

A BILL

i n t i t u l e d

An Act to amend the Companies Commission of Malaysia Act 2001.

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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 Companies Commission of Malaysia (Amendment) Act 2014.

(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 different parts or different provisions of this Act.

Amendment of section 2

2. The Companies Commission of Malaysia Act 2001 [*Act 614*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by inserting after the definition of “member” the following definitions:

‘ “business entity” means—

(a) in the case of the Registration of Businesses Act 1956 [*Act 197*], any sole proprietorship or partnership;

(b) in the case of the Companies Act 1965 [Act 125], a company, corporation or foreign company; and

(c) in the case of the Limited Liability Partnerships Act 2012 [Act 743], a limited liability partnership or a foreign limited liability partnership;

“document” has the meaning assigned to it in the Evidence Act 1950 [Act 56];’;

(b) by substituting for the definition of “Minister” the following definition:

‘ “Minister” means the Minister charged with the responsibility for the registration of companies, trust companies, businesses and limited liability partnerships;’;

(c) by inserting after the definition of “Minister” the following definition:

‘ “Registrar” means the Registrar designated under subsection 20A(1);’; and

(d) by inserting after the definition of “corporation” the following definition:

‘ “limited liability partnership” has the meaning assigned to it in the Limited Liability Partnerships Act 2012;’.

Substitution of section 6

3. The principal Act is amended by substituting for section 6 the following section:

“Membership of the Commission

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

(a) a Chairman;

- (b) the Chief Executive Officer;
- (c) not more than three persons from the public service;
and
- (d) not more than four persons who shall be qualified persons as defined in the Legal Profession Act 1976 [*Act 166*] or persons who possess the relevant knowledge or experience in commercial or company matters.

(2) The Minister may appoint any member of the Commission, other than the Chief Executive Officer, to act as the acting Chairman for the period when—

- (a) the office of the Chairman is vacant;
- (b) the Chairman is absent from duty or from Malaysia;
or
- (c) the Chairman is, for any other reason, unable to perform the duties of his office.”.

Amendment of section 9

4. Paragraph 9(b) of the principal Act is amended by substituting for the words “and sentenced to” the words “which is punishable with”.

Substitution of section 11

5. The principal Act is amended by substituting for section 11 the following section:

“The Chief Executive Officer and Deputies Chief Executive Officer

11. (1) The Minister shall appoint any person to be the Chief Executive Officer of the Commission on the terms and conditions as he may determine and may revoke the appointment of any person so appointed.

(2) The Chief Executive Officer appointed under subsection (1) shall—

- (a) be a qualified person as defined in the Legal Profession Act 1976; or
- (b) possess relevant knowledge or experience in commercial or company matters.

(3) The Chief Executive Officer shall be responsible for the day-to-day administration of the Commission.

(4) The Minister may appoint such number of Deputies Chief Executive Officer as may be necessary and may revoke the appointment of any person so appointed.

(5) The Deputies Chief Executive Officer shall be subject to the direction and control of the Chief Executive Officer and may perform the duties of the Chief Executive Officer under this Act.

(6) The Minister may appoint any person referred to in subsection (4) or any other person as he thinks fit to act as the acting Chief Executive Officer for the period when—

- (a) the office of the Chief Executive Officer is vacant;
or
- (b) the Chief Executive Officer is, for any other reason, unable to perform the duties of his office.”.

Amendment of section 17

6. Paragraph 17(d) of the principal Act is amended by inserting after the words “good corporate governance” the words “and to encourage and to promote corporate responsibility and business sustainability;”.

Amendment of section 18

7. Subsection 18(2) of the principal Act is amended by inserting after paragraph (e) the following paragraphs:

“(ea) to formulate, conduct and implement educational and training programmes relating to the laws specified in the First Schedule;

(eb) to grant and renew licences under this Act or the laws specified in the First Schedule;”.

Substitution of section 20

8. The principal Act is amended by substituting for section 20 the following section:

“Delegation of the Commission’s functions or powers

20. (1) The Commission may delegate any of its functions or powers under this Act to—

(a) any member of the Commission;

(b) a committee established by the Commission;

(c) the Chief Executive Officer of the Commission;

(d) any Deputy Chief Executive Officer of the Commission;

(e) the Registrar; or

(f) any employee of the Commission.

(2) Any person delegated with such functions or powers shall comply with all conditions or restrictions imposed by the Commission and all requirements, procedures and matters specified by the Commission.

(3) Any functions or powers delegated under this section shall be performed and exercised in the name and on behalf of the Commission.

(4) The delegation under this section shall not preclude the Commission itself from performing or exercising at any time any of the delegated functions or powers.”.

New Parts IIIA, IIIB and IIIC

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

“PART IIIA

FUNCTIONS AND POWERS OF THE REGISTRAR

Registrar, Deputy Registrars and Assistant Registrars

20A. (1) The Chief Executive Officer of the Commission shall be the Registrar for the purposes of the laws specified in the First Schedule.

(2) The Commission may appoint such number of Deputy Registrars, Assistant Registrars or other employees, from amongst the persons in the employment of the Commission, for the proper administration of the laws specified in the First Schedule on the terms and conditions as it may determine and may revoke the appointment of any person so appointed.

(3) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act or the laws specified in the First Schedule appointed or authorized or required to be done or signed by the Registrar may be done or signed by any Deputy Registrar or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

Court to take judicial notice of seal, *etc.* of Registrar, *etc.*

20B. The Court shall take judicial notice of the seal and signature of the Registrar, Deputy Registrars or Assistant Registrars, as the case may be.

PART IIIB

ISSUANCE OF GUIDELINES, PRACTICE NOTES, *ETC.*

Power to issue guidelines, practice notes, *etc.*

20c. (1) For the purposes of this Act and the laws specified in the First Schedule, the Commission may issue guidelines, practice notes, notices or circulars as it considers appropriate and may impose any condition or restriction as the Commission thinks fit.

(2) The person to whom the guidelines, practice notes, notices or circulars referred to in subsection (1) applies shall comply and give effect to such guidelines, practice notes, notices or circulars.

(3) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines, practice notes, notices or circulars issued under this section.

Power to publish information

20d. (1) If the Commission or Registrar thinks that it is necessary or expedient in the interest of the public or for the protection of shareholders, the Commission or Registrar may publish any information in any form or manner in relation to—

- (a) the grant of, lapsing, renewal, revocation or suspension of a licence, an approval or an exemption, under this Act or the laws specified in the First Schedule to any person;
- (b) the imposition of a condition or restriction under this Act or the laws specified in the First Schedule to any person;
- (c) any action taken under section 20E;
- (d) an order by the Court in relation to the disqualification of directors;

- (e) the compounding of any offence under this Act or any other laws, whether the laws of Malaysia or any territory or country outside Malaysia;
- (f) any civil or criminal proceedings brought against any person under this Act or any other laws, whether the laws of Malaysia or any territory or country outside Malaysia, including the outcome of such proceedings; or
- (g) any other information that the Commission or the Registrar thinks appropriate in the interest of the public or the protection of the shareholders.

(2) The Commission or Registrar shall not publish any information derived from the forms or returns required to be lodged with the Registrar under the laws specified in the First Schedule.

Power to take action

20E. (1) A person commits a breach if—

- (a) he fails to comply with any provisions of this Act or the laws specified in the First Schedule;
- (b) he fails to comply with or give effect to any guidelines, practice notes, notices or circulars issued under section 20c; or
- (c) he fails to comply with or give effect to any condition or restriction imposed under section 20c.

(2) If a person has committed a breach and the Commission or the Registrar is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission or the Registrar may take any one or more of the following actions:

- (a) direct the person to comply with or give effect to the provisions of this Act or the laws specified in the First Schedule, guidelines, practice notes, notices, circulars, conditions or restrictions;

- (b) impose an administrative penalty, in proportion to the severity or gravity of the breach, but in any event not exceeding five hundred thousand ringgit;
- (c) reprimand the person; or
- (d) direct the person to take the necessary steps to remedy the breach or to mitigate the effect of such breach, including making restitution to any person aggrieved by the breach.

(3) The Commission or the Registrar shall give a written notice to the person who has committed the breach of its intention to take action under subsection (2) and shall give that person an opportunity to be heard.

(4) If the person fails to comply with the directions given by the Commission or the Registrar under paragraphs (2)(a) and (d), the Commission or the Registrar may apply to the Court for one or more of the following orders:

- (a) an order directing the person to comply with the direction given by the Registrar;
- (b) an order directing the person to pay any costs incurred by the Registrar or any other person effected by the non-compliance with the direction given by the Registrar, arising from the non-compliance of the directions; or
- (c) any other orders that the Court considers appropriate.

(5) Where a person fails to pay an administrative penalty imposed by the Commission or the Registrar under paragraph (2)(b), the administrative penalty imposed by the Commission or the Registrar may be recovered as a civil debt due to the Commission or the Registrar, as the case may be.

(6) For the purpose of paragraph (2)(d), in determining whether or not restitution is to be made by the person, the Commission or the Registrar shall have regard to—

- (a) the profits that have accrued to such person; or

(b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(7) Nothing in this section shall prejudice the operation of any section imposing penalties on any person in respect of any failure under subsection (1), nor any power that the Commission, the Registrar, any other person or the Court may have under this Act or the laws specified in the First Schedule.

PART IIIc

LICENSING

Power to grant and renew licence

20f. The Commission shall have the power to grant and renew licences for any matter that is required to be licenced under the laws specified in the First Schedule.

Application for grant and renewal of licence

20g. (1) An application for grant or renewal of licence shall be made to the Commission—

(a) in the form and manner as the Commission may specify; and

(b) in the case of renewal of licence, made not later than thirty days, or such other period as the Commission may specify, before the expiry of the licence.

(2) The Commission may require an applicant to furnish the information or documents as the Commission thinks necessary in relation to the application.

(3) An application for the grant or renewal of a licence shall be accompanied with a prescribed fee which shall be paid in the manner as may be specified by the Commission.

(4) The Commission may grant or renew a licence if the Commission is of the opinion that the applicant is a fit and proper person to hold the licence, after considering the following:

- (a) the character, qualification and experience of the applicant;
- (b) the interest of the public; and
- (c) whether the applicant had previously contravened any provisions of this Act or the laws specified in the First Schedule.

(5) Every licence granted or renewed under this section shall be valid for a period of three years from the date of issue or renewal unless—

- (a) otherwise specified by the Commission; or
- (b) sooner revoked by the Commission.

Suspension of licence

20H. (1) The Commission shall have the power to suspend the licence granted or renewed pursuant to section 20F.

(2) The Commission may suspend a licence granted to any person where there is an action against the person to determine—

- (a) if there is a contravention of any of the provisions under this Act and the laws specified in the First Schedule; or
- (b) if there is a contravention of any of the conditions or restrictions imposed in relation to the issuance of the licence.

(3) A person whose licence has been suspended under subsection (1) shall be deemed as if he has not been licensed during that suspension period for the purposes of this Act and the laws specified in the First Schedule.

Revocation of licence

20i. (1) The Commission shall have the power to revoke the licence granted or renewed pursuant to section 20F on the following grounds:

- (a) contravention of any of the provisions under this Act or the laws specified in the First Schedule;
- (b) conviction of an offence under any other laws in Malaysia;
- (c) contravention of any of the conditions or restrictions imposed in relation to the issuance of the licence;
- (d) the person becomes a bankrupt; or
- (e) the person who has been licensed fails or ceases to carry on the service or activity to which the licence relates.

(2) The Commission shall not revoke a licence unless the licensed person has been given an opportunity to be heard.

Surrender of licence

20j. (1) Subject to subsection (2), a person who has been licensed may surrender the licence by sending it to the Commission together with a written notice of its surrender.

(2) The surrender of a licence shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all liabilities and obligations of the licensed person that are outstanding at the time the notice of surrender was given by the person who has been licensed.

(3) A surrender of licence made under subsection (1) shall not operate so as to avoid or effect any liability or obligation arising out from any agreement, contract, transaction or arrangement relating to the services or activity carried out by the person who has been licensed by virtue of holding such licence.

Amendment of section 25

10. Section 25 of the principal Act is amended by substituting for the words “any member or employee of the Commission or any other person under the direction of the Commission” the words “the Commission, the Registrar, any member or employee of the Commission, a public officer or any other person”.

New Part IVA

11. The principal Act is amended by inserting after Part IV the following Part:

“PART IVA

INVESTIGATION AND ENFORCEMENT PROVISIONS

Powers of enforcement, inspection and investigation

27A. The Registrar shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [*Act 593*], except the power to arrest without warrant, in relation to enforcement, inspection and investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

Power to require information

27B. (1) The Registrar may make a written order under subsection (2) against any person if he has reasonable grounds to believe that that person—

- (a) has any information or any document that is relevant to the performance of functions and powers under the laws specified in the First Schedule; or
- (b) is capable of giving any evidence which the Registrar has reasonable grounds to believe that the evidence is relevant to the performance of functions and powers under the laws specified in the First Schedule.

(2) The order under subsection (1) may require the person—

- (a) to give the Registrar any such information;
- (b) to produce to the Registrar any such documents, whether in a physical form or in electronic media;
- (c) to make copies of any such documents and to produce those copies to the Registrar;
- (d) if the person is an individual, to appear, at a private hearing, before the Registrar at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any such documents, whether in a physical form or in electronic media;
- (e) if the person is a body corporate or a public body, to cause a competent officer of the body corporate or the public body to appear, at a private hearing, before the Registrar at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any documents, whether in a physical form or in electronic media; or
- (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, at a private hearing, before the Registrar at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any documents, whether in a physical form or in electronic media.

(3) The person so ordered under subsection (1) shall—

- (a) provide the required information or documents within such time as specified in the order or such extended time as the Registrar may grant; and
- (b) ensure that the information or documents provided are true, accurate and complete and shall provide a representation to that effect, including a representation that he is not aware of any other information or document which would make the information or document provided untrue or misleading.

(4) A person who fails to comply with an order of the Registrar under this section commits 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 three years or to both.

Power to conduct inspection

27c. (1) For the purpose of ascertaining compliance with the laws specified in the First Schedule or breach of any guidelines, practice notes, notices or circulars issued under section 20c, the Registrar shall have access to any place or building and may inspect and make copies of or take extracts from any book, minute book, register or other documents required to be kept by the Registrar or necessary for the purpose of ascertaining compliance with the laws specified in the First Schedule.

(2) For the purposes of this section, the Registrar may by notice in writing require any person to produce to him such books, minute books, registers or other documents as are in the custody or under the control of that person.

(3) Any person who—

(a) fails to produce any books, minute books, registers or other documents as required by the Registrar under this section; or

(b) obstructs, intimidates, distracts, harasses or hinders the Registrar while exercising any of the powers under this section,

commits 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 three years or to both.

Power to investigate

27d. The Registrar shall have the power to conduct investigation, in relation to the laws specified in the First Schedule or any

guidelines, practice notes, notices or circulars issued under section 20c, where there is reason to suspect that—

- (a) an offence or a breach has been committed;
- (b) there was an attempt to commit an offence or a breach;
or
- (c) there was a conspiracy to commit an offence or a breach,

in relation to the laws specified in the First Schedule, or breach of any guidelines, practice notes, notices or circulars issued under section 20c.

Search and seizure with warrant

27E. Pursuant to a search and seizure warrant issued by the Magistrate under the Criminal Procedure Code, if, by the reason of its nature, size or amount, it is not practicable to remove any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or thing seized under this section, the Registrar shall by any means seal such book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, equipment, instrument or thing in the premises or container in which it is found.

Search and seizure without warrant

27F. If the Registrar is satisfied, upon information received, that he has reasonable cause to believe that by reason of delay in obtaining a search warrant from a Magistrate under the Criminal Procedure Code the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Registrar may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 56 of the Criminal Procedure Code in a full manner as if he were authorized to do so by a warrant issued under that section.

List of things seized

27G. (1) Except as provided in subsection (2), where any equipment, instrument, material, book, record, account, document or thing is seized under sections 27E and 27F, the Registrar shall as soon as practicable prepare a list of the things seized and of the places in which the equipment, instrument, material, book, record, account, document or thing is respectively found and deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises are unoccupied, the Registrar shall whenever possible post a list of the things seized conspicuously on the premises.

Release of things seized

27H. (1) If any equipment, instrument, material, book, record, account, document or thing has been seized under sections 27E and 27F, the Registrar may at any time after that release the equipment, instrument, material, book, record, account, document or thing to the person as he determines to be lawfully entitled to the equipment, instrument, material, book, record, account, document or thing if he is satisfied that the equipment, instrument, material, book, record, account, document or thing is not otherwise required for the purpose of any proceedings under the laws specified in the First Schedule, or for the purpose of any proceedings under any other written law.

(2) Neither the Registrar nor the Government or any person acting on behalf of the Government or the Registrar shall be liable to any proceedings by any person if the seizure and the release of the equipment, instrument, material, book, record, account, document or thing had been effected in good faith.

(3) A record in writing shall be made by the Registrar effecting the release of any equipment, instrument, material, book, record, account, document or thing under subsection (1) specifying in detail the circumstances of and the reason for the release and he shall send a copy of the record to the Public Prosecutor and to the Inspector General of Police within seven days of the release.

No cost or damages arising from seizure to be recoverable

27i. No person shall, in any proceedings before any Court in respect of any equipment, instrument, material, book, record, account, document or thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Surrender of travel documents

27j. (1) Notwithstanding any written law to the contrary, if the Registrar has grounds to believe that any person, who is the subject of or related to an investigation in respect of an offence under the laws specified in the First Schedule, is likely to leave Malaysia, the Registrar may by written notice require such person to surrender his passport or any other travel document in his possession.

(2) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith, failing which he may be arrested and taken before a Magistrate.

(3) Where a person is taken before a Magistrate under subsection (2), the Magistrate shall, unless such person complies with the notice under subsection (1) or satisfies the Magistrate that he does not possess a travel document, by warrant commit him to prison—

(a) until the expiry of a period of fourteen days from the date of his committal; or

(b) until he complies with the notice under subsection (1),

whichever occurs earlier.

(4) For the purpose of subsection (3), a certificate signed by the Public Prosecutor to the effect that the person has complied with the notice under subsection (1) shall be sufficient warrant for the Superintendent of Prison to discharge such person.

(5) The Registrar may by notice issued to any immigration officer, request that any person who is the subject of or related to an investigation in respect of an offence under the laws specified in the First Schedule, be prevented from leaving Malaysia.

(6) The immigration officer, upon being notified of a request made under subsection (5), may require the person who is the subject of or related to an investigation in respect of an offence under the laws specified in the First Schedule, to surrender his passport or any other travel document in his possession to the immigration officer.

(7) Subject to any order issued or made under any written law relating to immigration, “immigration officer” means any person appointed under section 3 of the Immigration Act 1959/63 [Act 155].”.

Amendment of section 35

12. Section 35 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The Commission shall pay to the Federal Consolidated Fund an amount not exceeding thirty per cent out of the current annual surplus of the Commission at such time and in such manner as may be determined by the Minister of Finance.”.

Substitution of section 37

13. The principal Act is amended by substituting for section 37 the following section:

“Representation in civil proceedings

37. Notwithstanding the provisions of any written law, any officer of the Commission authorized in that behalf by the Chairman, may institute, appear in and conduct proceedings and may make and do all appearances, acts and applications in respect of any civil proceedings by or against the Commission or any person holding any of the offices specified in the Second Schedule in the performance of his functions under any laws specified in the First Schedule.”.

New sections 37A and 37B

14. The principal Act is amended by inserting after section 37 the following sections:

“Services of documents, notices, etc.

37A. For the purposes of this Act and the laws specified in the First Schedule, any notice, letter or document shall be deemed to be served, if—

(a) the notice, letter or document is left or sent by ordinary or registered post—

(i) in the case of a business entity, to its last known registered office or registered principal place of business, as the case may be; or

(ii) in the case of any individual, to his last known address; or

(b) the notice, letter or document is sent by electronic means to the address or numbers provided by the entity for this purpose.

Evidentiary value of documents issued in the name of the Chief Executive Officer or the Registrar

37B. Any certificate, notice or any other document issued, served or given by the Chief Executive Officer or the Registrar or an officer duly authorized either by the Chief Executive Officer or the Registrar, pursuant to this Act or the laws specified in the First Schedule, shall be sufficiently authenticated if the name of the Chief Executive Officer or the Registrar or the authorized officer is printed, stamped or otherwise written thereon in the manner as determined by the Chief Executive Officer or the Registrar, and shall, in any proceedings be admissible as *prima facie* evidence.”.

New sections 38A, 38B, 38C, 38D and 38E

15. The principal Act is amended by inserting after section 38 the following sections:

“Compounding of offences

38A. (1) The Registrar may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or its subsidiary legislation by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Registrar an amount of money not exceeding fifty per centum of the maximum fine for that offence within such time as may be specified in the written offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Registrar may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any equipment, instrument, material, book, record, account, document or thing seized under this Act or its subsidiary legislation in connection with the offence may be released by the Registrar, subject to such terms and conditions as the Registrar thinks fit to impose in accordance with the conditions of the compound.

(4) All sums of money received by the Registrar under this section shall be paid into the fund established under section 28.

(5) In relation to the offences that may be compounded under subsection (1), the Minister may prescribe the offences that may be compounded and the procedures for compounding such offences.

Offences by body corporate

38B. (1) If a body corporate commits an offence under this Act or the laws specified in the First Schedule, any person who at the time of the commission of the offence was a director, partner, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act or the laws specified in the First Schedule to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person;
or

(c) by the employee of the agent in the course of his employment with the agent or otherwise on behalf of the agent acting on behalf of that person.

Destruction, concealment, mutilation and alteration of records

38c. A person who—

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any book, record, account, document, computerized data or thing kept or maintained with intent to defraud the Commission or the Registrar or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Commission or the Registrar under this Act or the laws specified in the First Schedule, commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Tipping-off

38d. (1) A person commits an offence if—

- (a) he knows or has reasonable grounds to suspect that the Commission or Registrar is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or laws specified in the First Schedule and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) he knows or has reasonable grounds to suspect that a disclosure has been made to the Commission or the Registrar under this Act or laws specified in the First Schedule and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) shall not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

Appeals

38E. (1) Unless otherwise stated in this Act or the laws specified in the First Schedule, any person aggrieved by—

(a) the refusal of the Commission or the Registrar to register or receive any document required by this Act or the laws specified in the First Schedule; or

(b) any act or decision of the Commission or the Registrar under this Act or the laws specified in the First Schedule,

may appeal to the Minister in writing within thirty days after being notified of the decision of the Commission or Registrar, as the case may be.

(2) Where an appeal is made under subsection (1), the decision of the Commission shall not take effect until the appeal is disposed of by the Minister.

(3) On an appeal, the Minister may affirm, vary, set aside the decision of the Commission or make any decision that he thinks fit.

(4) For the purposes of this section, the Minister may—

(a) form a committee to assist him in reaching the decision;

(b) request information or documentation or personal representation from any person for him to be satisfied with the application; and

(c) impose any terms and conditions that he thinks fit.

(5) This section shall not apply to any act or decision of the Commission or the Registrar—

(a) in respect of any provision in the nature of the appeal or review is expressly provided in this Act or the laws specified in the First Schedule; or

(b) which is declared by this Act or the laws specified in the First Schedule to be final and conclusive or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.”.

Substitution of section 40

16. The principal Act is amended by substituting for section 40 the following section:

“Regulations

40. (1) The Minister may, on the recommendation of the Commission, make any regulations as may be expedient or necessary for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other employees appointed to assist with the administration of this Act and the laws specified in the First Schedule;
- (b) the fees and charges under this Act, which include exempt payment of any fees and charges on such terms and conditions as the Minister thinks fit;
- (c) any requirement relating to educational and training programmes for any officer of a corporation, any person or class of persons;
- (d) any matter relating to licensing as specified in Part IIIc and the procedures in respect of appeal; and
- (e) all matters and things required or authorised by this Act to be prescribed, for the carrying out of, or giving full effect to, the provisions of this Act.

(3) Any subsidiary legislation made under this Act may provide for any act or omission in contravention of the subsidiary legislation and may provide for penalty of a fine not exceeding five hundred thousand ringgit or imprisonment for or a term not exceeding three years or to both.”.

Substitution of First Schedule and Second Schedule

17. The principal Act is amended by substituting for the First Schedule and Second Schedule the following Schedules:

“FIRST SCHEDULE

[Sections 11, 14, 17, 18, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 22, 25, 27, 27B, 27C, 27D, 27H, 27J, 36, 37, 37A, 37B, 38B, 38C, 38E and 40]

1. Companies Act 1965 [*Act 125*]
2. Trust Companies Act 1949 [*Act 100*]

3. Kootu Funds (Prohibition) Act 1971 [*Act 28*]
4. Registration of Businesses Act 1956 [*Act 197*]
5. Limited Liability Partnerships Act 2012 [*Act 743*]

SECOND SCHEDULE

[Section 37]

1. The Chairman appointed under section 6
2. The Chief Executive Officer appointed under section 11
3. The Deputies Chief Executive Officer appointed under section 11
4. The Registrar, Deputy Registrars and Assistant Registrars appointed under section 20A”.

Saving and transitional

18. (1) Any person who, immediately before the date of coming into operation of this Act, was a Chairman or other member of the Commission appointed under the principal Act shall, unless he resigns or otherwise vacates his office or his appointment is revoked, continue to hold that office on or after the date of coming into operation of this Act until the expiry of the period specified in his instrument of appointment.

(2) Any person who immediately before the date of coming into operation of this Act was a Registrar, Deputy Registrar or Assistant Registrar in the laws specified in the First Schedule shall, unless he resigns or otherwise vacates his office or his appointment is revoked, continue to hold that office on or after the date of coming into operation of this Act until the expiry of the period specified in his instrument of appointment.

(3) Any person who immediately before the date of coming into operation of this Act was a Regional Registrar or inspector in the laws specified in the First Schedule shall be known as Assistant Registrar and shall, unless he resigns or otherwise vacates his office or his appointment is revoked, continue to hold that office on or after the date of coming into operation of this Act until the expiry of the period specified in his instrument of appointment.

(4) Any act, thing or proceedings, whether civil or criminal, or appeal, pending or existing, under the deleted sections immediately before the coming into operation of this Act, may be continued under the principal Act as if the principal Act had not been amended.

EXPLANATORY STATEMENT

This Bill seeks to amend the Companies Commission of Malaysia Act 2001 (“Act 614”).

2. *Clause 1* contains the short title and seeks to allow the Minister to appoint the date of commencement of the proposed Act.
3. *Clause 2* seeks to introduce certain new definitions and to amend certain existing definitions of terms used in Act 614.
4. *Clause 3* seeks to substitute section 6 of Act 614. The new section 6 contains provisions on the membership of the Commission. With this proposed amendment, the members will consist of the persons from various fields and who have wide experience or knowledge in company and commercial matters. This *clause* also seeks to introduce the temporary exercise of functions of the Chairman when the office of the Chairman is vacant or in his absence.
5. *Clause 5* seeks to amend section 11 of Act 614 to provide for a better provision on the appointments of the Chief Executive Officer and the Deputies Chief Executive Officer by the Minister and to introduce the temporary exercise of functions of the Chief Executive Officer when the office of the Chief Executive Officer is vacant or in his absence.
6. *Clause 6* seeks to amend section 17 of Act 614 to extend the functions of the Commission in relation to corporate responsibility and business sustainability.
7. *Clause 7* seeks to amend section 18 of Act 614 to provide for the power of the Commission to formulate training programmes, to grant and renew licenses for the purposes of giving effect to the laws under the jurisdiction of the Commission.
8. *Clause 8* seeks to amend section 20 of Act 614 to allow the Commission to delegate any of its functions and powers to a committee established under section 19 of Act 614, any member of the Commission, the Chief Executive Officer, any employee of the Commission or to the Registrar.
9. *Clause 9* seeks to introduce new Parts IIIA, Part IIIB and Part IIIC into Act 614. The new Part IIIA contains sections 20A and 20B and deals with the functions and powers of the Registrar, Deputy Registrars and Assistant Registrars. The proposed new section 20A provides that the Chief Executive

Officer of the Commission shall be the Registrar for the purposes of the laws specified in the First Schedule of Act 614. The new section 20B provides for the Court to take judicial notice of the seal and signature of the Registrar, Deputy Registrars and Assistant Registrars.

The proposed new Part IIIB contains sections 20C, 20D and 20E. The proposed new section 20C empowers the Commission to issue guidelines, practice notes, notices or circulars or in respect of any provision under this Act or the laws specified in the First Schedule.

The new section 20D seeks to empower the Commission or the Registrar to publish information. The new section 20E empowers the Commission or Registrar to take action, other than prosecution, against a person who fails to comply with Act 614 or the laws specified in the First Schedule of Act 614, guidelines, practice notes, notices, circulars, conditions or restrictions imposed.

The proposed new Part IIIc contains the provisions on licensing.

10. *Clause 10* seeks to amend section 25 of Act 614 to extend the protection against personal liability to the Registrar and a public officer.

11. *Clause 11* seeks to introduce new Part IVA into Act 614 which contains the provisions on investigation and enforcement. The Registrar shall have all the powers of a police officer of whatever rank as provided for in the Criminal Procedure Code [Act 593], except the power to arrest without warrant, in relation to enforcement, inspection and investigation. Such powers shall be in addition to the powers provided under this Act and not in derogation thereof.

12. *Clause 12* seeks to amend section 35 of Act 614 to reduce the Commission's contribution into the Federal Consolidated Fund.

13. *Clause 13* seeks to substitute section 37 of Act 614. The new section 37 seeks to provide for the categories of persons who can represent the Commission or its employees in a civil proceeding.

14. *Clause 14* seeks to introduce new sections 37A and 37B into Act 614. The new section 37A provides for the modes of services of any documents or notices that would be issued by the Registrar in carrying out its functions and powers under this Act and the laws specified in the First Schedule. The new section 37B provides for the evidentiary value of certificates, notices or documents issued and authenticated in the name of the Chief Executive Officer, the Registrar or a duly authorized officer.

15. *Clause 15* seeks to introduce new sections 38A, 38B, 38C, 38D and 38E into Act 614. The new section 38A empowers the Registrar to compound any prescribed offence with the written consent of the Public Prosecutor. The new section 38B provides for the liability of any director, partner, chief executive officer, manager, secretary or other similar officer of a body corporate for offences committed by the body corporate. The new section 38C makes it an offence to destroy, conceal, mutilate, or alter any book, record, account,

document, *etc.*, with intent to defraud the Commission or the Registrar. The new section 38D provides for the offence relating to tipping-off. The new section 38E provides for the provision on appeal by any person aggrieved by the decision of the Commission or Registrar.

16. *Clause 16* seeks to amend section 40 of Act 614 to empower the Minister to make regulations and to provide for penalties of a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both for any act or omission in contravention of the regulations made under Act 614.

17. *Clause 17* seeks to substitute the First Schedule and Second Schedule of Act 614.

18. *Clause 18* contains saving and transitional provisions.

19. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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

[PN(U2)2916]