

A BILL

i n t i t u l e d

An Act to amend the Securities Commission Act 1993.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Securities Commission (Amendment) Act 2009.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of all or different provisions of this Act, in respect of different classes or categories of persons or securities.

Amendment of section 2

2. The Securities Commission Act 1993 [*Act 498*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

(a) by inserting after the definition of “appointed day” the following definition:

“Audit Oversight Board” means the Audit Oversight Board established under section 31c; and

(b) by inserting after the definition of “securities laws” the following definition:

“*Shariah* Advisory Council” means the *Shariah* Advisory Council established under the Capital Markets and Services Act 2007;’.

Amendment of section 15

3. Subsection 15(1) of the principal Act is amended—

(a) by substituting for the full stop at the end of paragraph (n) the words “; and”; and

(b) by inserting after paragraph (n) the following paragraph:

“(o) to register all auditors of public interest entities for the purposes of this Act, and to promote and develop an effective audit oversight framework in Malaysia.”.

New Part IIIA

4. The principal Act is amended by inserting after Part III the following Part:

“PART IIIA

AUDIT OVERSIGHT BOARD

DIVISION 1

Preliminary

Interpretation for the purpose of Part IIIA

31A. In this Part—

“auditor” means an individual auditor or audit firm who is registered under section 31o as an auditor of a public interest entity;

“Inspection Officer” means a person authorised by the Audit Oversight Board to carry out inspection under section 31v;

“Inquiry Officer” means a person authorised by the Audit Oversight Board to carry out inquiry under section 31w;

“Malaysian Institute of Accountants” means the Malaysian Institute of Accountants established under the Accountants Act 1967 [*Act 94*];

“public interest entity” means the entity specified in Schedule 1;

“relevant authorities” includes Bank Negara Malaysia, Companies Commission of Malaysia, Malaysian Institute of Accountants and any other authority as may be determined by the Minister.

DIVISION 2

Establishment and Functions of Audit Oversight Board

Functions of Commission relating to audit oversight

31B. The functions of the Commission relating to audit oversight shall be as follows:

- (a) to promote and develop an effective and robust audit oversight framework in Malaysia;
- (b) to promote confidence in the quality and reliability of audited financial statements in Malaysia; and
- (c) to regulate auditors of public interest entities.

Establishment of Audit Oversight Board

31c. (1) For the purposes of discharging its functions under section 31B, the Commission shall establish an Audit Oversight Board.

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

- (a) an executive chairman; and
- (b) six non-executive members.

(3) For the purposes of subsection (2), members who are appointed by the Commission—

- (a) must possess knowledge and experience in finance, business, or in any other relevant discipline;
- (b) must be individuals of integrity and reputation who have demonstrated commitment to the interests of investors; and
- (c) must understand the responsibilities for and the nature of financial disclosures as required by public interest entities.

(4) The executive chairman shall serve on a full-time basis and shall not—

- (a) be employed by any other person or be engaged in any other professional or business activity;
- (b) be a director or controlling shareholder of any public interest entity, its related corporation or associate company;
- (c) have any share in any of the profits of an accounting or auditing firm; and
- (d) receive payment from any accounting or auditing firm or from any other person as may be specified by the Commission, other than fixed continuing payments under standard arrangements for retirement from an accounting or auditing firm subject to such conditions as the Commission may impose.

(5) In this section, “controlling shareholder” means a person who—

- (a) is entitled to exercise, or control the exercise of, not less than fifteen per centum of the votes attached to the voting shares in a company;
- (b) has the power to appoint or cause to be appointed a majority of the directors of a company; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of a company, and to give effect to such decisions or cause them to be given effect to.

(6) At all times, not more than two non-executive members of the Audit Oversight Board shall be members of the Malaysian Institute of Accountants who are registered under the Accountants Act 1967 as a chartered accountant, a licensed accountant or an associate member.

Application of Schedule 2

31D. (1) Schedule 2 applies to members of the Audit Oversight Board.

(2) The Minister may amend Schedule 2 by order published in the *Gazette*.

Responsibilities of Audit Oversight Board

31E. (1) Without prejudice to the generality of section 31F, the responsibilities of the Audit Oversight Board in assisting the Commission in discharging its functions under section 31B, shall be as follows:

- (a) to implement policies and programmes in ensuring an effective audit oversight system in Malaysia;
- (b) to register auditors of public interest entities for the purposes of this Act;
- (c) to direct the Malaysian Institute of Accountants to establish or adopt, or by way of both, the auditing and ethical standards to be applied by auditors;
- (d) to conduct inspections and monitoring programmes on auditors to assess the degree of compliance of auditing and ethical standards;
- (e) to conduct inquiries and impose appropriate sanctions against auditors who fail to comply with auditing and ethical standards;
- (f) to cooperate with relevant authorities in formulating and implementing strategies for enhancing standards of financial disclosures of public interest entities;
- (g) to liaise and cooperate with oversight bodies outside Malaysia to enhance the standing of the auditing profession in Malaysia and internationally; and

- (h) to perform such other duties or functions as the Audit Oversight Board determines necessary or appropriate to promote high professional standards of auditors and to improve the quality of audit services provided by auditors.

(2) The Audit Oversight Board shall perform the responsibilities under subsection (1) on behalf and in the name of the Commission.

Commission may give general or specific directions to Audit Oversight Board

31F. The Commission may, from time to time, give the Audit Oversight Board such general or specific directions consistent with the provisions of this Part.

Disclosure of interest

31G. (1) A member of the Audit Oversight Board having directly or indirectly, by himself or a member of his family, any interest in any matter under discussion by the Audit Oversight Board shall disclose to such Board the fact and nature of his interest.

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

- (a) shall not take part nor be present in any deliberation or decision of the Audit Oversight Board; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Audit Oversight Board.

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

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

DIVISION 3

Finance

The Audit Oversight Board Fund

31H. (1) For the purposes of this Part, the Commission shall establish and administer a fund to be known as the “Audit Oversight Board Fund”.

(2) The assets of the Audit Oversight Board Fund shall be the property of the Commission and shall be kept separate and apart from those of the Fund.

(3) The Audit Oversight Board Fund shall consist of the following:

- (a) such sums as may be determined by the Commission from time to time for the purposes of this Part;
- (b) contributions as may be prescribed by the Minister under section 31i;
- (c) registration fees prescribed under section 31o;
- (d) penalty imposed under section 31z;
- (e) fees or other charges imposed under this Part;
- (f) monies earned or arising from any investment of the Audit Oversight Board Fund; and
- (g) all other sums or property which may, in any manner, be payable to or be vested in the Audit Oversight Board Fund relating to any matter incidental to its functions and powers under this Part.

Contribution

31i. (1) The Minister may, by order published in the *Gazette*, prescribe the person who shall be required to make a contribution to the Audit Oversight Board Fund and the amount of such contribution.

(2) The contribution made under subsection (1) shall be utilised only for the purposes of carrying out the functions of the Commission under section 31B.

Expenditure to be charged on Audit Oversight Board Fund

31j. The Commission shall utilise the monies in the Audit Oversight Board Fund for the following purposes:

- (a) paying any expenditure lawfully incurred by the Audit Oversight Board including legal fees and costs and other fees and costs, and the remuneration of persons employed or engaged by the Commission for the purposes of carrying out the functions of the Commission and the responsibility of the Audit Oversight Board in this Part, including the granting of loans, superannuation allowances and gratuities to such persons;
- (b) paying any expenditure incurred in planning and implementing capacity building programmes relating to accounting and auditing profession; and
- (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Audit Oversight Board for carrying into effect the provisions of this Part.

Investment

31k. The monies of the Audit Oversight Board Fund shall, in so far as they are not required to be expended under this Part, be invested by the Commission in such manner as the Commission deems fit.

Annual report and accounts

31L. (1) The Audit Oversight Board shall, within three months after the end of each financial year, prepare a report on its activities during that financial year and send a copy of the report to the Commission.

(2) For the purposes of subsection (1), the report shall provide—

- (a) the assessment of the Audit Oversight Board of its performance and effectiveness in discharging its responsibilities under section 31E;
- (b) an assessment of significant risks relating to the quality and reliability of financial statements of public interest entities as identified by the Audit Oversight Board in the course of its inspection and inquiries, and key measures recommended by the Audit Oversight Board to address such risks;
- (c) the systems, procedures and practices used by the Audit Oversight Board for evaluating the effectiveness of its operations; and
- (d) any other matter affecting the carrying out of the functions of the Audit Oversight Board.

(3) The Commission shall cause a copy of the annual report to be submitted to the Minister.

(4) The Audit Oversight Board shall keep proper accounts of the Audit Oversight Board Fund and shall prepare a balance sheet in respect of such accounts.

(5) The accounts of the Audit Oversight Board Fund shall be kept separate from the accounts of the Commission as provided under section 29.

(6) The Commission shall cause the statement of accounts of the Audit Oversight Board Fund to be audited by auditors appointed by the Commission.

(7) The Commission shall, as soon as possible, send a copy of the statement of accounts of the Audit Oversight Board Fund certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

Statutory Bodies (Accounts and Annual Reports) Act 1980

31M. The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall not apply to the Audit Oversight Board.

DIVISION 4

Registration as Auditor of Public Interest Entity

Requirement for registration as auditor of public interest entity

31N. (1) No person shall, unless he is registered under this Division—

- (a) hold himself out or act as an auditor of a public interest entity;
- (b) knowingly consents to be appointed and knowingly acts as an auditor of a public interest entity; or
- (c) prepare for or on behalf of a public interest entity any report required by the Companies Act 1965 to be prepared by an auditor.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Application for registration and renewal of registration as auditor of public interest entity

31O. (1) An application for registration or renewal of registration as an auditor of a public interest entity for the purposes of this Act shall be made to the Audit Oversight Board.

- (2) The application under subsection (1)—
- (a) shall be made in the form as may be determined by the Audit Oversight Board; and
 - (b) shall be accompanied with—
 - (i) the fees as may be prescribed by the Commission; and
 - (ii) such information or documents as may be required by the Audit Oversight Board.
- (3) Subject to section 31P, the Audit Oversight Board may approve or refuse the registration of an applicant or the renewal of registration of an auditor.

(4) The Audit Oversight Board may, upon the registration of an applicant or renewal of registration of an auditor, impose such conditions as it deems necessary or expedient and from time to time amend any such conditions or impose new or additional conditions.

(5) The Audit Oversight Board shall serve a written notice to the auditor concerned of the amendment of any conditions of the registration or renewal of registration, and such conditions as amended or such new or additional conditions shall take effect at the time the notice is served or at such time as specified in the notice, whichever is the later.

Refusal to register or renew registration

31P. (1) The Audit Oversight Board may refuse the registration of an applicant or the renewal of registration of an auditor if the Audit Oversight Board is satisfied that the applicant or the auditor—

- (a) is not or has ceased to be an auditor approved under section 8 of the Companies Act 1965;
- (b) has been convicted—
 - (i) within or outside Malaysia, of an offence involving fraud or other dishonesty;

- (ii) of an offence under any written law relating to the protection of members of the public against financial loss due to—
 - (A) dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies; or
 - (B) the conduct of discharged or undischarged bankrupts;
- (c) has engaged in any practices which reflect discredit on his ability to meet professional auditing standards;
- (d) is an undischarged bankrupt within or outside Malaysia;
- (e) is subject to a sanction imposed under section 31z; or
- (f) has failed to comply with any other requirements of this Part or any written notices or guidelines made under this Act.

(2) Where the Audit Oversight Board refuses the registration of an applicant or the renewal of registration of an auditor, the Audit Oversight Board shall serve a written notice on the applicant or the auditor stating that the registration or renewal of registration is refused and the grounds for such refusal.

(3) The Audit Oversight Board shall not refuse the registration of an applicant or the renewal of registration of an auditor without giving the applicant or the auditor an opportunity to be heard.

Power to revoke and suspend registration

31Q. (1) The Audit Oversight Board may, at any time, revoke or suspend the registration of an auditor if—

- (a) there exists a ground on which the Audit Oversight Board may refuse an application under subsection 31P(1); or

(b) the auditor contravenes any terms or conditions imposed by the Audit Oversight Board in respect of his registration under this Part.

(2) The suspension under subsection (1) may be extended or revoked at any time by the Audit Oversight Board as it considers appropriate.

(3) Where the Audit Oversight Board intends to revoke or suspend the registration of an auditor, it shall serve a written notice to the auditor concerned stating that his registration is to be revoked or suspended and the grounds for such revocation or suspension.

(4) The Audit Oversight Board shall not revoke or suspend a registration under subsection (1) or (2) without giving the auditor an opportunity to be heard.

(5) For the purposes of this Part, an auditor whose registration has been revoked or suspended shall be deemed not to be registered from the date the revocation or suspension takes effect or any other date as may be specified by the Audit Oversight Board.

Notification of refusal, revocation or suspension

31R. Where an auditor falls within the scope of subsection 31P(1) or 31Q(1), he shall, immediately upon becoming aware of the happening of such event, notify the Audit Oversight Board in writing by setting out the relevant particulars.

Period of registration

31s. (1) The registration under subsection 31o(3) shall be for a period of twelve months from the date of its approval or from such date as may be specified by the Audit Oversight Board in writing.

(2) The registration of an auditor may be renewed for a further period of twelve months or such period as may be

specified by the Audit Oversight Board from the date on which the renewal period would have expired.

Register of auditors

31r. (1) The Audit Oversight Board shall keep and maintain a Register of Auditors in such form and manner as it thinks fit.

(2) There shall be removed from the Register the name and other particulars of any auditor who ceases to be registered under this Part.

(3) Any person may, upon payment of the prescribed fees, inspect and take extracts from the Register kept and maintained under subsection (1).

DIVISION 5

Setting Auditing and Ethical Standards

Auditing and ethical standards

31u. (1) Subject to subsections (2) and (3), the Audit Oversight Board shall adopt the auditing and ethical standards to be complied by an auditor to the extent and in such manner it considers appropriate.

(2) For the purposes of setting auditing and ethical standards, the Audit Oversight Board may convene or authorise its staff to convene such advisory committees as may be appropriate, which may include accountants and other experts, as well as other stakeholders, to assist the Audit Oversight Board concerning the content of the auditing and ethical standards.

(3) The Audit Oversight Board may direct the Malaysian Institute of Accountants to establish or amend the auditing and ethical standards to be complied by an auditor.

DIVISION 6

Inspection and Inquiry

Inspection

31v. (1) The Audit Oversight Board shall, from time to time, conduct inspections to assess—

- (a) the degree of compliance with the auditing and ethical standards by an auditor; and
- (b) the quality of audit reports prepared by an auditor relating to the audited financial statements of public interest entities.

(2) The inspections under subsection (1) shall be carried out by any officers of the Audit Oversight Board or any person authorised by the Audit Oversight Board who is referred to as an “Inspection Officer” in this Division.

(3) The auditor, its partners and employees shall cooperate with an Inspection Officer, conducting an inspection under this section, in the following matters:

- (a) providing access to all books, accounts, working paper or other related documents;
- (b) furnishing copies of or extracts from such books, accounts, working papers or other related documents; and
- (c) providing information by oral interview, in writing or in any other manner as may be determined or required by an Inspection Officer.

(4) At the conclusion of the inspection made under this section, the Inspection Officer shall prepare a draft inspection report and a copy of that draft report shall be extended to the auditor concerned.

(5) The Audit Oversight Board shall forthwith discuss the findings of the inspection report with the auditor concerned and after taking into account the representations made by the auditor, the Inspection Officer shall finalise the draft inspection report.

(6) The auditor concerned shall, immediately, report to the Audit Oversight Board all remedial measures which have been or are being taken relating to any findings raised in the inspection report.

(7) The Audit Oversight Board may publish the inspection report referred to in subsection (5) if the auditor fails to take the relevant remedial measures under subsection (6).

Inquiry

31w. (1) If the Audit Oversight Board is satisfied, after conducting inspections under section 31v, that there is a reason to believe that any auditor—

(a) has contravened any provisions of this Part; or

(b) has breached or fails to comply with—

(i) any condition imposed under subsection 31o(4);
or

(ii) any written notice or guidelines issued by the Commission,

the Audit Oversight Board shall inquire into such matter.

(2) The inquiry under subsection (1) shall be carried out by any officers of the Audit Oversight Board or any person authorised by the Audit Oversight Board who is referred to as an “Inquiry Officer” in this Division.

Power to require information

31x. (1) For the purposes of an inquiry, an Inquiry Officer may, by notice in writing served on a person, require such person—

(a) to provide all reasonable assistance in connection with the inquiry; and

(b) to appear before him or other Inquiry Officers concerned to be examined orally.

(2) Any statement made by any person under this section shall be reduced into writing by the Inquiry Officer, and signed by the person making it or affixed with his thumb print after such statement has been read to him and after he had been given an opportunity to make any correction he may wish.

(3) If the person referred to in subsection (2) refuses to sign or affix his thumb print on the statement, the Inquiry Officer shall endorse on the statement under his hand of such refusal and the reason thereof, if any.

(4) A person referred to in subsection (1) shall be legally bound—

(a) to give information relevant to the inquiry which is in his power to give;

(b) to answer all questions put to him by the Inquiry Officer; and

(c) to state the truth, whether or not the statement is made wholly or partly, in answer to questions.

(5) For the purposes of subsection (1), the Inquiry Officer examining the person may give directions on who may be present during the examination or during any part of it.

(6) Any statement made and recorded under this section shall be admissible as evidence in any proceeding in any court.

(7) Any person to whom a notice is issued under subsection (1) shall not—

(a) refuse to answer any question put to him by an Inquiry Officer as required under subsection (4) or neglects to give any information which may reasonably be required of him and which he has in his power to give; or

(b) knowingly furnish to an Inquiry Officer information or statement which is false or misleading in any material particular.

(8) For the purposes of this Division, any notice which is given shall, if practicable, be served personally on any person specified in such notice.

(9) Where any person specified in a notice given under this section or any other provisions of this Division cannot by the exercise of due diligence be found, the notice may be served by leaving a copy of it for him with some adult member of his family or with his servant residing with him.

(10) When any person specified in any notice given under this section or any other provision of this Division cannot by the exercise of due diligence be found, and service cannot be effected as directed by subsection (8), a copy of the notice shall be affixed to some conspicuous part of the house or such other place in which the person specified in the notice ordinarily resides, and in such case the notice shall be deemed to have been duly served.

Inspection and inquiry of consolidated financial statements

31y. For the purposes of this Division and, in the case of consolidated financial statements of public interest entities, the powers conferred on the Audit Oversight Board and its officers, or persons authorised by the Audit Oversight Board to inspect or to inquire into such financial statements shall apply relating to the accounts, working papers and documents prepared by the auditors of the subsidiaries or associates of such public interest entities.

DIVISION 7

Sanctions

Sanctions

31z. (1) Where any person contravenes or fails to comply with, observe, enforce or give effect to any of the following, that person has committed a breach:

(a) any provisions of this Part;

- (b) any conditions imposed under subsection 31o(4);
or
- (c) any written notice or guidelines imposed or issued by the Commission.

(2) Where a person has committed a breach under subsection (1), the Audit Oversight Board may take one or more of the following actions:

- (a) direct the person concerned to comply with the provisions of this Part or any conditions imposed under subsection 31o(4), or any written notice or guidelines issued by the Commission;
- (b) reprimand the person concerned;
- (c) require the person concerned to take such steps, as the Audit Oversight Board may direct, to remedy the breach;
- (d) require relevant professional education to be undertaken by the person concerned;
- (e) assign a reviewer to oversee an audit that is undertaken by the person concerned;
- (f) prohibit the person concerned from accepting any public interest entity as its client for a period not exceeding twelve months;
- (g) prohibit the person concerned from auditing financial statements of a public interest entity for a period not exceeding twelve months or permanently; and
- (h) impose a penalty not exceeding five hundred thousand ringgit on the person concerned.

(3) Notwithstanding subsection (2), the Audit Oversight Board may require any person who has committed a breach under subsection (1) to give a written undertaking that such person shall comply with, observe, enforce or give effect to—

- (a) the provision of this Part;
- (b) any conditions imposed under subsection 31o(4);
or

(c) any written notice or guidelines imposed or issued by the Commission.

(4) Subsection (3) shall not apply to any person who has committed a breach under subsection (1) and has been prohibited from auditing financial statements of a public interest entity permanently pursuant to paragraph 2(g).

(5) The Audit Oversight Board shall not take any action under subsection (2) without giving the person concerned an opportunity to be heard.

(6) Where the person concerned fails to pay the penalty imposed under paragraph (2)(h), such penalty may be sued for and recovered as a debt due to the Commission.

(7) Any monies obtained from the penalty imposed under paragraph (2)(h), shall be utilised to plan and implement capacity building programmes relating to the accounting and auditing profession.

(8) Where on an application by the Commission, it appears to the court that the person who has committed a breach under subsection (1) has failed to comply with any action taken by the Audit Oversight Board under subsection (2) or (3), the court may make an order directing such person to comply with such direction, requirement or terms of undertaking issued by the Audit Oversight Board.

(9) Nothing in this section shall preclude the Commission or any other relevant authorities from taking any other action which they may take under their respective written laws or by-laws.

DIVISION 8

General

Power of Minister to amend Schedule 1

31ZA. The Minister may, by order published in the *Gazette*, amend any of the Schedules in this Act.

Appeal

31zB. (1) Any person who is aggrieved by the decision of the Audit Oversight Board under subsection 31P(1), section 31Q or subsection 31z(2) may appeal in writing to the Commission within thirty days from the date on which such person is notified of the decision of the Audit Oversight Board.

(2) The Commission shall determine its own procedures in hearing an appeal under this Part.

(3) For the purposes of an appeal under this Part, the Commission may—

- (a) affirm the determination of the Audit Oversight Board;
- (b) set aside the determination of the Audit Oversight Board; or
- (c) substitute for the determination of the Audit Oversight Board its own determination.

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

(5) Where there is an appeal against the decision of the Audit Oversight Board under this section, the decision of the Audit Oversight Board under subsection 31P(1), section 31Q or subsection 31z(2) shall not take effect until the appeal is disposed of.

Duty to report to relevant authorities

31zc. Notwithstanding section 148, the Audit Oversight Board shall report to the relevant authorities if it becomes aware of any breach of any law or code of conduct which is administered by the relevant authorities.

Cooperation and coordination

31zd. (1) For the purposes of promoting confidence in the quality and reliability of audited financial statements, the Commission may—

- (a) enter into arrangements to cooperate with relevant authorities or relevant foreign authorities; and

- (b) obtain any information or document from or share the same with any relevant authorities or relevant foreign authorities if the Commission considers it necessary to do so.

(2) In this section, “relevant foreign authorities” means foreign authorities which exercise the functions corresponding to the Audit Oversight Board as referred to in section 31B.”.

Amendment of section 148

5. Section 148 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Except for any of the purposes of the securities law or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorized by the Commission or subject to section 124 of the Evidence Act 1950, any—

- (a) member of the Commission;
- (b) member of the *Shariah* Advisory Council;
- (c) member of the Audit Oversight Board;
- (d) member of any committees of the Commission, *Shariah* Advisory Council or Audit Oversight Board;
- (e) officer, servant or agent of the Commission; or
- (f) person attending any meeting of—
 - (i) the Commission;
 - (ii) any committees of the Commission;
 - (iii) *Shariah* Advisory Council; or
 - (iv) Audit Oversight Board,

shall not disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of the securities laws.”.

Amendment of section 160

6. Section 160 of the principal Act is amended—

- (a) by inserting after the words “any member of the Commission” the words “or *Shariah* Advisory Council or Audit Oversight Board, any member”;
- (b) by deleting the word “or” appearing before the words “of any committee”; and
- (c) by inserting after the words “any committee established by the Commission” the words “or *Shariah* Advisory Council or Audit Oversight Board”.

New Schedules 1 and 2

7. The principal Act is amended by inserting after section 166 the following Schedules:

“SCHEDULE 1

[Section 31A]

- (a) a public listed company or a corporation listed on the stock exchange;
- (b) a licensed institution licensed under the Banking and Financial Institutions Act 1989 [Act 372];
- (c) an insurance company licensed under the Insurance Act 1996 [Act 553];
- (d) a takaful operator registered under the Takaful Act 1984 [Act 312];
- (e) an islamic bank licensed under the Islamic Banking Act 1983 [Act 276];
- (f) a development financial institution prescribed under the Development Financial Institutions Act 2002 [Act 618];
- (g) a holder of the Capital Markets Services Licence for the carrying on of the regulated activities of dealing in securities, trading in futures contracts or fund management; and
- (h) any other person as the Minister may, by order published in the *Gazette*, prescribe.

SCHEDULE 2

[Section 31D]

Resignation of office

1. A member of the Audit Oversight Board may at any time resign his office by giving a written notice addressed to the Commission.

Tenure of office

2. (1) An executive chairman of the Audit Oversight Board shall hold office for a term not exceeding three years as may be specified in his instrument of appointment and is eligible for reappointment.

(2) A non-executive member of the Audit Oversight Board shall, unless he sooner resigns or his appointment is sooner revoked, hold office for a term not exceeding three years as may be specified in his instrument of appointment and shall be eligible for reappointment for not more than two terms.

Remuneration

3. The executive chairman and non-executive members of the Audit Oversight Board may be paid such remuneration or allowance as the Commission may determine.

Vacation of office

4. (1) The office of a member of the Audit Oversight Board shall be vacated if—

- (a) he dies;
- (b) there has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) any offence involving fraud or dishonesty;
 - (ii) an offence under any law relating to corruption;
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years; or
 - (iv) an offence under section 31G;
- (c) he becomes bankrupt;
- (d) he absents himself from three consecutive meetings of the Audit Oversight Board without leave of the Chairman; or
- (e) he is of unsound mind or is otherwise incapable of discharging his duties.

(2) Where a person ceases to be a member of the Audit Oversight Board, the Commission may appoint another person to fill the vacancy for the remainder of the term for which his predecessor was appointed.

(3) The Audit Oversight Board may act notwithstanding any vacancy in its membership.

Meetings

5. (1) The Audit Oversight Board shall meet at such time and place as may be appointed by the executive chairman from time to time.

(2) The quorum of the Audit Oversight Board shall be three.

(3) The executive chairman of the Audit Oversight Board shall preside at all meetings of the Audit Oversight Board and in his absence, the members present shall elect a temporary chairman amongst them to preside at the meeting.

(4) Every member present shall be entitled to one vote and if on a question to be determined by the Audit Oversight Board there is an equality of votes, the executive chairman or temporary chairman shall have a casting vote.

(5) Subject to the provisions of this Part, the Audit Oversight Board may regulate its own procedure.

(6) The Audit Oversight Board shall cause minutes of all its meetings to be maintained and kept in a proper form.”.

Savings provisions

8. Immediately before the coming into operation of this Act, an auditor who is approved as a company auditor under section 8 of the Companies Act 1965 and is engaged to audit the accounts of any public interest entity shall be allowed to continue to audit the accounts of the public interest entity for a period of one year from the coming into operation of this Act subject to such terms and conditions as may be specified by the Audit Oversight Board.

EXPLANATORY STATEMENT

This Bill seeks to amend the Securities Commission Act 1993 (“Act 498”) primarily to provide for the establishment of an Audit Oversight Board and other connected matters.

2. *Clause 1* contains the short title and provisions on the commencement of the proposed Act.
3. *Clause 2* seeks to introduce the definition of “Audit Oversight Board” and “*Shariah* Advisory Council” consequent to, amongst others, the establishment of such Board under the new Part IIIA of the proposed Act.
4. *Clause 3* seeks to amend section 15 of Act 498 to broaden the functions of the Commission, that is, to promote and develop an effective audit oversight framework in Malaysia.
5. The new Part IIIA which is introduced into Act 498 via *clause 4* provides for matters pertaining to the Audit Oversight Board as follows:
 - (a) Division 1 deals with preliminary matters;
 - (b) the establishment and functions of the Audit Oversight Board is provided for in Division 2;
 - (c) Division 3 contains provisions relating to finance;
 - (d) Division 4 provides for the registration and renewal of registration as auditor of public interest entity as well as matters relating to revocation and suspension of registration;
 - (e) Division 5 deals with the auditing and ethical standards to be complied by auditors;
 - (f) the power of the Audit Oversight Board to conduct inspections and inquiries is specified in Division 6;
 - (g) Division 7 prescribes the grounds for sanctions and the sanctions which may be imposed by the Audit Oversight Board against the persons concerned; and
 - (h) Division 8 provides for general matters such as power of Minister to amend the relevant Schedule, appeal and cooperation and coordination with the relevant authorities.
6. *Clause 5* seeks to amend section 148 of Act 498 to extend the obligation of secrecy to members of the Audit Oversight Board and *Shariah* Advisory Council, and to persons attending their meetings.
7. *Clause 6* seeks to amend section 160 of Act 498 to extend the scope of indemnity to members of the Audit Oversight Board and *Shariah* Advisory Council, and any committee established by them.
8. For the purposes of sections 31A and 31D, two new Schedules, namely, Schedules 1 and 2 are introduced into Act 498 via *clause 7*.
9. *Clause 8* deals with savings provisions relating to auditors approved under the Companies Act 1965 and engaged to audit the accounts of any public interest entity immediately before the coming into operation of the proposed Act.

FINANCIAL IMPLICATIONS

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

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