refuse to disclose any information or document—

Permitted disclosures.

- (a) which the depositor, or his personal representative, has given permission in writing to disclose;
- (b) in a case where the depositor is declared a bankrupt, or, if the depositor is a corporation, the corporation is being or has been wound up, in Malaysia or in any country, territory or place outside Malaysia;
- (c) for the purpose of instituting or, in the course of, any civil proceedings—
  - (i) between a central depository or an authorised depository agent and a depositor relating to the securities account of the depositor; or
  - (ii) between a central depository or an authorised depository agent and two or more parties

making adverse claims to securities or monies in the securities account of the depositor, where the central depository or authorised depository agent seeks relief by way of interpleader;

- (d) to any person duly authorised to investigate into any offence under any law, such disclosure being, in any case, limited to the securities account and affairs of the depositor suspected of the offence;
- (e) to a central depository for purposes of the compilation of the record of depositors, or any part thereof, under section 34 of this Act;
- (f) to an issuer in respect of a record of depositors issued under section 34 of this Act;
- (g) for the purpose of enabling or assisting the Minister to exercise any power conferred on him by this Act or by any other written law;
- (h) for the purpose of enabling or assisting the Central Bank of Malaysia to discharge its functions under the Central Bank of Malaysia Ordinance 1958, the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983 or any other written law;
- (i) for the purpose of enabling or assisting the Registrar to discharge his functions under this Act;
- (j) for the purpose of enabling or assisting a stock exchange or clearing house of a stock exchange to discharge its functions;
- (k) for the purpose of enabling or assisting auditors of a central depository and authorised depository agents to discharge their functions;
- (l) in a summary or collection of information, framed in such a way so as not to enable the identity of any depositor, to whom the information relates, to be ascertained.

*Ord 61158*  
*Act 372*  
*Act 276*

(2) Subject to the provisions of this Act, nothing in section 43 shall entitle any person to refuse to disclose any information or document to the Minister if the disclosure is required in the interests of investors or in the public interest.

46. (1) Subject to any regulations made under subsection (2), a central depository may give to its authorised depository agents, a stock exchange (on which the deposited securities are listed), a clearing house of such stock exchange, issuers and any other person as may be prescribed by the Minister by regulations made under this Act, access to its computer system.

Regulation of access to the computer system.

(2) The Minister may, for the purpose of regulating access to the computer system, prescribe by regulations the extent to which any user or class of users may have, or should be prohibited from having, access to such system.

(3) Any person who—

- (a) being a user, unlawfully gains access, or attempts to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means, beyond the extent to which he is authorised to have access by the central depository under subsection (1);
- (b) unlawfully gains access, or attempts to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means; or
- (c) unlawfully interferes with, or impedes, or attempts to interfere with or impede, the operation of a computer system of a central depository,

shall be guilty of an offence.

(4) A person who is guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

## PARTY OFFENCES

47. Where a central depository or its authorised depository agent keeps or maintains a record or an account that is required to be kept or maintained under any of the provisions of this Act

Falsification of records or accounts.

by means of a mechanical device, an electronic device, or any other device, any person who—

- (a) records or stores, by means of that device, information that he knows or ought to know to be false or misleading in a material particular;
- (b) (i) falsifies; or
  - (ii) with intent to falsify, destroys or removes—
    - (aa) information that is recorded or stored by means of that device;
    - (bb) information that has been prepared for the purpose of being recorded or stored by means of that device;
    - (cc) information that has been prepared for use in compiling records;
    - (dd) information that has been prepared for use in recovering other information that has been recorded or stored by means of that device;
- (c) having a duty to record or store information by means of that device, fails to record or store such information—
  - (i) with intent to falsify, wholly or in part, any entry made, or record intended to be compiled, from the information that has been recorded or stored; or
  - (ii) knowing that the failure to so record or store the information will render false or misleading in a material particular other information so recorded or stored,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Destruction, concealment, mutilation and alteration of records prohibited.

48. A person who—

- (a) destroys, conceals, mutilates or alters any record or account required to be kept or maintained under any of the provisions of this Act; or

- (b) sends or attempts to send or conspires with any other person to send out of Malaysia any such record or account,

with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

49. (1) Any person who furnishes any information which he knows to be false or misleading in a material particular or recklessly furnishes any information which is false or misleading in a material particular—

Furnishing false or misleading information.

- (a) for the purpose of, or in connection with, any application under this Act; or
- (b) in purported compliance with any requirement imposed on him by or under this Act,

shall be guilty of an offence.

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

50. Where an offence against this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, an executive officer or the secretary of the body corporate or was purporting to act in such capacity, shall be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Offence by bodies corporate.

51. A person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder shall be guilty of an offence under this Act and, where no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

General penalty.

## PART VI

## INVESTIGATION

Application  
of this Part.

52. Nothing, unless specifically provided for in this Part, shall authorise any investigation by the Registrar into the business of—

- (a) a bank, merchant bank or a finance company licensed under the Banking and Financial Institutions Act 1989, or an Islamic bank licensed under the Islamic Banking Act 1983 or a bank established under an Act of Parliament; or
- (b) a dealer, dealer's representative or an exempt dealer as defined under the Securities Industry Act 1983.

Power of  
Registrar  
to require  
production  
of records.

53. (1) The Registrar may, at any time, if he considers there is sufficient reason to do so, by writing—

- (a) give a direction to—
  - (i) a central depository;
  - (ii) a nominee company of a central depository;
  - (iii) an authorised depository agent;
  - (iv) a user;
  - (v) a person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor, or other person acting in any capacity for or on behalf of, a central depository, or its nominee company, or an authorised depository agent, or a user,
 requiring the production, to the Registrar, of such records or accounts as are so specified, being records and accounts relating to—
  - (vi) the business or affairs of a central depository or its nominee company, or an authorised depository agent, or a user;
  - (vii) any record or account required to be kept pursuant to section 27; or
- (b) give a direction to any person requiring the production, to the Registrar, of any record or account relating to matters mentioned in subparagraph (a)(vi)

or (a)(vii) that are in the custody or under the control of the person:

Provided that the production of such record or account shall not be required at such times and at such places as shall interfere with the proper conduct of the normal daily business of that person.

(2) A reference in subsection (1) to a business carried on by a person shall be deemed to include a reference to a business carried on by a person as trustee.

(3) Where the Registrar requires the production of any record or account under this section and a person has a lien on the record or account, the production of such record or account shall not prejudice the lien.

(4) Where the Registrar exercises a power under this section to require another person to produce records or accounts—

(a) if the records or accounts are produced, the Registrar—

- (i) may take possession of the records or accounts and make copies of, or take extracts from, the records or accounts;
- (ii) may require the other person or any other person who was party to the compilation of the records or accounts to make a statement providing an explanation of any of the records or accounts;
- (iii) may retain possession of the records or accounts for as long as the Registrar may consider necessary; and
- (iv) shall permit the other person, upon giving a reasonable notice and description of the records or accounts, to have access to the records or accounts which are in the possession of the Registrar; or

(b) if the records or accounts are not produced, the Registrar may require the other person—

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

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

(6) A person who, without lawful excuse, refuses or fails to comply with a requirement made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding one thousand ringgit for every day during which the offence continues after the fourteenth day from the date such person is required to comply with such requirement.

Power of Registrar to enter and search premises, etc

54. (1) Where the Registrar has reasonable grounds for suspecting that an offence under this Act has been or is being committed or that there are on any particular premises any record or account the production of which has been required by virtue of section 53 and which have not been produced in compliance with such requirement, he may—

(a) enter and search the premises and—

- (i) in the case of premises occupied by a central depository or a user, to inspect, examine and operate the whole or any part of the computer system; and
- (ii) in the case of premises occupied by any other person, to break open and search any cupboard, drawer, safe, box or other receptacle, and where a computer system

(not being a computer system as defined in section 2 of this Act) is installed in such premises, to inspect, examine and operate the whole or any part of such system; and

- (b) inspect and take possession of, or secure against interference, any records, documents or other material found in such premises which may be evidence of such offence.

(2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred under this Act or by any other written law.

55. A person who—

- (a) intentionally obstructs or hinders the Registrar in the exercise of his powers under section 53 or section 54; or Obstruction.
- (b) fails without reasonable excuse to give to the Registrar such assistance as he may reasonably require,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

56. (1) The Registrar may require a central depository or its authorised depository agent to disclose to him, in relation to any acquisition or disposal of deposited securities, any information including the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of, their securities account numbers and the entries made in such securities accounts and the nature of the instructions given to the central depository or its authorised depository agent in respect of such acquisition or disposal. Disclosure to Registrar.

(2) The Registrar may require a depositor to disclose to him whether he acquired or disposed of the deposited securities, as the case may be, as trustee for, or on behalf of, another person and, if he acquired or disposed of those securities as trustee for, or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the depositor in respect of the acquisition or disposal.

(3) A person who, without reasonable excuse, fails to comply with the requirement of the Registrar under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Investigation  
by Registrar.

57. Where the Registrar has reason to suspect that a person has committed an offence under a provision of this Act or is about to do an act that, if done, would be an offence under a provision of this Act, he may make such investigation as he thinks expedient for the due administration of this Act.

Power of  
Court to  
make certain  
orders.

58. (1) Where—

(a) on the application of the Registrar, it appears to the High Court that a person—

- (i) has committed an offence under this Act relating to any dealing in deposited securities; or
- (ii) has contravened the rules of a central depository; or
- (iii) is about to do an act with respect to any dealing in deposited securities that, if done, would be an offence under this Act or would be a contravention of the rules of a central depository; or

(b) on the application of a central depository, it appears to the High Court that a person has contravened the rules of the central depository,

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

- (c) in the case of persistent or continuing breaches of this Act, or of the rules of a central depository, an order restraining a person from acting as an authorised depository agent or from holding himself out as so acting;
- (d) an order restraining a person from withdrawing or otherwise dealing with any deposited securities that are specified in the order;

- (e) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act; and
- (f) 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) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) Any person who fails to comply with an order made under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(4) Subsection (3) does not affect the powers of the High Court in relation to the punishment for contempt of court.

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

## PART VII

### GENERAL

59. A central depository and its authorised depository agents shall preserve all records and accounts for a period of seven years, whether or not they cease to carry on their business before the end of the seventh year.

Preservation  
of records  
and accounts.

60. The Registrar may, without instituting proceedings against any person for an offence under this Act other than offences under subsections 3(2), 13(4), 43(3) and 46(3) and sections 47 and 48, compound any offence by demanding and receiving from such person a sum not exceeding fifty per centum of the amount of the maximum fine (including the daily fine, if any)

Power of  
Registrar to  
compound.

to which the person would have been liable if he had been convicted of the offence, whereupon—

- (a) if such person pays such amount to the Registrar 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 Registrar may cause proceedings to be instituted in relation to the offence.

Criminal prosecution. 61. A prosecution for any offence against any provision of this Act may be conducted by the Registrar or by any officer authorised in writing by the Registrar.

Indemnity. 62. No person shall be liable to be sued in any court for any act or matter done, or ordered to be done, or omitted to be done, by him in good faith and in the intended exercise of any power or performance of any duty, conferred or imposed on him by or under this Act.

Regulations. 63. (1) The Minister may, from time to time, make such regulations as may be necessary or expedient for carrying out or achieving the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for—

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act;
- (c) prescribing the manner and form in which securities accounts are to be opened, maintained or closed by a central depository and its authorised depository agents, including the manner of making entries in such accounts;
- (d) prescribing the circumstances when a deposited security in a securities account may be specified by a central depository as being in suspense under section 41;
- (e) regulating the appointment of authorised depository agents and nominee companies and the imposition

of duties, obligations and sanctions on such agents and companies;

- (f) regulating the setting-up and operation of the computer system including computer terminals which form part of such system;
- (g) regulating the manner in which deposited securities shall be kept for safe custody by a central depository;
- (h) regulating all matters relating to the deposit of unlisted securities with a central depository and its authorised depository agents;
- (i) prescribing other purposes for which a central depository may appoint authorised depository agents under paragraph 13(1)(e);
- (j) prescribing the types of bodies corporate which may be appointed to act as authorised depository agents under paragraph 13(2)(f);
- (k) regulating the activities of, and the standards to be maintained by, a central depository and its authorised depository agents;
- (l) prescribing the time and manner in which statements of account shall be issued by a central depository to its depositors under section 26;
- (m) prescribing the manner in which records shall be kept and maintained by a central depository, its authorised depository agents and its nominee companies under this Act;
- (n) prescribing the purposes for which, and the manner in which, the Registrar may conduct a stock count of scrips held in custody by or in the name of, a central depository or its nominee companies;
- (o) prescribing all matters relating to the maintenance of insurances, and the establishment and maintenance of compensation funds, by a central depository, its nominee companies and authorised depository agents for the purpose of settling claims by depositors against them;
- (p) matters relating to the issuance of jumbo certificates under section 20;

- (q) prescribing such other persons who may have access to the computer system of a central depository;
- (r) prescribing the extent to which any user or class of users may have access to the computer system of a central depository;
- (s) matters relating to linkages between a central depository and other securities depositories established outside Malaysia; and
- (t) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to give effect to this Act.

Reference to allottee in the Companies Act 1965.

64. For purposes of the application of the Companies Act 1965 in relation to any deposited security, a reference to an allottee in that Act shall be construed as a reference to a depositor who, by virtue of section 35 of this Act, is deemed to be a member of the company which makes the allotment.

Section 69A of the Companies Act 1965.

65. Notwithstanding section 69A of the Companies Act 1965, the Registrar may not, except as provided for under this Act, require a central depository, its nominee company or authorised depository agent to furnish the information and particulars of shareholdings mentioned in that section.

Reference to owner in section 102 of the Companies Act 1965.

66. (1) For purposes of the application of section 102 of the Companies Act 1965 in relation to any deposited security, a reference to an owner in the said section shall be construed as a reference to a central depository notwithstanding that the registration of such security in the name of the depository or its nominee company under section 18 of this Act may still be pending.

(2) Subsection 102(2) of the Companies Act 1965 shall not apply to those certificates or documents which have already been registered in the name of the central depository or its nominee company.

Reference to company in section 103 of the Companies Act 1965.

67. For purposes of the application of subsection 103(3) of the Companies Act 1965 in relation to any deposited security, reference to a company in the said section shall be construed as a reference to a central depository, or an authorised depository agent, with or through whom the deceased person had a securities account.

68. For purposes of the application of paragraphs 166(1)(a) and 166(1)(c) of the Companies Act 1965, references to members of a public company in those paragraphs shall be construed as including those depositors who are deemed to be members of such company by virtue of section 35 of this Act.

Reference to members of a public company in section 166 of the Companies Act 1965.

### EXPLANATORY STATEMENT

This Bill seeks to regulate the establishment of a securities depository which will be responsible for operating a system that will enable securities transactions to be effected without the need for physical delivery of scrips. The cornerstone of the system is the transfer of ownership of a security through a computerised book entry rather than by physical delivery and execution of instruments of transfer. The establishment of a depository will create a more efficient settlement system in respect of dealings in securities on the stock market and will also eliminate financial loss due to misplacement, forgery or loss of scrips.

#### PART I

2. Part I seeks to provide for preliminary matters.
3. *Clause 1* provides for the coming into force of this Bill.
4. *Clause 2(1)* defines certain words and expressions used in the Bill. Some of the salient definitions are explained below.

The word "central depository" is defined to mean a company which is approved by the Minister under the proposed Act to establish and operate a system for the central handling of securities deposited with it. Dealings in such securities are effected by means of entries in securities accounts without the physical delivery of scrips.

The expression "authorised depository agent" is defined to mean a person appointed by a central depository under *clause 13* of the Bill to be its agent.

The expression "deposited security" is defined to mean a security standing to the credit of a securities account and would include a security in the securities account that is in suspense.

The word "depositor" is defined to mean a holder of a securities account.

The word "issuer", in relation to a deposited security, is defined to mean the public company, corporation, government, or the body, corporate or unincorporate, which issued the security and includes any person performing the functions of a registrar for such issuer or an issuing house in respect of that security.

The word "scrip" is defined to mean a document that is a security or a document that is a document of title to a security.

The expression "stock exchange" is defined to mean the stock exchange established under the Securities Industry Act 1983.

5. *Subclauses (2) and (3) of clause 2* seeks to clarify certain references made in the proposed Act. *Subclause (3)* seeks to clarify that a reference to a security being deposited, or required to be deposited, with a central depository is to be construed as a reference to a deposit of, or a requirement for the deposit of, the scrip, the instruments of transfer, or any other documents representing such security, with the central depository.

## PART II

6. Part II relates to the establishment of a central depository.

7. *Clause 3* prohibits a person from establishing and maintaining or holding himself out as maintaining a central depository unless an approval in writing has been given by the Minister. Contravention of this provision constitutes an offence.

8. *Clause 4* sets out the manner in which an application for the establishment and maintenance of a central depository is to be made and *subclause (2)* specifies the documents and information which has to be submitted to the Minister.

9. *Clause 5* sets out the matters in respect of which the Minister must satisfy himself before approving an application for establishing a central depository. It also sets out conditions which may be imposed by the Minister on giving the approval.

10. *Clause 6* empowers the Minister to establish an advisory committee and sets out its functions and composition,

11. *Clause 7* provides that the Minister shall be notified of any amendment to the rules of a central depository and empowers him, after consultation with the central depository, to amend the rules of the central depository.

12. *Clause 8* makes it the duty of a central depository to take all necessary steps to ensure orderly dealings in securities deposited with it.

13. *Clause 9* provides that any person who is an authorised depository agent, an issuer, a depositor, or a user shall comply with the rules of a central depository.

14. *Clause 10* makes provision for a central depository to provide assistance to the Registrar in relation to the performance of his functions and duties.

## PART III

15. Part III is divided into four divisions and deals with the deposit and withdrawal of securities, securities accounts and records, securities transactions and entries in respect of such transactions.

16. Division I relates to the deposit of securities with a central depository. *Clause 11* defines certain expressions used in this Part. The expression "jumbo certificate" in relation to a deposited security is defined to mean a certificate comprising not less than fifty thousand units of securities of an issuer which is registered in the name of the central depository or its nominee company. The expression "notification date" is defined to mean the date on which the notice pursuant to *clause 14* is given by a stock exchange. The expression "prescribed date" in relation to any prescribed security is defined to mean the date specified in the notice given by a stock exchange under *clause 14* as the last day on which prescribed security may be traded on a stock market unless such security has been deposited with the central depository. The expression "prescribed security" is defined to mean a security which has been prescribed by a stock exchange to be deposited with a central depository under *clause 14*.

17. *Clause 12* sets out the duties of a central depository.

18. *Clause 13* authorises a central depository to appoint persons to be its authorised depository agents. It sets out the persons who may be appointed authorised depository agents and authorises them, when required by the central depository or the Registrar, in respect of the purposes carried out by such authorised depository agent, to give, divulge, reveal or disclose to the central depository or the Registrar any information or document relating to a securities account. It also makes it an offence for any person to act as, or hold himself out to be, an authorised depository agent unless he has been so appointed in writing by a central depository.

19. *Clause 14* empowers a stock exchange, after consultation with a central depository, to prescribe any security, listed or proposed to be listed for quotation on its official list, to be deposited with the central depository. It also requires the stock exchange to notify the public of all the securities prescribed by it to be deposited with the central depository.

20. *Clause 15* deals with trading in prescribed securities during the period between the notification date and the prescribed date. During this period any scrip delivered by a seller to an authorised depository agent to settle a sale made by him is required to be sent to the issuer together with the instrument of transfer for the purpose of registering the security underlying the scrip in the name of the central depository. The buyer of the prescribed security must have a securities account when purchasing such security. The purpose of this provision is to ensure that all prescribed securities traded after the notification date will be kept in custody by the central depository.

21. *Clause 16* empowers the central depository to prescribe a date following which no member company may receive a scrip representing a prescribed security merely for safe custody.

22. *Clause 17* provides that a prescribed security may not after the prescribed date be traded on a stock market unless such security has been deposited with a central depository. However, such security may, at any time after the prescribed date, be deposited with the central depository but in such a case it cannot be utilised to settle a transaction which took place on a stock market prior to the date of deposit of that security.

23. *Clause 18* deals with the verification of scrips and the transfer of deposited securities in the name of a central depository or its nominee company. A central depository and its authorised depository agent is required to lodge with the issuer all scrips and instruments of transfer or other documents representing prescribed securities which have been deposited with them. On receipt of such scrip or document, the issuer is required to do all such acts and things as may be necessary to register the transfer of the securities in the name of the central depository or its nominee company. *Subclause (3)* sets out the circumstances when the issuer shall refuse to register a transfer. In the absence of the aforesaid circumstances and any other circumstances which the issuer is for any reason entitled to refuse to register a transfer, it must complete and deliver to the central depository the appropriate certificate within seven market days after the transfer is lodged. Where the issuer refuses to register a transfer, it shall serve on the transferor a written notice giving the reasons for such refusal. The clause also provides that an instrument of transfer shall be capable of registration in the name of a central depository or its nominee company even if such instrument is not executed by the depository or nominee company, provided that the instrument has been duly certificated in the manner provided in *subclause (7)*.

24. *Clause 19* provides that a central depository and its authorised depository agent shall not, except in the case of any wilful act, omission, neglect or default on their part, be liable for any loss, damage or liability suffered or incurred by any person in respect of any dealing in a deposited security which transfer has been refused under *clause 18*.

25. *Clause 20* provides for the issuance of jumbo certificates by an issuer.

26. *Clause 21* seeks to make it clear that a central depository and its nominee company is a bare trustee in relation to any deposited securities which are registered in their respective names for the purposes of paragraph 6(9)(a) of the Companies Act 1965.

27. Division II relates to withdrawal of securities. *Clause 22* provides for the withdrawal of deposited securities from a central depository by depositors. It also provides that all securities withdrawn from a central depository are required to be registered in the name of the depositor who withdraws them or in the name of any person nominated by him.

28. *Clause 23* provides that a security which has been withdrawn from a central depository may not be traded on a stock market unless it is redeposited with the central depository. A security that is redeposited is not capable of being utilised by a depositor to settle a transaction which took place on a stock market prior to the redeposit of that security.

29. *Clause 24* enables a stock exchange, after consultation with the Minister, to restrict or prohibit withdrawal of any deposited security or class of deposited securities which is quoted on its official list. The main object of this clause is to enable a stock exchange to control the amount of scrips representing any prescribed security which remain undeposited.

30. Division III deals with matters relating to securities accounts and the keeping of records by a central depository and its authorised depository agents. *Clause 25* prohibits any person from dealing in deposited securities without first having a securities account. An authorised depository agent which deals in deposited securities as principal shall, in relation to such dealing, open and maintain a securities account with a central depository.

31. *Clause 26* makes provision for the issuance of statements of accounts to depositors. A statement of account issued under the clause is *prima facie* evidence of the truth of the matters specified therein.

32. *Clause 27* provides that it is the duty of a central depository and its authorised depository agents to keep certain records and accounts. Entries in the records and accounts maintained thereunder will be deemed to have been made by or with the authority of the central depository or its authorised depository agent, as the case may be.

33. *Clause 28* requires a central depository to conduct a stock count of all scrips and other documents representing deposited securities held in custody by, or in the name of, the central depository or its nominee company. Where the Registrar is dissatisfied with the report of the outcome of the stock count submitted to him or where he considers it appropriate, he may conduct a stock count or he may appoint an approved company auditor to conduct a stock count.

34. Division IV contains provisions relating to securities transactions, entries in securities accounts, record of depositors and other related matters. *Clause 29* provides that notwithstanding the provisions of any written law to the contrary, dealings in deposited securities would be effected by means of entries in securities accounts. Dealings would therefore be effective without the need for any instrument in writing or the need for delivery of the scrip representing those securities.

35. *Clause 30* provides that an entry in a securities account in respect of any dealing shall be deemed to have been made by, or with the authority of, the central depository or its authorised depository agent.

36. *Clause 31* provides for the making of entries in securities accounts in respect of off-market transactions effected by depositors.

37. *Clause 32* requires each entry in a securities account made under *clauses 30 and 31* to specify the date and time of the making of such entry, and where the entry is not generated by computer, the identity of the person making the entry.

38. *Clause 33* provides that a record of an entry in a securities account shall be *prima facie* evidence of the truth of the matters so recorded.

39. *Clause 34* provides for the issuance of a record of depositors by the central depository to the issuers of the deposited securities. The provision specifies certain particulars which must be contained in such record. A record of depositors is required to be made available for inspection by any member of the issuer. A member or any other person may require an issuer to furnish him with a copy of the record of depositors or any part thereof, subject to the payment of certain charges.

40. *Clause 35* provides that a person whose name appears, in relation to any deposited security, in the record of depositors shall have all the rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from such security as if he were a registered member of the issuer instead of the central depository or its nominee company in whose name the deposited security is registered.

41. *Clause 36* prohibits a central depository from purchasing, acquiring or otherwise dealing in any deposited security as principal. The Minister may however make regulations specifying the purposes for which, and the manner in which, a central depository may deal in deposited securities.

42. *Clauses 37 and 38* deals with public offer, bonus issues and rights issues. These provisions set out the manner in which securities are to be deposited with the central depository in such circumstances.

43. *Clause 39* seeks to prohibit an underwriter from underwriting any security proposed to be listed on a stock exchange or any rights issues in respect of a deposited security without first having a securities account.

44. *Clause 40* sets out the procedure in which pledged or charged deposited securities are to be dealt with by a central depository or its authorised depository agents. It specifies that such securities should be transferred to a special account designated as "Pledged Securities Account". This procedure is aimed at distinguishing between securities owned by a chargee or pledgee and securities charged or pledged to them and at the same time giving the chargee or pledgee control over such securities.

45. *Clause 41* sets out the circumstances in which deposited securities may be specified in the securities accounts as being in suspense.

46. Part IV deals with matters relating to access to the computer system established by a central depository, protection of information and documents relating to depositors and permitted disclosures.

47. *Clause 42* imposes a duty on every central depository and its authorised depository agents to take all reasonable security measures to protect information and documents relating to the affairs of the depositors against any unauthorised access, alteration, disclosure or dissemination.

48. *Clause 43* seeks to prohibit directors and officers of a central depository or its authorised depository agents who have access to any information or document from giving, divulging or otherwise disclosing such information or document to any person.

49. *Clause 44* imposes a restriction on an authorised depository agent who is a licensed institution under the Banking and Financial Institutions Act 1989 or who is an Islamic bank licensed under the Islamic Banking Act 1983 from disclosing information to any person in contravention of those Acts. The exception to this rule is provided in *subclause 13(2)*.

50. *Clause 45* sets out the circumstances where disclosure of information or documents may be permitted. However these disclosures are subject to the provisions of the Act.

51. *Clause 46* seeks to regulate access to the computer system of a central depository.

52. Part V deals with offences not specified elsewhere in the proposed Act. *Clause 47* makes it an offence for any person to record information which he knows to be false or misleading or to destroy, remove or falsify information that is recorded.

53. *Clause 48* makes it an offence for any person to destroy, conceal, mutilate or alter any record or account with intent to defraud.

54. *Clause 49* makes it an offence for any person to intentionally or recklessly furnish false or misleading information.

55. *Clause 50* makes provision for a director, executive officer or secretary of a body corporate to be liable for an offence committed by the body corporate unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

56. *Clause 51* provides the general penalty for offences where no specific penalty is provided.

57. Part VI relates to investigation. *Clause 52* provides that nothing, unless specifically provided for in Part VI, shall authorise any investigation by the Registrar into the business of a bank, merchant bank, licensed institution or Islamic bank.

58. *Clause 53* empowers the Registrar to require the production of records by a central depository, nominee company of a central depository, authorised depository agent, user or any of their officers.

59. *Clause 54* empowers the Registrar to enter and search any premises if he has reasonable grounds for suspecting that an offence under the proposed Act has been or is being committed or that there are on a particular premises any record or account the production of which has been required under *clause 53*.

60. *Clause 55* makes it an offence for any person to obstruct the Registrar in the exercise of his powers under *clause 53* or *54*,

61. *Clause 56* empowers the Registrar to require a central depository or its authorised depository agent to make certain disclosures in relation to the acquisition and disposal of deposited securities.

62. *Clause 57* empowers the Registrar to make investigations if he suspects that an offence has been committed or is about to be committed.

63. *Clause 58* empowers a High Court to make certain orders on the application of the Registrar or a central depository for the purposes of the Bill or for enforcing the rules of the central depository.

64. Part VII deals with general provisions. *Clause 59* provides that all records and accounts of a central depository and its authorised depository agents shall be kept for a period of seven years.

65. *Clause 60* empowers the Registrar to compound certain offences.

66. *Clause 61* provides that prosecution for offences against the proposed Act may be conducted by the Registrar or by an officer authorised by him in writing.

67. *Clause 62* provides that a person shall not be liable to be sued in any court for any act or matter done or ordered to be done by him in good faith or in the intended exercise of any power or performance of any duty conferred or imposed on him under the proposed Act.

68. *Clause 63* empowers the Minister to make regulations.

69. *Clause 64* provides that for purposes of the application of the Companies Act 1965 in relation to a deposited security, a reference to an allottee in that Act shall be construed as a reference to a depositor.

70. *Clause 65* seeks to exempt a central depository, its nominee company and authorised depository agents from being required by the Registrar to supply the information and particulars specified in section 69A of the Companies Act 1965.

71. *Clause 66* provides that for purposes of the application of section 102 of the Companies Act 1965 in relation to a deposited security, a reference to an owner in that section shall be construed as a reference to a central depository notwithstanding that registration may still be pending.

72. *Clause 67* provides that for purposes of the application of subsection 103(3) of the Companies Act 1965 in relation to a deposited security, reference in the said section to a company shall be construed as a reference to a central depository or an authorised depository agent.

73. *Clause 68* provides that for purposes of the application of paragraphs 166(1)(a) and 166(1)(c) of the Companies Act 1965, reference to members of a public company in that section shall be construed as including those depositors who are deemed to be members by virtue of section 35 of the proposed Act.

#### *FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure. [PN. (U<sup>2</sup>) 1637.]

