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## **Securities and Futures (Amendment) Bill**

**Bill No. /2008.**

*Read the first time on*

*2008.*

A BILL

*intituled*

An Act to amend the Securities and Futures Act (Chapter 289 of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

**Short title and commencement**

1. This Act may be cited as the Securities and Futures (Amendment) Act 2008 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 2**

2. Section 2(1) of the Securities and Futures Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the definition of “advocate and solicitor”, the following definition:

10 ““appointed representative” means a representative who qualifies as a representative under section 99C and, unless it is otherwise stated, shall include a provisional representative;”;

(b) by deleting the definition of “chief executive officer” and substituting the following definition:

15 ““chief executive officer” in relation to —

(a) an approved exchange, a recognised market operator, a designated clearing house, a person operating a clearing facility, an approved holding company or a holder of a capital markets services licence, means any person, by whatever name described, who is —

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(i) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be; and

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- 5 (ii) principally responsible for the management and conduct of the business of the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be, in Singapore; and
- 10 (b) a corporation (other than one referred to in paragraph (a)), means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;”;
- 15 (c) by deleting the word “only” in paragraph (b) of the definition of “closed-end fund” and substituting the word “primarily”;
- (d) by deleting the words “Part III” in paragraph (b) of the definition of “customer” and substituting the words “Parts II, III and IIIA”;
- 20 (e) by deleting the words “a designated clearing house” in paragraph (b) of the definition of “customer” and substituting the words “an approved exchange or a designated clearing house, as the case may be,”;
- (f) by deleting the definition of “defalcation”;
- 25 (g) by inserting, immediately after the word “prescribe” in subparagraph (ii) of paragraph (a) of the definition of “futures contract”, the words “as a futures contract”;
- (h) by inserting, at the end of paragraph (a) of the definition of “futures contract”, the words “but does not include such contract or class of contracts that would otherwise fall within paragraph(a) (i) as the Authority may prescribe as not being a futures contract;”;
- 30 (i) by inserting, immediately after the word “prescribe” in subparagraph (ii) of paragraph (b) of the definition of “futures contract”, the words “as a futures contract”;
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(j) by inserting, at the end of paragraph (b) of the definition of “futures contract”, the words “but does not include such contract or class of contracts that would otherwise fall within paragraph (b)(i) as the Authority may prescribe as not being a futures contract;”;

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(k) by deleting the definition of “licence”;

(l) by deleting the definition of “licensed person”;

(m) by inserting, immediately after the definition of “member”, the following definition:

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““misapplication”, for the purposes of Part XI, includes misappropriation of any property;”;

(n) by deleting the definition of “principal” and substituting the following definition:

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““principal”, in relation to an individual who is or intends to be an appointed representative or temporary representative, means a holder of a capital markets services licence or a person exempt under section 99(1)(a), (b), (c) or (d), whom that individual is or intends to be in the direct employment of, acting for or by arrangement with, and for whom he carries out any regulated activity;”;

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(o) by inserting, immediately after the definition of “providing custodial services for securities”, the following definition:

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““provisional representative” means a representative who qualifies as a provisional representative under section 99(C)(12);”;

(p) by inserting, immediately after the definition of “public company”, the following definition:

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““public register of representatives” means the record of representatives that the Authority publishes under section 99J;”;

(q) by inserting, immediately after the definition of “quote”, the following definition:

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““recognised business trust” means a business trust that is recognised by the Authority under section 282TA(1);”;

- (r) by deleting the definition of “representative’s licence”;
- (s) by deleting the word “or” at the end of paragraph (f) of the definition of “securities”;
- (t) by deleting the comma at the end of paragraph (g) of the definition of “securities” and inserting the word “; or” and by inserting, immediately thereafter, the following paragraph:

“(h) such other product or class of products as the Authority may prescribe as a security,”;

- (u) by deleting the word “or” at the end of paragraph (iii) of the definition of “securities”;
- (v) by inserting the word “or” at the end of paragraph (iv) of the definition of “securities” and inserting, immediately thereafter, the following paragraph:

“(v) such other product or class of products that would otherwise fall within paragraphs (a) to (g) as the Authority may prescribe as not being a security,”;

- (w) by deleting the definitions of “substantial shareholder” and “substantial shareholding” and substituting the following definitions:

““substantial shareholder”, in relation to a corporation, means a person who has —

- (a) an interest or interests in one or more voting shares (excluding treasury shares) in the corporation and the total votes attached to that share, or those shares, is not less than 5% of the total voting rights of all the voting shares (excluding treasury shares) in the corporation; or
- (b) where the share capital of the corporation is divided into 2 or more classes of shares, an interest or interests in one or more voting shares (excluding treasury shares) included in one of those classes of shares in the corporation and the total votes attached to that share, or those shares, is not less than 5% of the total voting rights of all the voting shares (excluding treasury shares) included in that class;

“substantial shareholding” means the shareholding of a substantial shareholder of a corporation;”;

(x) by deleting the definition of “substantial unitholder” and substituting the following definition:

5 ““substantial unitholder”, in relation to —

(a) a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme and the total votes attached to that unit, or those units, is not less than 10 5% of the total voting rights of all the voting units in the scheme; or

(b) a business trust, means a person who has an interest or interests in one or more voting units in the business trust and the total votes attached to that unit, or those units, is not less than 5% of the total voting rights of all the voting units in the business trust;”;

(y) by deleting the word “or” at the end of paragraph (a)(i)(B) of the definition of “take-over offer” and inserting, immediately after 20 paragraph (a)(ii) of that definition, the following paragraph:

“(iii) in the case of a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any units of 25 which are listed for quotation on a securities exchange —

(A) some or all of the units, or some or all of the units of a particular class, in the scheme made to all unitholders of the scheme, or where the person already holds units in the scheme, made to all other unitholders of the scheme; or 30

(B) all of the remaining units in the scheme made to all other unitholders of the scheme as a result of the person acquiring or consolidating effective control of that scheme within the meaning of the Take-over Code; or”; 35

(z) by inserting, immediately after the definition of “take-over offer”, the following definition:

““temporary representative” means a representative who qualifies as a temporary representative under section 99D;”;

(za) by inserting, immediately after the definition of “transaction information”, the following definitions:

““treasury share” means —

(a) in relation to a company, has the same meaning as in section 4(1) of the Companies Act (Cap. 50); and

(b) in relation to a corporation (other than a company), such equivalent share within the meaning in paragraph (a) in relation to a company;

“trustee-manager” —

(a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

(b) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act, means the company proposed to be named as the trustee-manager in the application made under that section;

(c) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust, by whatever name called and whether incorporated or not; and

(d) in relation to a business trust for which an application for recognition has been made under section 282TA(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;”;

(zb) by deleting the definition of “unitholder” and substituting the following definition:

““unitholder” —

(a) in relation to a collective investment scheme, means a participant of the scheme; and

(b) in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);”; and

(zc) by inserting, immediately after the definition of “voting share”, the following definition:

“voting unit”—

(a) in relation to a business trust, means an issued unit in the business trust, not being —

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

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

(A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrear;

(B) upon a proposal to reduce the unitholders’ equity of the business trust;

(C) upon a proposal that affects rights attached to the unit;

(D) upon a proposal to wind up the business trust;

(E) upon a proposal for the disposal of the whole of the property, business and undertakings of the business trust;

(F) during the winding up of the business trust; and

(b) in relation to a collective investment scheme, means an issued unit in the scheme, not being —

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

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

- (A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrear;
- 5 (B) upon a proposal to reduce the participants' funds of the scheme;
- (C) upon a proposal that affects rights attached to the unit;
- (D) upon a proposal to wind up the scheme;
- 10 (E) upon a proposal for the disposal of the whole of the property, business and undertakings of the scheme;
- (F) during the winding up of the scheme.”.

### **New section 16A**

3. The principal Act is amended by inserting, immediately after  
15 section 16, the following section:

#### **“Obligation to manage risks prudently**

**16A.**—(1) Without prejudice to the generality of section 16(1)(b),  
an approved exchange shall —

20 (a) ensure that the systems and controls concerning the assessment and management of risks to its market are adequate and appropriate for the scale and nature of its operations; and

25 (b) establish and determine any limits on the number of open positions which may be held by any person under a futures contract traded on every futures market it operates, subject to the approval of the Authority.

(2) Nothing in this section shall preclude an approved exchange  
from —

30 (a) establishing or determining different position limits for different futures contracts, or for different months or days in the period remaining until the last day of trading in the futures contract ; or

(b) establishing or determining limits whether on long or short positions, and whether on a net or gross basis.

(3) Without prejudice to the generality of section 45, the Authority may make regulations relating to the matters in subsection (1), including —

(a) the limits in respect of positions held under a futures contract traded on every futures market operated by an approved exchange; and

(b) the measures to manage any risks assumed by the approved exchange.

(4) Any person who wilfully exceeds any position limit fixed by the approved exchange under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.”.

### **Repeal and re-enactment of section 31**

4. Section 31 of the principal Act is repealed and the following section substituted therefore:

**“Action by Authority if approved exchange is unable to meet obligations, etc.,**

**31.** —(1) Where —

(a) an approved exchange informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) an approved exchange becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that the approved exchange —

(i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 5;

(ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition attached to its approval as an approved exchange; or

(d) the Authority considers it in the public interest to do so,

the Authority may appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise that approved exchange on the proper management of such of the business of that approved exchange as the Authority may determine.

(2) Where the Authority has exercised any power under subsection (1), it may, at any time and without prejudice to its power under section 13(1), do one or more of the following:

(a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(b) exercise its powers under subsection (1);

(c) add to, vary or revoke any term or condition specified by the Authority under this section.

(3) No action, suit or other legal proceedings shall lie against a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with—

(a) the exercise or purported exercise of any power under this Act;

(b) the performance or purported performance of any function or duty under this Act; or

(c) the compliance or purported compliance with this Act.

(4) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange to a statutory adviser appointed in relation to the approved exchange, whether or not the appointment has been terminated.

(5) There shall be recoverable as a civil debt due to the Authority from the approved exchange any remuneration and expenses payable by the approved exchange to a statutory adviser appointed under subsection (1).”.

### **New section 43A**

5. The principal Act is amended by inserting, immediately after section 43, the following section:

5 **“Power of Authority to exempt recognised market operators from provisions of this Part**

10 **43A.** The Authority may exempt a recognised market operator or a class of recognised market operators from any of the provisions in this Part if it is satisfied that the non-compliance by such recognised market operators or class of recognised market operators with such provision would not detract from the objectives specified in section 5, subject to such conditions or restrictions as may be imposed by the Authority.”.

### **Amendment of section 48**

15 **6.** Section 48 of the principal Act is amended by deleting the word “all” in the 5<sup>th</sup> line of the definition of “default rules” in subsection (1) and substituting the word “any”.

### **Repeal and re-enactment of section 61**

**7.** Section 61 of the principal Act is repealed and the following section substituted therefore:

20 **“Obligation to manage risks prudently**

**61.—(1)** Without prejudice to the generality of section 59(1)(b), a designated clearing house shall —

25 (a) ensure that the systems and controls concerning the assessment and management of risks to its clearing facility are adequate and appropriate for the scale and nature of its operations; and

30 (b) establish and determine any limits on the number of open positions which may be held by any person with the designated clearing house, subject to the approval of the Authority.

(2) Nothing in this section shall preclude a designated clearing house from —

(a) establishing or determining, in respect of positions held with the designated clearing house, different position limits for different months or days in the period the positions are held or may be held with the designated clearing house; or

5 (b) establishing or determining limits whether on long or short positions, and whether on a net or gross basis.

(3) Without prejudice to the generality of section 81S, the Authority may make regulations relating to the matters in subsection (1), including —

10 (a) the limits in respect of positions held with the designated clearing house; and

(b) the measures to manage any risks assumed by the designated clearing house.

15 (4) Any person who wilfully exceeds any position limit fixed by the designated clearing house under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.”.

### **Amendment of section 62**

20 **8.** Section 62 of the principal Act is amended by deleting subsections (2) and (3) and substituting the following subsections:

“(2) Where a member has notified the designated clearing house under subsection (1) that the money or assets are deposited or paid in respect of or in relation to a contract of a customer of the member, the designated clearing house shall —

25 (a) subject to sections 63 and 64, ensure that such money is deposited in a trust account, or such assets are deposited in a custody account, to be held for the benefit of the customers of the member and disposed of or used only in respect of or in relation to contracts of customers of the member;

30 (b) ensure that such money or assets are kept separate from all money and assets received by the designated clearing house from members which, pursuant to subsection (1), have been reported by members as not being deposited or paid in respect of or in relation to a contract of a customer of a member; and  
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- (c) keep books for money or assets deposited or paid in respect of or in relation to a customer or customers of one member separate from books for money or assets deposited or paid in respect of or in relation to a customer or customers of another member.

(2A) Nothing in this section shall prevent a designated clearing house from commingling such money or assets, deposited pursuant to subsection (2)(a) in the same trust account or custody account, as the case may be.

(3) Where a designated clearing house has been convicted of an offence under section 70 for a contravention of subsection (2)(a), in so far as any money which has been deposited in a trust account, or any asset which has been deposited in a custody account, is used for any purpose other than —

(a) in respect of or in relation to contracts of a customer of the member; or

(b) in accordance with sections 63 and 64,

the designated clearing house shall —

(i) in the case of money, repay the money to the trust account referred to in subsection (2)(a); or

(ii) in the case of assets —

(A) return the asset to the custody account referred to in subsection (2)(a); or

(B) if the asset cannot be returned to the custody account, deposit an amount of money which is equivalent to the monetary value of the asset at the time of the contravention of subsection (2)(a) in the trust account referred to in subsection (2)(a) for the benefit of the customers of the member.”.

### **Repeal and re-enactment of section 63**

**9.** Section 63 of the principal Act is repealed and the following section substituted therefore:

**“Permissible use of customers’ money and assets by designated clearing house**

5 **63.—** (1) Where a member of a designated clearing house fails to meet its obligations to the designated clearing house, the designated clearing house may use any money or assets deposited or paid in respect of or in relation to contracts of customers of the member and held by the designated clearing house (including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62(2)(a)) (collectively referred to in this section as the customers’ money and assets) to meet the obligations of the member to the designated clearing house, if –

10 (a) the designated clearing house is of the opinion, formed in good faith, that the failure of the member to meet the member’s obligations is directly attributable to the failure of any of the customers of the member to meet that customer’s obligations under any market contract; and

15 (b) where –

20 (i) the money or assets deposited or paid in respect of or in relation to contracts of the member and held by the designated clearing house, and any other money or assets deposited by the member with the designated clearing house as collateral or guarantee for the purpose of satisfying all obligations of the member to the designated clearing house, have been wholly utilised to meet the obligations of the member to the designated clearing house, but in such event, the customers’ money or assets shall only be used by the designated clearing house to meet the obligations of the member to the designated clearing house that are outstanding; or

25 (ii) the designated clearing house has reasonable grounds for forming an opinion that the failure to use the money or assets to meet the obligations of the member may jeopardise the financial integrity of the designated clearing house;

30 (c) the designated clearing house has made provision for –

35 (i) the matters set out under (a) and (b); or

(ii) such similar matters which do not detract from the type and scope of the matters set out under (a) and (b),

in its business rules; and

(d) the money or assets are used in accordance with the provisions of the business rules referred to under (c).

(2) A designated clearing house shall notify the Authority prior to using any such money or assets in the circumstances specified in subsection (1).”.

#### 10 **New section 80A**

**10.** The principal Act is amended by inserting, immediately after section 80, the following section:

**“Action by Authority if designated clearing house is unable to meet obligations, etc.,**

**80A.** —(1) Without prejudice to the powers conferred on the Authority under section 80, where —

(a) a designated clearing house informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) a designated clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that the designated clearing house —

(i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 47;

(ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition attached to its approval as a designated clearing house; or

(d) the Authority considers it in the public interest to do so,

the Authority may appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise that designated clearing house on the proper management of such of the business of that designated clearing house as the Authority may determine.

(2) Where the Authority has exercised any power under subsection (1), it may, at any time and without prejudice to its power under section 54(2), do one or more of the following:

(a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in exercise of such power, on such terms and conditions as it may specify;

(b) exercise its powers under subsection (1);

(c) add to, vary or revoke any term or condition specified by the Authority under this section.

(3) No action, suit or other legal proceedings shall lie against a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with—

(a) the exercise or purported exercise of any power under this Act;

(b) the performance or purported performance of any function or duty under this Act; or

(c) the compliance or purported compliance with this Act.

(4) The Authority may at any time fix the remuneration and expenses to be paid by a designated clearing house to a statutory adviser appointed in relation to the designated clearing house, whether or not the appointment has been terminated.

(2) There shall be recoverable as a civil debt due to the Authority from the designated clearing house any remuneration and expenses payable by the designated clearing house to a statutory adviser appointed under subsection (1).”.

#### **Amendment of section 81U**

**11.** Section 81U of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) No corporation shall be the holding company of any approved exchange, designated clearing house, or corporation which is an approved holding company, unless —

- 5           (a) the first-mentioned corporation is an approved holding company; or
- (b) the first-mentioned corporation has been exempted by the Authority from complying with subsection (1) pursuant to section 81VA.”.

### **New section 81VA**

10    **12.** The principal Act is amended by inserting, immediately after section 81V, the following section:

#### **“Power to exempt corporations from approval**

15    **81VA.** The Authority may exempt a holding company of a corporation approved as an approved exchange under section 8(1) or designated as a designated clearing house under section 55(1), from the requirement under section 81U to be an approved holding company if it is satisfied that the exemption would not detract from the objectives specified in section 81T, subject to such conditions or restrictions as may be imposed by the Authority.”.

### **Amendment of Part IV**

20    **13.** Part IV of the principal Act is amended -

- (a) by deleting the Part heading and substituting the words “HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES”; and
- 25       (b) by deleting the word “Licensing” in the subject heading of Division 1 and substituting the words “Capital markets services licence”.

### **Repeal of section 83**

14. Section 83 of the principal Act is repealed.

### **Amendment of section 84**

30    **15.** Section 84 of the principal Act is amended –

- (a) by deleting the word “licence” in the section heading and in subsection (3) and substituting in each case the words “of capital markets services licence”;
- 5 (b) by deleting subsection (1) and substituting the following subsection:  
 “(1) An application for the grant of a capital markets services licence shall be made to the Authority in such form and manner as the Authority may prescribe.”;
- 10 (c) by deleting the words “or renewal” in subsection (3) and the section heading; and
- (d) by deleting subsections (4), (5), (5A), (5B), (6), (7) and (8).

### **Amendment of section 85**

**16.** Section 85 of the principal Act is amended –

- 15 (a) by deleting the words “A licensed person” in subsection (1) and substituting the words “The holder of a capital markets services licence”;
- (b) by deleting subsection 2(b);
- (c) by deleting paragraph (c) of subsection (2) and substituting the following paragraph:  
 20 “(c) the holder of a capital markets services licence ceases to carry on business in that regulated activity during the period to which the licence fee relates; or”; and
- (d) by deleting paragraph (d) of subsection (2) and substituting the following paragraph:  
 25 “(d) a prohibition order has been made against the holder of a capital markets services licence under section 101A.”.

### **Amendment of section 86**

**17.** Section 86 of the principal Act is amended –

- 30 (a) by deleting the words “or renewal” in subsections (4), (5) and (6);
- (b) by deleting the word “or” at the end of paragraph (m) of subsection (4);

- (c) by deleting the words “or renew” in paragraph (n) of subsection (4);
- (d) by deleting the full-stop at the end of paragraph (n) of subsection (4) and substituting a semi-colon and the word “or”;
- 5 (e) by inserting, immediately after paragraph (n) of subsection (4), the following paragraph:
  - “(o) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.”;
- 10 (f) by deleting the full-stop at the end of paragraph (c) of subsection (6) and substituting a semi-colon; and
- (g) by inserting, immediately after paragraph (c) of subsection (6), the following paragraph:
  - “(d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.”.

#### 15 **Repeal of sections 87 and 87A**

**18.** Sections 87 and 87A of the principal Act are repealed.

#### **Amendment of section 88**

**19.** Section 88 of the principal Act is amended –

- 20 (a) by deleting the words “or renew a licence” in subsection (1) and substituting the words “a capital markets services licence”;
- (b) by deleting the words “licensed person” in subsection (2) and substituting the words “holder of a capital markets services licence”; and
- 25 (c) by deleting the word “his” in subsection (3) and substituting the word “its”.

#### **Repeal of section 89**

**20.** Section 89 of the principal Act is repealed.

#### **Amendment of section 90**

**21.** Section 90 of the principal Act is amended –

- 30 (a) by deleting the word “licence” in the section heading and substituting the words “capital markets services licence”;

- (b) by deleting subsection (1) and substituting the following subsection:

“(1) The Authority may, on the application of a holder of a capital markets services licence, vary its licence by adding a regulated activity to those already specified in the licence.”;

- (c) by deleting subsection (2) and substituting the following subsection:

“(2) An application under subsection (1) shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.”;

- (d) by deleting subsection (2A); and

- (e) by deleting the words “, 87(3) or 87A(10)” in subsection (3)(b).

#### **Amendment of section 91**

22. Section 91 of the principal Act is amended by deleting the word “, renewing” in subsection (1).

#### **Amendment of section 92**

23. Section 92 of the principal Act is amended –

- (a) by deleting the word “licence” in the section heading and in the 2<sup>nd</sup> line of the section and substituting the words “capital markets services licence”; and

- (b) by deleting the word “, renewal” in the section heading and in the 2<sup>nd</sup> line of the section.

#### **Amendment of section 93**

24. Section 93 of the principal Act is amended –

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Where —

- (a) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates; or

(b) a change occurs in any matter particulars of which are required by section 94 to be entered in the record of holders of a capital markets services licence in relation to the holder,

the holder shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.”; and

(b) by deleting the words “licensed person ceases to carry on, or ceases to act as a representative in carrying on,” in subsection (2) and substituting the words “holder of a capital markets services licence ceases to carry on”.

#### **Repeal and re-enactment of section 94**

25. Section 94 of the principal Act is repealed and the following section substituted therefore:

##### **“Record in relation to holders of capital markets services licence**

94. —(1) The Authority shall keep in such form as it thinks fit a record in relation to the holder of a capital markets services licence of —

- (a) its name;
- (b) the address of the principal place of business at which it carries on the business in respect of which the licence is held;
- (c) the regulated activity or activities to which its licence relates;
- (d) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
- (e) such other information as may be prescribed.

(2) The Authority may publish the information referred to in subsection (1), or any part of it in a financial institutions directory, set out at the Authority’s Internet website at <http://www.mas.gov.sg>.”.

#### **Repeal and re-enactment of section 95**

26. Section 95 of the principal Act is repealed and the following section substituted therefore:

**“Lapsing, revocation and suspension of capital markets services licence**

95. —(1) A capital markets services licence shall lapse —

- 5 (a) if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere; or
- (b) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke a capital markets services licence, if —

- 10 (a) there exists a ground on which the Authority may refuse an application under section 86;
- (b) it fails or ceases to carry on the business in all the regulated activities for which it was licensed;
- 15 (c) the Authority has reason to believe that the holder of the capital markets services licence, or any of its officers or employees, has not performed its duties efficiently, honestly or fairly;
- (d) the holder of the capital markets services licence contravenes any condition or restriction applicable in respect of its licence, any direction issued to it by the Authority under this Act, or any other provision in this Act;
- 20 (e) the Authority has reason to believe that the holder of the capital markets services licence is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public; or
- 25 (f) any information or document that is furnished by the holder of the capital markets services licence to the Authority is false or misleading.

(3) The Authority may, if it considers it desirable to do so —

- 30 (a) suspend a capital markets services licence for a specific period instead of revoking it under subsection (2); and
- (b) at any time extend or revoke the suspension.

(4) Subject to subsection (5), the Authority shall not revoke or suspend a capital markets services licence under subsection (2) or (3) without giving the holder of the licence an opportunity to be heard.

(5) The Authority may revoke or suspend a capital markets services licence without giving the holder of the licence an opportunity to be heard, on any of the following grounds:

5 (a) the holder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the holder ;

10 (c) the holder has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which a finding that it had acted fraudulently or dishonestly; or

(d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.

15 (6) Where the Authority has revoked or suspended a capital markets services licence or issued a prohibition order to a holder of a capital markets services licence, the holder of that licence shall —

20 (a) in the case of a revocation of its licence, immediately inform all its representatives by notice in writing of such revocation and the representatives who are so informed shall cease to act as representatives of that holder;

25 (b) in the case of a suspension of its licence, immediately inform all its representatives by notice in writing of such suspension and the representatives who are so informed shall cease to act as representatives of that holder during the period of the suspension; and

30 (c) in the case of a prohibition order, immediately inform all its representatives who perform the regulated activity or activities to which the prohibition order relates, by notice in writing of such prohibition order and the representatives who are so informed shall cease to perform such regulated activity or activities during the period specified in the prohibition order.

35 (7) Any holder of a capital markets services licence who —

(a) performs a regulated activity while its licence has lapsed or has been revoked or suspended; or

(b) contravenes subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(8) A lapsing, revocation or suspension of a capital markets services licence shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the holder of the licence, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence, as the case may be; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.”.

### **Amendment of section 96**

**27.** Section 96 of the principal Act is amended –

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Subject to subsection (1B), no holder of a capital markets services licence shall —

(a) appoint a person as its chief executive officer or director; or

(b) change the nature of an appointment of a director from a non-executive to executive capacity,

unless it has obtained the approval of the Authority.”;

(b) by deleting the word “subsection (1)” in subsection (1A) and substituting the words “subsection (1)(a)”;

(c) by inserting, immediately after subsection (1A), the following subsection:

“(1B) Subsection (1) shall not apply to the appointment of a person as a director or the change in nature of an appointment of

a director of a foreign company where, upon the appointment or change, as the case may be, the person –

(a) does not or will not, reside in Singapore; and

(b) is not or will not be, directly responsible for its business in Singapore or any part thereof.”; and

(d) by inserting, immediately after paragraph (a) in subsection (4), the following paragraph:

“(aa) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;”.

**Amendment of section 97**

**28.** Section 97 of the principal Act is amended –

(a) by deleting the word “or” at the end of paragraph (f) of subsection (1);

(b) by inserting, immediately after paragraph (f) of subsection (1), the following paragraph:

“(fa) has had a prohibition order under section 101A made by the Authority against him that remains in force;”;

(c) by deleting the comma at the end of paragraph (g) of subsection (1) and substituting the word “; or”;

(d) by inserting, immediately after paragraph (g) of subsection (4), the following paragraph:

“(h) is not a fit and proper person;”;

(d) by inserting, immediately after paragraph (a) of subsection (4), the following paragraph:

“(aa) a prohibition order under section 101A has been made by the Authority, and remains in force, against the officer;”.

**New sections 97A and 97B**

**29.** The principal Act is amended by inserting, immediately after section 97, the following sections:

**“Control of take-over of holder of capital markets services licence**

5       **97A.**—(1) This section shall apply to and in relation to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) No person shall enter into any arrangement in relation to the holder of a capital markets services licence by virtue of which he would, if the arrangement is carried out, obtain effective control of the holder without obtaining the prior approval of the Authority.

10       (3) Any person intending to enter into any arrangement to obtain effective control of a holder of capital markets services licence under subsection (2) shall apply to the Authority for approval in writing and the Authority may approve such an application made by any person if the Authority is satisfied that —

15           (a) the person is a fit and proper person;

(b) having regard to the person’s likely influence, the holder of a capital markets services licence is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and

20           (c) such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to any person subject to such conditions as the Authority may determine, including but not limited to any condition —

25           (a) restricting the person’s disposal or further acquisition of shares or voting power in the holder of a capital markets services licence; or

(b) restricting the person’s exercise of voting power in the holder of a capital markets services licence,

30       and the person shall comply with such conditions.

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the holder of a capital markets services licence.

35       (6) For the purposes of this section —

- (a) “arrangement” includes any formal or informal scheme, arrangement or understanding, and any trust whether express or implied;
- 5 (b) a person shall be regarded as entering into an arrangement by virtue of which he would obtain effective control of a holder of a capital markets services licence if the person alone or acting together with any connected person would be in a position to control, directly or indirectly, not less than 20% of the voting power in the holder or would hold interests, 10 directly or indirectly, in not less than 20% of the issued shares of the holder;
- (c) a reference to an arrangement by which a person would obtain effective control of a holder of a capital markets services licence includes a reference to an arrangement by which the person would acquire any interest, directly or 15 indirectly, in shares in the holder where, upon the acquisition of those interests and of any other interest in other shares of the holder that he has offered to acquire, he would have effective control of the holder; and
- 20 (d) a reference to the voting power in a capital markets services licence is a reference to the total number of votes that may be cast in the general meeting of the holder.

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 25 \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

### **Objection to existing control of holder of capital markets services licence**

30 **97B.**— (1) The Authority may serve a written notice of objection on any person referred to in section 97A if the Authority is satisfied that

- 
- (a) any condition of approval imposed on the person under section 97A(4) has not been complied with;
- (b) the person is not or ceases to be a fit and proper person;
- 35 (c) having regard to the likely influence of the person, the holder of a capital markets services licence is not able to or is no

longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;

5 (d) the person has furnished false or misleading information or documents in connection with an application under section 97A; or

(e) the Authority would not have granted its approval under section 97A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

10 (2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

15 (a) the person is in the course of being wound up or otherwise dissolved, or in the case of an individual, in the course of bankruptcy proceedings, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

20 (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;

25 (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall –

30 (a) take such steps as are necessary to ensure that he ceases to be a party to the arrangement described in section 97A (2) or ceases to have effective control of a holder of a capital markets services licence as defined in section 97A(6); or

(b) comply with such other requirements as the Authority may specify in written directions.

(4) Any person served with a notice of objection under this section shall comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.”.

### **Amendment of section 98**

**30.** Section 98(1) of the principal Act is amended –

(a) by deleting paragraph (a) and substituting the following paragraph:

“(a) the refusal of the Authority to grant or vary a capital markets services licence;”

(b) by deleting the word “licence” in paragraph (b) and substituting the words “capital markets services licence”; and

(c) by deleting paragraph (1)(c).

### **Amendment of section 99A**

**31.** Section 99A of the principal Act is amended –

(a) by deleting the words “its representative” in the section heading and substituting the word “certain representatives”; and

(b) by deleting the words “an exempt person” in subsection (1) and the 2<sup>nd</sup> line of subsection (2) and substituting in each case, the words “a person exempted under section 99(1)(f), (g) or (h)”.

### **New Division 2 of Part IV**

**32.** The principal Act is amended by deleting the Division heading before section 99 and inserting, immediately after section 99A, the following Division:

*“Division 2 – Representatives*

**Acting as a representative**

**99B.** — (1) No person shall act as a representative in respect of any regulated activity or hold himself out as doing so, unless he is –

- 5           (a) an appointed representative in respect of such regulated activity that has been notified to the Authority;
- (b) a temporary representative in respect of such regulated activity that has been notified to the Authority; or
- 10           (c) a representative of an exempt person under section 99(1)(f), (g) or (h), in so far as –
- (i) the type and scope of regulated activity carried out by the first-mentioned person are within the type and scope of, or are the same as, those carried out by the exempt person (in his capacity as an exempt person); and
- 15           (ii) the manner in which the first-mentioned person carries out the regulated activity referred to in subsection (1) is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out the regulated activity.

20           (2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as may be imposed by the Authority.

             (3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

25

**Appointed representative**

30           **99C.** — (1) A person may act as an appointed representative to carry on business in respect of one or more regulated activities if —

- (a) the person is an individual;

(b) the following documents have been lodged by his principal with the Authority in such form and manner as the Authority may prescribe:

5 (i) a notice of intent by the principal to appoint the individual to act as an appointed representative; and

(ii) a certification by the principal that the individual is a fit and proper person to be an appointed representative;

(c) his name has been listed on the Authority's public register of representatives; and

10 (d) he carries on business only in the regulated activities that –

(i) his principal is licensed to carry on; or

(ii) are carried out by his principal in his capacity as a person exempted from the requirement to hold a capital markets services licence under section 99 (1)(a), (b), (c) and (d).

15 (2) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the intended appointment of the individual as an appointed representative and the principal or the individual, as the case may be, shall comply with such a request.

20 (3) An individual shall immediately cease to act as an appointed representative to carry on business in any regulated activity on the date —

25 (a) of his cessation to act as an appointed representative, as notified by his principal to the Authority, in such form and manner as the Authority may prescribe;

(b) his principal ceases to carry on business in that regulated activity;

30 (c) the licence of his principal in respect of that regulated activity is revoked, has lapsed or if a prohibition order is made against the principal;

(d) the individual dies; or

(e) of such other circumstances as the Authority may prescribe, whichever is earlier.

(4) An individual shall not carry on business in a regulated activity as an appointed representative during the period in which the licence of his principal in respect of that regulated activity is suspended.

5 (5) An individual who is not allowed to carry on business in a regulated activity under subsection (4) and who has ceased to act as a representative of the principal who has been suspended may, subject to compliance with subsection (1), carry on business in a regulated activity as an appointed representative for a new principal.

10 (6) A cessation by an individual to carry on business in any regulated activity under subsection (3) or where an individual does not carry on business in any regulated activity by virtue of him not being allowed to carry on business under subsection (4) shall not operate so as to -

15 (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the cessation; or

20 (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(7) Where the individual is required to cease to act as an appointed representative under subsection (3) or is not allowed to carry on business under subsection (4), the Authority need not give the individual an opportunity to be heard.

25 (8) A principal shall not permit any individual to carry on business in any regulated activity on its behalf as its appointed representative unless the individual is an appointed representative under subsection (1) and the principal has lodged the documents required under subsection (1)(b).

30 (9) Subject to subsection (10), where a change occurs in any particulars of the appointed representative required to be furnished to the Authority under subsection 1(b), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

35 (10) Where –

(a) the individual ceases to act as an appointed representative for his principal; or

(b) the individual ceases to carry on business in any of the regulated activities which he is appointed to carry on;

5 the principal shall, no later than the next business day after such cessation, furnish particulars of such cessation to the Authority, in the prescribed form and manner.

(11) The principal shall make such notification and in such form and manner as may be prescribed by the Authority.

10 (12) Where a person satisfies all the requirements of an appointed representative under this section but for the examination requirements issued by way of written directions under section 101 of the Act by the Authority, the Authority may allow such a person to act as an appointed representative for such period of time as the Authority may  
15 prescribe or such other period as the Authority may by notice in writing allow, in respect of such notified regulated activity (referred to in this Act as a provisional representative), subject to the following conditions:

20 (a) the principal lodges with the Authority in such form and manner as the Authority may prescribe an undertaking in respect of its intent to appoint an individual to act as a provisional representative;

25 (b) that the person thereafter satisfies the examination requirements in respect of the notified regulated activities within such period as may be prescribed by the Authority or such other period as the Authority may by notice in writing allow;

(c) that the person satisfies such other conditions and restrictions as the Authority may impose; and

30 (d) that the person is not, by virtue of the circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

35 (13) If a person who is allowed to act as a provisional representative under subsection (12) fails to comply with such conditions and restrictions as may be imposed by the Authority under that

subsection, that person shall immediately cease to act as a provisional representative.

5 (14) Where the provisional representative has satisfied the examination requirements within the period prescribed or allowed by the Authority under subsection (12)(b), the principal of a provisional representative shall inform the Authority, in the prescribed form and manner that the provisional representative has satisfied the examination requirements in respect of the relevant notified regulated activity.

10 (15) Upon notification by the principal under subsection (14), the provisional representative shall cease to be a provisional representative and may act as an appointed representative to carry on business in respect of such notified regulated activity.

15 (16) For the avoidance of doubt, nothing shall prevent the principal of a provisional representative from informing the Authority of the satisfaction of the examination requirements in respect of any notified regulated activity under subsection (14) before the expiry of the prescribed period, or such other period of time as allowed by the Authority, under subsection (12)(b) provided that upon the principal  
20 informing the Authority of the satisfaction of the examination requirements in respect of any notified regulated activity, the provisional representative shall immediately cease to act as a provisional representative to carry on business in respect of such other notified regulated activity for which the examination  
25 requirements have not been satisfied.

(17) Where the principal of a provisional representative fails to inform the Authority that the provisional representative has completed the examination requirements by the prescribed period, or such other period of time as allowed by the Authority, under  
30 subsection (12)(b), the provisional representative shall immediately cease to act as a provisional representative.

(18) Any person who contravenes subsection (1), (2), (3), (4), (13) or (17) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not  
35 exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(19) Any person who contravenes subsection (8), (9), (10), (11) or (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(20) The Authority may exempt any person or class of persons from the requirements of this section, subject to such conditions or restrictions as may be imposed by the Authority.

### **Temporary Representative**

**99D.**—(1) A person may act as a temporary representative to carry on business in respect of one or more regulated activities if –

- (a) the person is an individual;
- (b) the following documents have been lodged by his principal with the Authority in such form and manner as the Authority may prescribe:
  - (i) a notice of intent by the principal to appoint an individual to act as a temporary representative;
  - (ii) a certification by the principal that the individual is a fit and proper person to be a temporary representative; and
  - (iii) an undertaking in respect of its intent to appoint an individual to act as a temporary representative;
- (c) his name has been listed on the Authority's public register of representatives;
- (d) he carries on business only in the regulated activities that –
  - (i) his principal is licensed to carry on; or
  - (ii) are carried out by his principal in his capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d); and
- (e) the laws and practices of the jurisdictions in which the person is licensed, authorised or otherwise regulated as a person who is equivalent of a representative are comparable to the requirements of an appointed representative under this Part.

(2) The Authority may require the principal or the individual to furnish it with such information or documents as the Authority considers necessary in relation to the intended appointment of the individual as a temporary representative and the principal or the individual, as the case may be, shall comply with such a request.

(3) A notification by the principal to the Authority in relation to its appointment of an individual to act as a temporary representative in respect of any regulated activity shall be deemed to be withdrawn with effect from the date the principal withdraws its support in the form and manner as the Authority may prescribe.

(4) An individual shall immediately cease to act as a temporary representative to carry on business in any regulated activity –

(a) upon the expiry of such period as may be prescribed by the Authority, or such other period as the Authority may specify in writing to the principal;

(b) from the date on which the principal notifies the Authority that the individual ceases to act as a temporary representative;

(c) if his principal ceases to carry on business in that regulated activity;

(d) if the licence of his principal in respect of that regulated activity is revoked, has lapsed or if a prohibition order is made against the principal;

(e) the individual dies; or

(f) of such other circumstances as the Authority may prescribe, whichever is earlier.

(5) An individual shall not carry on business in a regulated activity as an appointed representative during the period in which the licence of his principal in respect of that regulated activity is suspended.

(6) A cessation by an individual to carry on business in any regulated activity under subsection (4) or where an individual does not carry on business in any regulated activity by virtue of him not being allowed to carry on business under subsection (5) shall not operate so as to –

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the cessation; or

5 (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(7) Where the individual is required to cease to act as a temporary representative under subsection (4) or is not allowed to carry on business under subsection (5), the Authority need not give the individual an opportunity to be heard.

(8) A principal shall not permit any individual to carry on business in any regulated activity on its behalf as its temporary representative unless the individual is a temporary representative under subsection (1).

15 (9) The Authority shall remove a temporary representative from, the public register of representatives if the individual has been a temporary representative for a period which exceeds, or for periods which together exceed, the prescribed number of months within the prescribed period.

20 (10) Subject to subsection (11), where a change occurs in any particulars of the temporary representative required to be furnished to the Authority under subsection (1b), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

25 (11) Where –

(a) the temporary representative ceases to act for the principal who notified the Authority of the intent to appoint the individual as a temporary representative; or

30 (b) the temporary representative ceases to carry on business in any regulated activity,

the principal shall, no later than the next business day after such cessation, furnish particulars of such cessation to the Authority, in the prescribed form and manner.

35 (12) Subsection (1) shall not apply to any principal, person or class of persons whom the Authority may exempt from the requirement to

notify the Authority of the intention to appoint an individual to act as temporary representative in respect of any regulated activity.

5 (13) Any person who contravenes subsection (1), (2), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

10 (14) Any person who contravenes subsection (8), (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

#### **Notification and annual fees**

15 **99E.**— (1) A principal shall pay such notification fee in relation to the notification of an individual intending to act as his appointed representative or temporary representative as may be prescribed by the Authority.

20 (2) A principal shall pay such annual fee in relation to the notification of an individual intending to act as his appointed representative or temporary representative as may be prescribed by the Authority.

25 (3) A principal shall pay such fee in relation to any resubmission of a form or change in particulars of a form lodged with the Authority as may be prescribed by the Authority.

(4) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section shall not be refunded.

30 (5) Where the principal fails to pay such notification fee or annual fee, as the case may be, by the day on which the fee is due, the Authority may impose a late payment fee not exceeding \$100 for every day or part thereof that the payment is late, subject to a maximum of \$3,000.

### **Additional regulated activity**

**99F.**—(1) An appointed representative under section 99C (other than a provisional representative) may carry out additional regulated activity to those notified to the Authority under section 99C if –

- 5           (a) the following documents have been lodged by his principal with the Authority in such form and manner as the Authority may prescribe:
- (i) a notice of intent by the principal;
- (ii) a certification by the principal that the individual is a fit  
10           and proper person to be an appointed representative in respect of that additional regulated activity;
- (b) his name has been listed on the Authority’s public register of representatives in respect of that additional regulated activity; and
- 15           (c) he carries on business only in the regulated activities that –
- (i) his principal is licensed to carry on; or
- (ii) are carried out by his principal in his capacity as a person  
              exempted from the requirement to hold a capital  
              markets services licence under section 99(1)(a), (b), (c)  
20           or (d).

              (2) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the intended appointment of an individual as an appointed representative in relation to the additional regulated  
25           activity and the principal or the individual, as the case may be, shall comply with such a request.

              (3) A notification under subsection (1) shall be accompanied by a non-refundable prescribed notification fee which shall be paid in the manner specified by the Authority.

### **Power of Authority to refuse to enter, revoke or suspend**

30           **99G.**– (1) Subject to regulations made under this Act, the Authority may refuse to enter or revoke, an individual from the Authority’s public register of representatives if —

- 5
- (a) he fails or ceases to act as an appointed representative or a temporary representative, as the case may be, in respect of all the regulated activities for which his notification relates;
- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt whether in Singapore or elsewhere;
- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- 10 (e) he has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) he —
- 15 (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
- (ii) has been convicted of an offence under this Act;
- 20 (g) the Authority is not satisfied as to his educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to the relevant regulated activity;
- (h) he or his principal fails to satisfy the Authority that he is a fit and proper person;
- 25 (i) the Authority has reason to believe that he may not be able to act in the best interests of the subscribers or customers of his principal, having regard to his reputation, character, financial integrity and reliability;
- 30 (j) the Authority is not satisfied as to his financial standing;
- (k) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he may perform in relation to the carrying on of business in the relevant regulated activity;

- 5 (l) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him for the purpose of his business;
- (m) the individual is in arrears in the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- 10 (n) the Authority has reason to believe that he will not perform the relevant regulated activity efficiently, honestly or fairly;
- (o) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name or keep his name in the public register of representatives as an appointed representative or a temporary representative, as  
15 the case may be;
- (p) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;
- 20 (q) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;
- (r) a prohibition order under section 101A has been made by the  
25 Authority, and remains in force, against him; or
- (s) the licence of his principal is revoked.
- (2) The Authority may, if it considers it desirable to do so –
- (a) suspend an appointed representative or a temporary representative, as the case may be, from carrying on  
30 business in any regulated authority for a specific period instead of revoking the notification under subsection (1); and
- (b) at any time extend or revoke the suspension.
- (3) The Authority shall not refuse to enter, revoke or suspend an  
35 individual under subsection (1)(p) if –

(a) in the case where the individual furnished false or misleading information or document to the Authority, the individual proves that he had –

(i) made all inquiries (if any) that were reasonable in the circumstances; and

(ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading;

(b) in the case where the principal furnished false or misleading information or document to the Authority and –

(i) such information or document was furnished to the principal by the individual, the individual proves that he had –

(A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

(ii) such information or document was not furnished to the principal by the individual, the principal proves that he had –

(A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

(4) Subject to subsection (3), the Authority shall not refuse to enter, suspend or remove from notification, an individual in the Authority's public register of representatives, without giving him an opportunity to be heard.

(5) The Authority may refuse to enter, suspend or remove from notification, an individual from the Authority's public register of representatives, on any of the following grounds without giving him an opportunity to be heard:

(a) he is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) he has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) An individual who has been suspended from acting as an appointed representative or a temporary representative, as the case may be, to carry on business in any regulated activity shall cease to act as an appointed representative or a temporary representative, as the case may be, from the date on which the suspension takes effect until the expiration of the period of suspension.

(7) Any appointed representative or temporary representative, as the case may be, who performs a regulated activity while his notification has been suspended or removed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(8) A suspension or removal from notification of an appointed representative or a temporary representative, as the case may be, shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the suspension or removal, as the case may be; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

### **Power of Authority to impose conditions or restrictions**

**99H.** — (1) The Authority may by notice in writing to an appointed representative or a temporary representative, as the case may be, impose such conditions or restrictions as it thinks fit.

(2) Without prejudice to the generality of subsection (1), the Authority may, in entering the appointed representative's or temporary representative's name in the register, impose conditions or restrictions with respect to the type of regulated activity which the appointed representative or temporary representative, as the case may be, may or may not carry on business in.

(3) The Authority may, at any time, by notice in writing to the appointed representative or temporary representative, as the case may be, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(4) Any person who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for everyday or part thereof during which the offence continues after conviction.

#### **False statements in relation to notification of an appointed representative or a temporary representative**

**99I.-** (1) Any principal who, in connection with the provision of the notice of intent and certification to the Authority under section 99C or D for an individual to act as its appointed representative or a temporary representative, as the case may be, —

(a) makes a statement which is false or misleading in a material particular; or

(b) omits to state any matter or thing without which the notice or certification is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Any individual who, in connection with his principal's notification or certification to the Authority for him to act as an appointed representative or a temporary representative as the case may be, —

(a) makes a statement to the principal which is false or misleading in a material particular and such statement was thereafter provided to the Authority; or

(b) omits to state any matter or thing to the Principal without which his notification or certification as an appointed representative or a temporary representative, as the case may be, is misleading in a material respect,

5 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any individual who, in connection with his principal's notification or certification to the Authority for him to act as an appointed representative or a temporary representative, as the case may be, —

(a) makes a statement to the Authority which is false or misleading in a material particular; or

(b) omits to state any matter or thing to the Authority without which his notification or certification as an appointed representative or a temporary representative, as the case may be, is misleading in a material respect,

15 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if he proves that he —

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing, as the case may be, was not false or misleading.

### **Record of appointed representatives or temporary representatives**

30 **99J.**-(1) The Authority shall establish and maintain, in such form as it thinks fit, a record of information on appointed representatives and temporary representatives, as the case may be, comprising —

(a) each appointed representative's or temporary representative's name;

(b) the name of all his current and past principals;

- (c) the current and past regulated activities performed by him and the date of commencement and cessation (if any) of such activities;
  - (d) where the business of the principal for which he acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;
  - (e) formal regulatory actions taken by the Authority against him; and
  - (f) such other information as may be prescribed by the Authority.
- (2) The Authority may publish the information referred to in subsection (1), or any part of it in a public register of representatives, set out at the Authority's Internet website at <http://www.mas.gov.sg>.

### Appeals

- 99K.**—(1) Any person who is aggrieved by —
- (a) the refusal of the Authority to enter his name in the public register of representatives;
  - (b) the removal from notification by the Authority of an appointed representative or a temporary representative, as the case may be, from the public register of representatives; or
  - (c) the suspension of an appointed representative or a temporary representative, as the case may be, by the Authority;
- may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.”.

### Amendment of section 100

**33.** Section 100 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

- “(1) Without prejudice to section 341, the Authority may make regulations relating to the grant of a capital markets services licence or notification of an appointed representative or temporary representative, as the case may be, and requirements applicable to a licensed person, exempt person, representative or class of such persons.”.

### **Amendment of section 101**

**34.** Section 101 of the principal Act is amended –

- (a) by deleting the words “of an exempt person” under subsection (1);  
and
- 5 (b) by deleting the word “his” in subsection 2(a) and substituting the  
word “its”.

### **New sections 101A to 101D**

**35.** The principal Act is amended by inserting, immediately after section 101, the following sections:

10 **“Power of Authority to make prohibition orders**

**101A.**—(1) The Authority may make a prohibition order against a person, by notice in writing, if –

- (a) the Authority suspends or revokes the capital markets services licence held by the person;
- 15 (b) where the person is exempt from the requirement to hold a capital markets services licence under section 99(1) (a), (b), (c) or (d), the Authority has reason to believe that circumstances exist under which, if the person were a licensee, there would exist a ground on which the Authority may suspend or revoke its licence under section 95;
- 20 (c) the Authority suspends or revokes an individual in the Authority’s public register of representatives;
- (d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened, any  
25 provision of this Act;
- (e) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or  
30 dishonestly;
- (f) the person has an order for the payment of a civil penalty made against him by the court under section 232 or has entered into an agreement with the Authority to pay a civil penalty under section 232(5);

(g) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any regulated activity carried out by that person; or

5 (h) the person has been removed as an officer of a holder of a capital markets services licence under section 97(1)(h).

(2) A prohibition order made under subsection (1) may —

(a) prohibit the person from —

10 (i) performing any regulated activity, or performing such regulated activity in specified circumstances or capacities; or

15 (ii) taking part, directly or indirectly in the management of, acting as a director of, or becoming a substantial shareholder of, a holder of a capital markets services licence or a person exempt from the requirement to hold a capital markets services licence under sections 99(1)(a), (b), (c), (d), (f) or (g) or paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10);

20 whether permanently or for a specified period;

(b) include a provision allowing the person, subject to any condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances, or

25 that the order would otherwise prohibit him from doing.

(3) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

30 (4) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

### **Effect of prohibition orders**

**101B.** — (1) A person against whom a prohibition order is made shall comply with the prohibition order.

- 5 (2) No holder of a capital markets services licence or person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c), (d), (f) or (g) or paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) shall employ or otherwise deal with any person against whom a prohibition order has been made under section 101A to the extent that such employment or dealing is prohibited by the order.
- 10 (3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.
- 15 (4) Any holder of a capital markets services licence or person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c), (d), (f) or (g) or paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) which contravenes subsection (2) shall be  
20 guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

### **Variation or revocation of prohibition orders**

- 25 **101C.** — (1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.
- 30 (2) The Authority may vary or revoke a prohibition order under subsection (1) —
- (a) on its own initiative; or
  - (b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document or fee as may be prescribed.

- (3) The Authority shall not vary a prohibition order made against a person under subsection (2) (a) without giving the person an opportunity to be heard.
- (4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2) (a) may, within 30 days of the decision, appeal in writing to the Minister.

### **Date of effect of prohibition orders**

**101D.** —(1) A prohibition order, or any variation or revocation of a prohibition order, shall take effect on a date as specified in the order by the Authority.

(2) The issue of a prohibition order shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence or the issue of the prohibition order, as the case may be; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.”.

### **Repeal of sections 117, 118, 120, 122, 124, 125, 126, 127, 128, 129 and Division 1 of Part VII**

**36.** Sections 117, 118, 120, 122, 124, 125, 126, 127, 128, 129 and Division 1 of Part VII of the principal Act are repealed.

### **Repeal and re-enactment of Divisions 2 and 3 and new Divisions 4 and 5 of Part VII**

**37.** Divisions 2 and 3 of Part VII of the principal Act are repealed and the following Divisions substituted therefore:

*“Division 2 – Disclosure of Interest in Corporation*

### **Application of this Division**

**137.**—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

- 5 (2) A reference to a corporation is a reference to —
- (a) a company all or any of the shares in which are listed for quotation on the official list of a securities exchange;
  - (b) a corporation (not being a collective investment scheme) all or any of the shares in which are listed for quotation on the  
10 official list of a securities exchange and such listing is a primary listing; or
  - (c) an entity that is for the time being declared by the Authority, by order published in the *Gazette*, to be a corporation for the purposes of this Division.

15 (3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to that stock.

20 (4) For the avoidance of doubt, a reference in the definition of “substantial shareholder” in section 2(1) to shares includes a reference to equity interests of an entity referred to in subsection (2)(c).

25 (5) For the purposes of determining whether a person has an interest in securities under this Division, subsection (6) of section 4 shall not apply and for the purposes of the application of subsection (5) of section 4, a person is an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned person;
- 30 (b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or
- (c) a corporation which is, or the directors of which are,  
35 accustomed or under an obligation, whether formal or

informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security.

(6) For the purposes of this Division, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time.

**Persons obliged to comply with Division and power of Authority to grant exemption or extension**

**137A.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed or constituted and whether carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or any class of persons from all or any of the provisions of this Division, subject to such conditions or restrictions as may be imposed by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Where a person is required to give a notice under this Division, the Authority may, on the application of such person, in its discretion, extend the time for giving the notice or allow such further extension of time.

*Subdivision (1) — Disclosure by Directors and Chief Executive Officer*

**Duty of director and chief executive officer to notify corporation of his interests**

**137B.**—(1) A director or chief executive officer of a corporation shall give notice in writing to the corporation of particulars of —

- (a) shares in that corporation, being shares held by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest;
- (b) debentures of the corporation which are held by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest;
- (c) rights or options of the director or chief executive officer, as the case may be, or of the director or chief executive officer, as the case may be, and another person or other persons, in respect of the acquisition or disposal of shares in the corporation;
- (d) contracts to which the director or chief executive officer, as the case may be, is a party, or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the corporation; and
- (e) any other securities which are held, whether directly or indirectly, by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest, as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after —

- (a) the date on which the director or chief executive officer, became a director or chief executive officer, as the case may be; or
- (b) the date on which the director or chief executive officer became a registered holder of, or acquired an interest in, the shares, debentures, units in collective investment schemes, rights, options or contracts, or other securities,

whichever last occurs.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) In this section —

(a) “real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of which units are listed for quotation on a securities exchange; and

(b) a reference to a person who holds or acquires shares, debentures or units in collective investment schemes, or an interest in shares, debentures or units in collective investment schemes, includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or unit in a collective investment scheme, or an interest in a share, debenture or unit in a collective investment scheme.

(5) For the purposes of this section, an interest of a member of a director’s or chief executive officer’s family shall be treated as an interest of the director or chief executive officer of the corporation and the words “member of a director’s or chief executive officer’s family” shall include his –

(a) spouse; and

(b) son, adopted son, step-son, daughter, adopted daughter and step-daughter, who is below the age of 18 years.

**Duty of director or chief executive officer to notify corporation of change in interests**

**137C.**—(1) Where there is a change in the particulars referred to in section 137B(1) of which notice has or should have been given to the corporation, the director or chief executive officer, as the case may be, shall give notice in writing to the corporation within 2 business days after he becomes aware of such change.

(2) The first-mentioned notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) The provisions of section 137B(4) and (5) shall apply to this section with such modifications and qualifications as may be necessary.

### **Penalties under this Subdivision**

**137D.**—(1) Subject to subsections (2) and (3), any director or chief executive officer of a corporation who –

(a) contravenes section 137B(1), (2) or (3) or 137C(1) or (2); or

(b) in purported compliance with section 137B(3) or 137C(2), makes to the corporation a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Where –

(a) any contravention by a director or chief executive officer of a corporation of section 137B(1), (2) or (3) or 137C(1) or (2) is committed intentionally or recklessly; or

(b) in purported compliance with section 137B(3) or 137C(2), a director or chief executive officer of a corporation intentionally or recklessly makes to the corporation a statement which is false or misleading in a material particular,

such director or chief executive officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) No proceedings under this section shall be instituted against a director or chief executive officer for an offence in respect of a contravention of section 137B or 137C after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

### *Subdivision (2) — Disclosure by Substantial Shareholders*

### **Duty of substantial shareholder to notify corporation of his interests**

**137E.**—(1) A person who is a substantial shareholder in a corporation shall give notice in writing to the corporation of particulars of the voting shares in the corporation in which he has an interest or interests or any other securities in which he has an interest

and the nature and extent of that interest as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after the person becomes aware that he is a substantial shareholder.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

### **Duty of substantial shareholder to notify corporation of change in interests**

**137F.**—(1) Where there is a change in the percentage level of —

- (a) the interest or interests of a substantial shareholder in a corporation in voting shares in the corporation; or
- (b) any other securities in which a substantial shareholder has an interest as the Authority may prescribe for the purposes of the disclosure under section 137E,

the substantial shareholder shall give notice in writing to the corporation within 2 business days after he becomes aware of such a change.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

- (a) all the voting shares (excluding treasury shares) in the corporation; or

(b) where the share capital of the corporation is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

**Duty of person who ceases to be substantial shareholder to notify corporation**

**137G.**—(1) A person who ceases to be a substantial shareholder in a corporation shall give notice in writing to the corporation within 2 business days of the date on which he becomes aware that he has ceased to be a substantial shareholder.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

**Beneficial owner to ensure notification by person who holds, acquires or disposes securities on his behalf**

**137H.**—Where a person authorises another person to hold, acquire or dispose of, on his behalf, securities or interests in securities of a corporation, he shall ensure that the second-mentioned person notifies him immediately of such acquisitions or disposals of securities or interest in securities effected by the second-mentioned person which will or may give rise to any duty to give notice under this Subdivision.

**Notification by person who holds, acquires or disposes of shares for benefit of another person**

**137I.**—Where a person holds securities in a corporation, being securities in which another person has an interest, he shall give to the second-mentioned person a notice, in such form as the Authority may prescribe, as soon as possible and in any case, no later than 2 business days after becoming the holder of the securities or after acquiring or disposing the securities.

**Corporation to keep register of substantial shareholders**

**137J.**—(1) A corporation shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice under section 137E; and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 137F or 137G, the information given in that notice.

(2) A corporation shall keep the register referred to in subsection (1) at its registered office or, if the corporation does not have a registered office, at its principal place of business in Singapore and shall be open for inspection by a member of the corporation without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the corporation requires.

(3) A person may request the corporation to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the corporation requires for every page or part thereof required to be copied and the corporation shall send the copy to that person, within 14 days after the day on which the request is received by the corporation.

(4) The Authority may at any time in writing require the corporation to furnish it with a copy of the register or any part of the register and the corporation shall furnish the copy within 7 days after the day on which the requirement is received by the corporation.

(5) Any corporation which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in the case of a continuing offence to a further fine of \$5,000 for every day during which the offence continues after conviction.

### **Penalties under this Subdivision**

**137K.**—(1) Subject to subsections (2) and (3), a person who –

(a) contravenes section 137E(1), (2) or (3), 137F(1) or (2), 137G(1) or (2), 137H or 137I; or

(b) in purported compliance with 137E(3), 137F(2), 137G(2) or 137I, makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Where –

(a) any contravention by a person of section 137E(1), (2) or (3), 137F(1) or (2), 137G(1) or (2), 137H or 137I is committed intentionally or recklessly; or

5 (b) in purported compliance with 137E(3), 137F(2), 137G(2) or 137I, a person intentionally or recklessly makes a statement which is false or misleading in a material particular,

10 such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

15 (3) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of section 137E, 137F, 137G, 137H or 137I after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

### **Powers of Court with respect to non-compliance by substantial shareholders**

20 **137L.**—(1) Where a person is a substantial shareholder, or at any time after [date of operation] has been a substantial shareholder in a corporation and has failed to comply with section 137E, 137F or 137G, the Court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

25 (a) an order restraining the substantial shareholder from disposing of any interest in shares in the corporation in which he is or has been a substantial shareholder;

(b) an order restraining a person who is, or is entitled to be the holder of the shares referred to in paragraph (a) from disposing of any interest in those shares;

30 (c) an order restraining the exercise of any voting or other rights attached to any share in the corporation in which the substantial shareholder has or has had an interest;

(d) an order directing the corporation not to make payment, or to defer making payment, of any sum due from the

corporation in respect of any share in which the substantial shareholder has or has had an interest;

5 (e) an order directing the sale of all or any of the shares in the corporation in which the substantial shareholder has or has had an interest;

(f) an order directing the corporation not to register the transfer or transmission of specified shares;

10 (g) an order that any exercise of the voting or other rights attached to specified shares in the corporation in which the substantial shareholder has or has had an interest be disregarded;

15 (h) for the purposes of securing compliance with any other order made under this section, an order directing the corporation or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

20 (3) An order made under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

25 (4) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the Authority may make a further application to the Court for such further direction as the Court may think fit to order.

30 (5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

35 (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or

mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

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

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

**Power of corporation to require disclosure of beneficial interest in its voting shares**

**137M.**—(1) Any corporation may by notice in writing require any member of the corporation within such reasonable time as is specified in the notice –

(a) to inform it whether he holds any voting shares in the corporation as beneficial owner or as trustee ; and

(b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where a corporation is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in a corporation, the corporation may by notice in writing require that other person within such reasonable time as is specified in the notice -

(a) to inform it whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

5 (3) Any corporation to which this section applies may by notice in writing require any member of the corporation to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the corporation held by him are the subject of an agreement or arrangement under which  
10 another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) The notice referred to in subsection (1) or (3) shall include such information and matters as may be prescribed by the Authority, and  
15 the delivery of such notice shall comply with such other requirements as may be prescribed by the Authority.

(5) Whenever a corporation receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the corporation, it shall be  
20 under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 137J –

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in pursuance of the requirement.

25 (6) Section 137J shall apply in relation to the part of the register referred to in subsection (5) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (5).

(7) Subject to subsections (8), (9) and (10), any person who –

30 (a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice, makes any statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

35 (8) Where –

(a) any failure by a person to comply with a notice under this section is committed intentionally or recklessly; or

(b) in purported compliance with such a notice, a person intentionally or recklessly makes any statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(9) No proceedings under this section shall be instituted against a person for an offence under this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that offence.

(10) A person shall not be guilty of an offence under this section if he proves that the information in question was already in the possession of the corporation or that the requirement to give it was for any other reason frivolous or vexatious.

(11) For the purposes of this section, “member” means –

(a) in relation to a company, a person referred to as a member in section 19(6) of the Companies Act (Cap. 50); and

(b) in relation to a corporation (other than a company), such equivalent person.

### *Subdivision (3) — Disclosure by Corporation*

#### **Duty of corporation to make disclosure**

**137N.**—(1) Where a corporation all or any of the shares in which are listed for quotation on the official list of a securities exchange has been notified in writing by a director, chief executive officer or substantial shareholder in pursuance of a requirement imposed on him under section 137B, 137C, 137E, 137F or 137G, as the case may be, the corporation shall announce or otherwise disseminate the information stated in the notification to the securities market operated by the securities exchange as soon as possible and in any case, no later than the end of the following business day, upon receipt of the notification from the director, chief executive officer or substantial shareholder, as the case may be.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) Subject to subsection (4) and (5), any corporation –

5 (a) that contravenes subsection (1) or (2); or

(b) in purported compliance with subsection (2), makes a statement which is false or misleading in a material particular,

10 the corporation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4) Where any contravention by a corporation of this section is committed intentionally or recklessly, or a statement made by a corporation is false or misleading in a material particular and such statement is made intentionally or recklessly, the corporation and every director who intentionally or recklessly contravenes or permits or authorizes the contravention of this section or permits the making of the false or misleading statement, as the case may be, shall be guilty of an offence and –

20 (a) in the case of the corporation, shall be liable on conviction to a fine not exceeding \$250,000; and

(b) in the case of the director, shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

25 (5) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

*Division 3 – Disclosure of Interest in Business Trust and interests in shares of Trustee-Manager*

30 **Application of this Division**

**137O.**—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a registered business trust is a reference to a registered business trust all or any of which units are listed for quotation on the official list of a securities exchange.

5 (3) A reference to a recognised business trust is a reference to a recognised business trust all or any of which units are listed for quotation on the official list of a securities exchange and such listing is a primary listing.

10 (4) For the purposes of determining whether a person has an interest in securities under this Division, subsection (6) of section 4 shall not apply and for the purposes of the application of subsection (5) of section 4, a person is an associate of another person if the first-mentioned person is —

(a) a subsidiary of the second-mentioned person;

15 (b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or

20 (c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security.

25 (5) For the purposes of this Division, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time.

**Persons obliged to comply with Division and power of Authority to grant exemption or extension**

30 **137P.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed or constituted and whether carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or any class of persons from all or any of the provisions of this Division, subject to such conditions or restrictions as may be imposed by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Where a person is required to give a notice under this Division, the Authority may, on the application of such person, in its discretion, extend the time for giving the notice or allow such further extension of time.

*Subdivision (1) — Disclosure by Substantial Unitholders*

**Duty of substantial unitholders to notify trustee-manager of registered business trust or recognised business trust**

**137Q.**—(1) In the case of a registered business trust or recognised business trust, Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —

- (a) references to the corporation to which notification should be given were references to the trustee-manager of the registered business trust or recognised business trust, as the case may be;
- (b) references to shares of the corporation were references to units in the registered business trust or recognised business trust, as the case may be; and
- (c) references to a substantial shareholder were references to a substantial unitholder of the registered business trust or recognised business trust, as the case may be,

and such person shall comply with those provisions accordingly.

(2) Subject to subsections (3) and (4), any person to whom subsection (1) applies who —

(a) fails to comply with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M); or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M), makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(3) Where –

(a) any non-compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) by a person to whom subsection (1) applies is committed intentionally or recklessly; or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137L and 137M), a person intentionally or recklessly makes a statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) No proceedings under this section shall be instituted against a person to whom subsection (1) applies for an offence in respect of a non-compliance of any provision of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that non-compliance.

#### **Trustee-manager to keep register of substantial unitholders**

**137R.**—(1) The trustee-manager of a registered business trust or recognised business trust to whom section 137Q(1) applies shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice under section 137E (with such modifications and qualifications as provided for under section 137Q); and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 137F or 137G (with such modifications and qualifications as provided for under section 137Q), the information given in that notice.

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(2) The trustee-manager of a registered business trust or recognised business trust shall keep the register referred to in subsection (1) at its registered office, or, if the trustee-manager does not have a registered office, at its principal place of business in Singapore and shall be open for inspection by a unitholder of the registered business trust or recognised business trust without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee-manager requires.

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(3) A person may request the trustee-manager of a registered business trust or recognised business trust to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee-manager requires for every page or part thereof required to trustee-manager be copied and the trustee-manager shall send the copy to that person, within 14 days after the day on which the request is received by the trustee-manager.

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(4) The Authority may at any time in writing require the trustee-manager of a registered business trust or recognised business trust to furnish it with a copy of the register or any part of the register and the trustee-manager shall furnish the copy within 7 days after the day on which the requirement is received by the trustee-manager.

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(5) The trustee-manager of a registered business trust or recognised business trust which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in the case of a continuing offence to a further fine of \$5,000 for every day during which the offence continues after conviction.

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### **Powers of Court with respect to non-compliance by substantial unitholders**

**137S.**—(1) Where a person is a substantial unitholder, or at any time after [date of operation] has been a substantial unitholder in a registered business trust or recognized business trust to whom section 137Q(1) applies and has contravened section 137E, 137F or 137G

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(with such modifications and qualifications as provided for under section 137Q), the Court may, on the application of the Authority, whether or not that contravention still continues, make one or more of the following orders:

- 5           (a) an order restraining the substantial unitholder from disposing of any interest in units in the registered business trust or recognized business trust in which he is or has been a substantial unitholder;
- 10           (b) an order restraining a person who is, or is entitled to be the holder of the units referred to in paragraph (a) from disposing of any interest in those units;
- 15           (c) an order restraining the exercise of any voting or other rights attached to any unit in the registered business trust or recognized business trust in which the substantial unitholder has or has had an interest;
- 20           (d) an order directing the trustee-manager of the registered business trust or recognized business trust not to make payment, or to defer making payment, of any sum due from the registered business trust or recognised business trust, as the case may be, in respect of any unit in which the substantial unitholder has or has had an interest;
- 25           (e) an order directing the sale of all or any of the units in the registered business trust or recognized business trust in which the substantial unitholder has or has had an interest;
- 30           (f) an order directing the trustee-manager of the registered business trust or recognized business trust not to register the transfer or transmission of specified units;
- 35           (g) an order that any exercise of the voting or other rights attached to specified units in the registered business trust or recognized business trust in which the substantial unitholder has or has had an interest be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the trustee-manager of the registered business trust or recognized business trust or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a unit may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court  
5 thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder in the registered business trust or recognized business trust, as the case may be.

(4) The Court may direct that, where a unit is not sold in accordance  
10 with an order of the Court under this section, the Authority may make a further application to the Court for such further direction as the Court may think fit to order.

(5) The Court shall, before making an order under this section and  
15 in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial unitholder to comply as  
20 mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct  
25 that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

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

(9) Any person who contravenes an order made under this section  
35 that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

**Power of trustee-manager to require disclosure of beneficial interest in voting units**

5 **137T.**—(1) The trustee-manager of a registered business trust or recognised business trust may by notice in writing require any unitholder of the registered business trust or recognised business trust, as the case may be, within such reasonable time as is specified in the notice –

10 (a) to inform it whether he holds any voting units in the registered business trust or recognised business trust, as the case may be, as beneficial owner or as trustee; and

15 (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where the trustee-manager of a registered business trust or recognised business trust is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in a registered business trust or recognised business trust, as the case may be, the trustee-manager may by notice in writing require that other person within such reasonable time as is specified in the notice -

25 (a) to inform it whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

30 (3) The trustee-manager of a registered business trust or recognised business trust to whom this section applies may by notice in writing require any unitholder of the registered business trust or recognised business trust, as the case may be, to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the registered business trust or recognised business trust, as the case may be, held by him are

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the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

5 (4) The notice referred to in subsection (1) or (3) shall include such information and matters as may be prescribed by the Authority, and the delivery of such notice shall comply with such other requirements as may be prescribed by the Authority.

10 (5) Whenever the trustee-manager of a registered business trust or recognised business trust receives information from a person in pursuance of a requirement imposed on him under this section with respect to units held by a unitholder of the registered business trust or recognised business trust, as the case may be, it shall be under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137R –

15 (a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in pursuance of the requirement.

20 (6) Section 137R shall apply in relation to the part of the register referred to in subsection (5) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (5).

(7) Subject to subsections (8), (9) and (10), any person who –

(a) fails to comply with a notice under this section; or

25 (b) in purported compliance with such a notice, makes any statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(8) Where –

30 (a) any failure by a person to comply with a notice under this section is committed intentionally or recklessly; or

(b) in purported compliance with such a notice, a person intentionally or recklessly makes any statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

5 (9) No proceedings under this section shall be instituted against a person for an offence under this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that offence.

10 (10) A person shall not be guilty of an offence under this section if he proves that the information in question was already in the possession of the trustee-manager or that the requirement to give it was for any other reason frivolous or vexatious.

*Subdivision (2) — Disclosure by Directors and Chief Executive Officer of Trustee-Manager*

15 **Duty of director and chief executive officer of trustee-manager to notify his interests**

**137U.**—(1) A director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust shall give notice in writing to the trustee-manager of particulars of —

- 20 (a) units or derivatives of units in the registered business trust or recognised business trust, being units or derivatives in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest; and
- 25 (b) debentures or units of debentures of the registered business trust or recognised business trust in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest; and
- 30 (c) any other securities which are held, whether directly or indirectly, by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest, as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after —

(a) the date on which the director or chief executive officer became a director or chief executive officer, as the case may be, of the trustee-manager of a registered business trust or recognised business trust, as the case may be; or

5 (b) the date on which the director or chief executive officer became a unitholder of the registered business trust or recognised business trust, as the case may be, or acquired an interest in the units or derivatives of units in, debentures or units of debentures of, or other securities of, the registered  
10 business trust or recognised business trust, as the case may be,

whichever last occurs.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and  
15 complies with such prescribed form.

(4) For the purposes of this section, an interest of a member of a director's or chief executive officer's family shall be treated as an interest of the director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust  
20 and the words "member of a director's or chief executive officer's family" shall include his –

(a) spouse; and

(b) son, adopted son, step-son, daughter, adopted daughter and step-daughter, who is below the age of 18 years.

25 **Duty of director or chief executive officer of trustee-manager to notify trustee-manager of change in interests**

**137V.**—(1) Where there is a change in the information and matters referred to in section 137U(1) of which notice has or should have been given to the trustee-manager of a registered business trust or  
30 recognised business trust, the director or chief executive officer of the trustee-manager shall give notice in writing to the trustee-manager within 2 business days after he becomes aware of such a change.

(2) The first-mentioned notice referred to in subsection (1) shall include such information and matters as may be prescribed by the  
35 Authority, and complies with such prescribed form.

(3) The provision of section 137U(4) shall apply to this section with such modifications and qualifications as may be necessary.

**Penalties under this Subdivision**

5 **137W.**—(1) Subject to subsections (2) and (3), any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who –

(a) contravenes section 137U(1), (2) or (3) or 137V(1) or (2); or

10 (b) in purported compliance with section 137U(3) or 137V(2), makes to the trustee-manager a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Where –

15 (a) any contravention by a director or chief executive officer of the trustee-manager of a registered business trust or recognized business trust of section 137U(1), (2) or (3) or 137V(1) or (2) is committed intentionally or recklessly; or

20 (b) in purported compliance with section 137U(3) or 137V(2), a director or chief executive officer of the trustee-manager of a registered business trust or recognized business trust intentionally or recklessly makes to the trustee-manager a statement which is false or misleading in a material particular,

25 such director or chief executive officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

30 (3) No proceedings under this section shall be instituted against a director or chief executive officer for an offence in respect of a contravention of section 137U or 137V after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

*Subdivision (3) — Disclosure by Shareholders of Trustee-Manager*

**Duty of shareholder to notify trustee-manager of his interests or change in interests**

5 **137X.**—(1) Where there is a change in the percentage level of the interest or interests of a shareholder of the trustee-manager of a registered business trust or recognised business trust in voting shares in the trustee-manager, and the interest or interests of the shareholder in voting shares in the trustee-manager following such a change reaches or crosses (either above or below) the percentage point of 15%, 30%, 50% or 75%, the shareholder shall give notice in writing to the trustee-manager within 2 business days after he becomes aware of his interests or the change in his interests.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

15 (3) In subsection (1), “percentage level”, in relation to a shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

(a) all the voting shares (excluding treasury shares) in the trustee-manager of a registered business trust or recognized business trust; or

25 (b) where the share capital of the trustee-manager of a registered business trust or recognized business trust is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

30 **Penalties under this Subdivision**

**137Y.**—(1) Subject to subsections (2) and (3), a person who –

(a) contravenes section 137X(1) or (2); or

(b) in purported compliance with 137X, makes to the trustee-manager of a registered business trust or recognised business

trust a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

5 (2) Where –

(a) any contravention by a person of section 137X(1) or (2) is committed intentionally or recklessly; or

10 (b) in purported compliance with 137X, a person intentionally or recklessly makes to the trustee-manager of a registered business trust or recognised business trust a statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

15 (3) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of section 137X after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

*Subdivision (4) — Disclosure by Trustee-Manager*

20 **Duty of trustee-manager of business trust to make disclosure**

**137Z.**—(1) Where the trustee-manager of a registered business trust or recognised business trust –

25 (a) acquires, or disposes of, interests in units or derivatives of units in the registered business trust or recognised business trust; or

(b) has been notified in writing by a substantial unitholder or a director, chief executive officer or shareholder of the trustee-manager in pursuance of a requirement imposed on him under section 137X,

30 the trustee-manager shall announce or otherwise disseminate the information stated in the notification to the securities market operated by the securities exchange as soon as possible and in any case, no later than the end of the following business day, upon

receipt of the notification from the substantial unitholder, director, chief executive officer or shareholder, as the case may be.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority and complies with such prescribed form.

(3) Subject to subsections (4) and (5), the trustee-manager of a registered business trust or recognised business trust that contravenes subsection (1) or (2), or in purported compliance with subsection (2), makes a statement which is false or misleading in a material particular, the trustee-manager shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4) Where any contravention by the trustee-manager of a registered business trust or recognised business trust of subsection (1) or (2) is committed intentionally or recklessly, or a statement made by the trustee-manager is false or misleading in a material particular and such statement is made intentionally or recklessly, the trustee-manager and every director of the trustee-manager who intentionally or recklessly contravenes or permits or authorizes the contravention of this section or permits the making of the false or misleading statement, as the case may be, shall be guilty of an offence and –

(a) in the case of the trustee-manager, shall be liable on conviction to a fine not exceeding \$250,000; and

(b) in the case of the director, shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

*Division 4 — Disclosure of interests in Real Estate Investment Trust and interests in shares of Responsible Person*

**Application of this Division**

**137ZA.**—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) For the purposes of this Division –

(a) “real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of which units are listed for quotation on the official list of a securities exchange; and

(b) “trustee” in relation to a real estate investment scheme, means the trustee approved under section 289 for the scheme.

(3) For the purposes of determining whether a person has an interest in securities under this Division, subsection (6) of section 4 shall not apply and for the purposes of the application of subsection (5) of section 4, a person is an associate of another person if the first-mentioned person is —

(a) a subsidiary of the second-mentioned person;

(b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security.

(4) For the purposes of this Division, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time.

### **Persons obliged to comply with Division and power of Authority to grant exemption or extension**

**137ZB.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed or constituted and whether carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or any class of persons from all or any of the provisions of this Division, subject to such conditions or restrictions as may be imposed by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Where a person is required to give a notice under this Division, the Authority may, on the application of such person, in its discretion, extend the time for giving the notice or allow such further extension of time.

*Subdivision (1) — Disclosure by Substantial Unitholders*

**Duty of substantial unitholders to notify trustee and responsible person for real estate investment trust**

**137ZC.**—(1) In the case of a real estate investment trust, Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —

(a) references to the corporation to which notification should be given were references to —

- (i) the trustee of the real estate investment trust; and
- (ii) the responsible person for the real estate investment trust;

(b) references to shares in the corporation were references to units in the real estate investment trust; and

(c) references to a substantial shareholder were references to a substantial unitholder of the real estate investment trust,

and such person shall comply with those provisions accordingly.

(2) Subject to subsections (3) and (4), any person to whom subsection (1) applies who –

(a) fails to comply with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M); or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M), makes a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(3) Where –

(a) any non-compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) by a person to whom subsection (1) applies is committed intentionally or recklessly; or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137L and 137M), a person intentionally or recklessly makes a statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) No proceedings under this section shall be instituted against a person to whom subsection (1) applies for an offence in respect of a non-compliance of any provision of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that non-compliance.

### **Trustee for real estate investment trust to keep register of substantial unitholders**

**137ZD.**—(1) The trustee for a real estate investment trust to whom section 137ZC(1) applies shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice under section 137E (with such modifications and qualifications as provided for under section 137ZC); and

5 (b) against each name so entered, the information given in the notice and, where it receives a notice under section 137F or 137G (with such modifications and qualifications as provided for under section 137ZC), the information given in that notice.

10 (2) The trustee for a real estate investment trust shall keep the register referred to in subsection (1) at its registered office, or, if the trustee does not have a registered office, at its principal place of business in Singapore and shall be open for inspection by a unitholder of the trust without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee requires.

15 (3) A person may request the trustee for a real estate investment trust to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee requires for every page or part thereof required to trustee be copied and the trustee shall send the copy to that person, within 14 days after the day on which the request is received by the trustee.

20 (4) The Authority may at any time in writing require the trustee for a real estate investment trust to furnish it with a copy of the register or any part of the register and the trustee shall furnish the copy within 7 days after the day on which the requirement is received by the trustee.

25 (5) The trustee for a real estate investment trust which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in the case of a continuing offence to a further fine of \$5,000 for every day during which the offence continues after conviction.

### **Powers of Court with respect to non-compliance by substantial unitholders**

35 **137ZE.**—(1) Where a person is a substantial unitholder, or at any time after [date of operation] has been a substantial unitholder in a

real estate investment trust to whom section 137ZC(1) applies and has contravened section 137E, 137F or 137G (with such modifications and qualifications as provided for under section 137ZC), the Court may, on the application of the Authority, whether  
5 or not that contravention still continues, make one or more of the following orders:

- 10 (a) an order restraining the substantial unitholder from disposing of any interest in units in the real estate investment trust in which he is or has been a substantial unitholder;
- (b) an order restraining a person who is, or is entitled to be the holder of units referred to in paragraph (a) from disposing of any interest in those units;
- 15 (c) an order restraining the exercise of any voting or other rights attached to any unit in the real estate investment trust in which the substantial unitholder has or has had an interest;
- (d) an order directing the trustee for the real estate investment trust not to make payment, or to defer making payment, of any sum due from the trust in respect of any unit in which  
20 the substantial unitholder has or has had an interest;
- (e) an order directing the sale of all or any of the units in the real estate investment trust in which the substantial unitholder has or has had an interest;
- 25 (f) an order directing the trustee for the real estate investment trust not to register the transfer or transmission of specified units;
- (g) an order that any exercise of the voting or other rights attached to specified units in the real estate investment trust in which the substantial unitholder has or has had an interest  
30 be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the responsible person or the trustee for the real estate investment trust or any other person to do or refrain from  
35 doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a unit may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court  
5 thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder in the real estate investment trust.

(4) The Court may direct that, where a unit is not sold in accordance  
10 with an order of the Court under this section, the Authority may make a further application to the Court for such further direction as the Court may think fit to order.

(5) The Court shall, before making an order under this section and  
15 in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than  
an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial unitholder to comply as  
20 mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct  
25 that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

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

(9) Any person who contravenes an order made under this section  
30 that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the Court in  
35 relation to the punishment of contempt of the Court.

**Power of trustee for real estate investment trust to require disclosure of beneficial interest in voting units**

5 **137ZF.**—(1) The trustee for a real estate investment trust may by notice in writing require any unitholder of the trust within such reasonable time as is specified in the notice –

(a) to inform it whether he holds any voting units in the trust as beneficial owner or as trustee; and

10 (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

15 (2) Where the trustee for a real estate investment trust is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the trust, the trustee may by notice in writing require that other person within such reasonable time as is specified in the notice -

(a) to inform it whether he holds that interest as beneficial owner or as trustee; and

20 (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

25 (3) The trustee for a real estate investment trust to which this section applies may by notice in writing require any unitholder of the trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the trust held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement  
30 and the parties to it.

(4) The notice referred to in subsections (1) and (3) shall include such information and matters as may be prescribed by the Authority, and the delivery of such notice shall comply with such other  
35 requirements as may be prescribed by the Authority.

(5) Whenever the trustee for a real estate investment trust receives information from a person in pursuance of a requirement imposed on him under this section with respect to units held by a unitholder of the trust, it shall be under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137ZD –

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in pursuance of the requirement.

(6) Section 137ZD shall apply in relation to the part of the register referred to in subsection (5) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (5).

(7) Subject to subsections (8), (9) and (10), any person who –

(a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice, makes any statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(8) Where –

(a) any failure by a person to comply with a notice under this section is committed intentionally or recklessly; or

(b) in purported compliance with such a notice, a person intentionally or recklessly makes any statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(9) No proceedings under this section shall be instituted against a person for an offence under this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that offence.

(10) A person shall not be guilty of an offence under this section if he proves that the information in question was already in the possession of the trustee for a real estate investment trust that the requirement to give it was for any other reason frivolous or vexatious.

5                    *Subdivision (2) — Disclosure by Directors and Chief Executive Officer of Responsible Person*

**Duty of director and chief executive officer of responsible person for real estate investment trust to notify his interests**

10            **137ZG.**—(1) A director or chief executive officer of the responsible person for a real estate investment trust shall give notice in writing to the responsible person of particulars of —

- (a) units in the trust, being units in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest;
- 15            (b) debentures or units of debentures of the trust in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest; and
- 20            (c) any other securities which are held, whether directly or indirectly, by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest, as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after —

- 25            (a) the date on which the director or chief executive officer became a director or chief executive officer, as the case may be, of the responsible person for a real estate investment trust; or
- 30            (b) the date on which the director or chief executive officer became a unitholder of the real estate investment trust or acquired an interest in the units in, or debentures or units of debentures of, the trust, as the case may be,

whichever last occurs.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) For the purposes of this section, an interest of a member of a director's or chief executive officer's family shall be treated as an interest of the director or chief executive officer of the responsible person of a real estate investment trust and the words "member of a director's or chief executive officer's family" shall include his –

(a) spouse; and

(b) son, adopted son, step-son, daughter, adopted daughter and step-daughter, who is below the age of 18 years.

**Duty of director or chief executive officer of responsible person for real estate investment trust to notify responsible person of change in interests**

**137ZH.**—(1) Where there is a change in the information and matters referred to in section 137ZG(1) of which notice has or should have been given to the responsible person for a real estate investment trust, the director or chief executive officer of the responsible person shall give notice in writing to the responsible person within 2 business days after he becomes aware of such a change.

(2) The first-mentioned notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) The provision of section 137ZG(4) shall apply to this section with such modifications and qualifications as may be necessary.

**Penalties under this Subdivision**

**137ZI.**—(1) Subject to subsections (2) and (3), any director or chief executive officer of the responsible person for a real estate investment trust who –

(a) contravenes section 137ZG(1), (2) or (3) or 137ZH(1) or (2);  
or

(b) in purported compliance with section 137ZG(3) or 137ZH(2), makes to the responsible person a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Where –

(a) any contravention by a director or chief executive officer of the responsible person for a real estate investment trust of section 137ZG(1), (2) or (3) or 137ZH(1) or (2) is committed intentionally or recklessly; or

(b) in purported compliance with section 137U(3) or 137V(2), a director or chief executive officer of the responsible person for a real estate investment trust intentionally or recklessly makes to the responsible person a statement which is false or misleading in a material particular,

such director or chief executive officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) No proceedings under this section shall be instituted against a director or chief executive officer for an offence in respect of a contravention of section 137ZG or 137ZH after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

*Subdivision (3) — Disclosure by Shareholders of Responsible Person*

**Duty of shareholder to notify responsible person for real estate investment trust of his interests or change in interests**

**137ZJ.**—(1) Where there is a change in the percentage level of the interest or interests of a shareholder of the responsible person for a real estate investment trust in voting shares in the responsible person, and the interest or interests of the shareholder in voting shares in the responsible person following such a change reaches or crosses (either above or below) the percentage point of 15%, 30%, 50% or 75%, the shareholder shall give notice in writing to the responsible person within 2 business days after he becomes aware of his interests or the change in his interests.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) In subsection (1), “percentage level”, in relation to a shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

(a) all the voting shares (excluding treasury shares) in the responsible person for a real estate investment trust; or

(b) where the share capital of the responsible person for a real estate investment trust is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

#### **Penalties under this Subdivision**

**137ZK.**—(1) Subject to subsections (2) and (3), a person who –

(a) contravenes section 137ZJ(1) or (2); or

(b) in purported compliance with 137ZJ, makes to the responsible person for a real estate investment trust a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Where –

(a) any contravention by a person of section 137ZJ(1) or (2) is committed intentionally or recklessly; or

(b) in purported compliance with 137ZJ, a person intentionally or recklessly makes to the responsible person of a real estate investment trust a statement which is false or misleading in a material particular,

such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of section 137ZJ after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

5                                    *Subdivision (4) — Disclosure by Responsible Person*

**Duty of responsible person for real estate investment trust to make disclosure**

**137ZL.**—(1) Where the responsible person for a real estate investment trust –

- 10                    (a) acquires, or disposes of, interests in units in the real estate investment trust; or
- (b) has been notified in writing by a substantial unitholder or a director, chief executive officer or shareholder of the responsible person in pursuance of a requirement imposed
- 15                    on him under section 137ZG,

                      the responsible person shall announce or otherwise disseminate the information stated in the notification to the securities market operated by the securities exchange as soon as possible and in any case, no later than the end of the following business day, upon receipt of the

20                    notification from the substantial unitholder, director, chief executive officer or shareholder, as the case may be.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

25                    (3) Subject to subsections (4) and (5), the responsible person for a real estate investment trust that contravenes subsection (1) or (2), or in purported compliance with subsection (2), makes a statement which is false or misleading in a material particular, the responsible person shall be guilty of an offence and shall be liable on conviction

30                    to a fine not exceeding \$25,000.

(4) Where any contravention by the responsible person for a real estate investment scheme of subsection (1) or (2) is committed intentionally or recklessly, or a statement made by the responsible person is false or misleading in a material particular and such

35                    statement is made intentionally or recklessly, the responsible person

and every director of the responsible person who intentionally or recklessly contravenes or permits or authorizes the contravention of this section or permits the making of the false or misleading statement, as the case may be, shall be guilty of an offence and –

- 5           (a) in the case of the responsible person, shall be liable on conviction to a fine not exceeding \$250,000; and
- (b) in the case of the director, shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.
- 10       (5) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

#### *Division 5 – Civil Liability*

#### 15       **Civil penalty**

**137ZM.** —(1) Whenever it appears to the Authority that any person has contravened any provision in Division 2, 3 or 4 of this Part intentionally or recklessly, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

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             (2) If the court is satisfied on a balance of probabilities that the person has contravened a provision as specified in accordance with subsection (1), the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

25

             (3) Notwithstanding subsection (2), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision referred to in subsection (1) and the order may be made on such terms as may be agreed between the Authority and the defendant

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             (4) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits

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referred to in subsection (2) for a contravention of any provision as specified in accordance with subsection (1).

(5) A civil penalty imposed under this section shall be payable to the Authority.

5 (6) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (3) or specified under the agreement referred to in subsection (4), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

10 (7) Any defence that is available to a person who is prosecuted for a contravention of any provision as specified in accordance with subsection (1), shall also be available to a defendant to an action under this section in respect of that contravention.

**Action under section 137ZM not to commence, etc., in certain situations**

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**137ZN.** —(1) An action under section 137ZM shall not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in Division 2, 3 or 4 of this Part.

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(2) An action under section 137ZM shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in Division 2, 3 or 4 of this Part, except where he has been acquitted on the ground of the withdrawal of the charge against him.

25

(3) An action under section 137ZM shall be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in Division 2, 3 or 4 of this Part, and may thereafter be continued only if —

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(a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or

(b) the charge against him in respect of that contravention has been withdrawn.

### **Jurisdiction of District Court**

**137ZO.** A District Court shall have jurisdiction to hear and determine any action under section 137ZM regardless of the monetary amount.

### **Rules of Court**

**137ZP.** — Rules of Court (Cap. 322, R 5) may be made —

(a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under section 137ZM; and

(b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.”.

### **Amendment of section 143**

**38.** Section 143 of the principal Act is amended by deleting the words “section 32” in subsection (1)(a) and substituting the words “sections 32, 34 or 81”.

### **Amendment of section 144**

**39.** Section 144 of the principal Act is amended by deleting the words “section 34” in subsection (1)(a) and substituting the words “sections 34 or 81”.

### **New section 150A**

**40.** The principal Act is amended by inserting, immediately after section 150, the following section:

#### **“Confidentiality of inspection reports**

**150A.** —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 150 in respect of any approved holding company, securities exchange, futures exchange, recognised market operator, person operating an exempt market, exempt market operator, designated clearing house, holder of a capital markets services licence, exempt person or representative under the inspection (referred to in this section as the inspected person), the report shall

not be disclosed by the inspected person, or any of its officer or auditor, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made -

(a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;

(b) by any officer or auditor of the inspected person to any other officer or auditor, solely in connection with the performance of their duties in that inspected person; or

(c) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2) (c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, or any of its officer or auditor and the inspected person, the officer or auditor, as the case may be, shall comply with such conditions and restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the inspected person.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he has as soon as practicable taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.

(6) Any person who contravenes subsection (1), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding 2 years or both.”.

5 **New section 152A**

**41.** The principal Act is amended by inserting, immediately after section 152, the following section:

**“Confidentiality of investigation reports**

10 **152A.** —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an investigation under section 152 in respect of any person under the investigation (referred to in this section as the investigated person), the report shall not be disclosed by the investigated person, or any of its officer or auditor, to any other person except in the circumstances provided under subsection (2).

15 (2) Disclosure of the report referred to in subsection (1) may be made -

20 (a) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that investigated person;

(b) by any officer or auditor of the investigated person to any other officer or auditor, solely in connection with the performance of their duties in that investigated person; or

25 (c) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2) (c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, or any of its officer or auditor and the investigated person, the officer or auditor, as the case may be, shall comply with such conditions and restrictions.

30 (4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the investigated person.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that —

- 5 (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- 10 (c) where the disclosure was made in an electronic form, he has as soon as practicable taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.
- 15 (6) Any person who contravenes subsection (1), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding 2 years or both.”.

### **Amendment of section 153**

- 20 **42.** Section 153 of the principal Act is amended by deleting the words “under this section” in subsection (2)(a) and substituting the words “in respect of any offence under section 162”.

### **New Division 4 of Part IX**

- 25 **43.** The principal Act is amended by inserting, immediately after Division 3 of Part IX, the following Division:

#### ***“Division 4 — Transfer of evidence***

#### **Evidence obtained by the Authority**

- 30 **168A.** – (1) Notwithstanding the provisions of any written law or any requirement imposed thereunder or any rule of law, any information obtained by the Authority pursuant to Part IX of this Act may be disclosed to the body known as the Commercial Affairs Department which is constituted as a department of the Singapore Police Force under the Police Force Act (Cap. 235) (referred to in this

section as the Commercial Affairs Department) and to the Public Prosecutor, if the Authority is satisfied that such information may -

- (a) enable the Commercial Affairs Department to investigate an alleged or suspected contravention of any provision under Part XII of this Act; or
- (b) enable the Public Prosecutor to bring or continue with any criminal proceedings against any person for a contravention of any provision of this Act.

(2) For the avoidance of doubt, any information disclosed under subsection (1) shall be admissible in criminal proceedings referred to in subsection (1)(b) if it complies with any requirement governing the admissibility of evidence under any other written law, except that it shall not be inadmissible by virtue only of the fact that such information was not obtained pursuant to an examination by a police officer.

#### **Evidence obtained by the Police**

**168B.** – (1) Notwithstanding the provisions of any written law or any requirement imposed thereunder or any rule of law, any information obtained by a police officer or a commercial affairs officer appointed under the Police Force Act (Cap. 235), pursuant to Chapters VI and XIII of the Criminal Procedure Code (Cap. 68), may be disclosed to the Authority if the Public Prosecutor is satisfied that such information may enable the Authority -

- (a) to enforce any provision of this Act or any written direction issued under this Act;
- (b) to investigate an alleged or suspected contravention of any provision of this Act or of any written direction issued under this Act; or
- (c) to exercise any of its powers or to perform any of its functions or duties under this Act, including but not limited to bringing an action in court under section 232 against any person to seek an order of civil penalty.

(2) For the avoidance of doubt, any information disclosed to the Authority under subsection (1) shall be admissible in any civil proceeding under this Act to which the Authority is, or is proposed to be, a party to, if it complies with any requirement governing the

admissibility of evidence under any other written law, except that it shall not be inadmissible by virtue only of the fact that such information was obtained pursuant to an examination by a police officer under section 121 of the Criminal Procedure Code (Cap. 68).”.

5 **Amendment of section 169**

44. Section 169 of the principal Act is amended by inserting, immediately after the definition of “material”, the following definitions:

10 ““parent entity”, in relation to a holder of a capital markets services licence, means an entity which is able to exercise a significant influence over the direction and management of the holder or which has a controlling interest in the holder;

15 “parent supervisory authority”, in relation to a holder of a capital markets services licence, means the supervisory authority which is responsible, under the laws of the country or territory where the holder of the capital markets services licence or parent entity is incorporated, formed or established, for supervising the holder’s or parent entity’s activities, as the case may be;”.

**New Division heading for Part X**

20 45. Part X of the principal Act is amended by inserting, immediately after section 169, the following Division heading:

*“DIVISION 1 – ASSISTANCE FOR SUPERVISION,  
INVESTIGATION AND ENFORCEMENT”.*

**Amendment of section 173**

25 46. Section 173 of the principal Act is amended by deleting the word “Part” in the section heading and substituting the word “Division”.

**New Division 2 of Part X**

47. The principal Act is amended by inserting, immediately after section 174, the following Division:

***“DIVISION 2 – ASSISTANCE FOR INSPECTION***

**Inspection in Singapore by parent supervisory authority**

5     **174A.**—(1) In relation to a holder of a capital markets services licence or its parent entity incorporated outside Singapore, a parent supervisory authority may, with the prior written approval of the Authority and under conditions of secrecy, conduct an inspection in Singapore of the books of the holder of the licence in Singapore in accordance with this section if the following conditions are satisfied:

10         (a) the inspection is required by the parent supervisory authority for the sole purpose of carrying out its supervisory functions;

(b) the parent supervisory authority —

15         (i) is prohibited by the laws applicable to the parent supervisory authority from disclosing information obtained by it in the course of the inspection to any other person; or

(ii) has given to the Authority such written undertaking, as to the confidentiality of the information obtained, as the Authority may determine; and

20         (c) the parent supervisory authority has given a written undertaking to the Authority to comply with such conditions as the Authority may impose under subsection (3).

25     (2) In deciding whether to grant its approval to a parent supervisory authority under subsection (1), the Authority may also have regard to the following:

(a) whether the parent supervisory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the parent supervisory authority for similar assistance;

30     (b) whether the parent supervisory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance the parent supervisory authority has requested for; and

(c) in the case of a parent supervisory authority of a parent entity, whether the parent entity carries out substantial operations in the jurisdiction of the parent supervisory authority.

5 (3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, require the parent supervisory authority to comply with conditions or restrictions relating to —

10 (a) the classes of information to which the parent supervisory authority shall or shall not have access in the course of the inspection;

(b) the conduct of the inspection;

(c) the use or disclosure of any information obtained in the course of the inspection; and

(d) such other matters as the Authority may determine.

15 (4) Subject to compliance by a parent supervisory authority with such conditions or restrictions as the Authority may impose under subsection (3), the holder of a capital markets services licence under inspection —

20 (a) shall afford the parent supervisory authority access to such books of the holder of the capital markets services licence under inspection, and provide such information (including information relating to the holder of a capital markets services licence's internal control systems) and facilities as may be required to conduct the inspection; and

25 (b) shall not be required to afford the parent supervisory authority access to its books or to provide information or facilities at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the holder of the capital markets services licence.  
30

35 (5) A parent supervisory authority may, with the prior written approval of the Authority request the auditors of the parent entity or the head office, as the case may be, of the holder of a capital markets services licence or appoint any person to conduct the inspection under subsection (1) and in such event, this section (other than this subsection) shall apply to the auditors or the person, as the case may

be, as if a reference to the parent supervisory authority or any official of the parent supervisory authority in this section includes a reference to the auditors or the person.

(6) Any holder of a capital markets services licence which refuses or neglects, without reasonable excuse, to afford access to any book or provide any information or facility as may be required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

### **Confidentiality of inspection reports**

**174B.** —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by a parent supervisory authority upon an inspection under section 174A in respect of any holder of a capital markets services licence, the report shall not be disclosed by the holder of the capital markets services licence, or any of its officer or auditor, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made -

(a) by the holder of a capital markets services licence to any officer or auditor of that holder solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that holder of a capital markets services licence;

(b) by any officer or auditor of the holder of a capital markets services licence to any other officer or auditor, solely in connection with the performance of their duties in that holder of a capital markets services licence;

(c) to the Authority if requested by the Authority, where the report has been produced by a parent supervisory authority;  
or

(d) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2) (d), the Authority may impose such conditions or restrictions as it thinks fit on the holder of a capital markets services licence, or any of its officer or auditor and the holder of the capital markets services

licence, the officer or auditor, as the case may be, shall comply with such requirements and restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the holder of a capital markets services licence.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he has as soon as practicable taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.

(6) Any person who contravenes subsection (1), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding 2 years or both.”.

#### **Amendment of section 186**

**48.** Section 186 of the principal Act is amended —

(a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph:

“(a) in the course of, or in connection with, dealing in securities, or trading of a futures contract, in respect of a transaction that is —

(i) traded or to be traded on an approved exchange;

- (ii) cleared or to be cleared by a designated clearing house; or
  - (iii) cleared or to be cleared by a clearing facility for an overseas futures exchange or overseas securities exchange which has a trading linkage with an approved exchange;”;
- 5
- (b) by inserting, immediately after the words “futures contracts” in subsection (2), the words “, in respect of a transaction that is –
    - (a) traded or to be traded on an approved exchange;
    - 10 (b) cleared or to be cleared by a designated clearing house; or
    - (c) cleared or to be cleared by a clearing facility for an overseas futures exchange or overseas securities exchange which has a trading linkage with an approved exchange;”;
- 15
- (c) by inserting, immediately after the words “futures contracts” in subsection (5), the words “, in respect of a transaction that is –
    - (a) traded or to be traded on an approved exchange;
    - (b) cleared or to be cleared by a designated clearing house; or
    - (c) cleared or to be cleared by a clearing facility for an overseas futures exchange or overseas securities exchange which has a trading linkage with an approved exchange;”.
- 20

#### **Amendment of section 196A**

- 49.** Section 196A of the principal Act is amended -
- (a) by deleting the word “or” at the end of subparagraph (ii) of paragraph (a) of the definition of “securities”;
  - 25 (b) by deleting the comma at the end of subparagraph (iii) of paragraph (a) of the definition of “securities” and inserting the word “; or”;
  - (c) by inserting, immediately after subparagraph (iii) of paragraph (a) of the definition of “securities”, the following subparagraph:
    - 30 “(iv) such other product or class of products as the Authority may prescribe as a security;”;
  - (d) by deleting the word “or” at the end of subparagraph (CC) of paragraph (a) of the definition of “securities”;

(e) by inserting the word “or” at the end of subparagraph (DD) of paragraph (a) of the definition of “securities” and inserting, immediately thereafter, the following subparagraph:

5 “(EE) such other product or class of products that would otherwise fall within subparagraphs (i) to (iii) as the Authority may prescribe as not being a security;”;

(f) by deleting the word “or” at the end of subparagraph (iii) of paragraph (b) of the definition of “securities”;

10 (g) by deleting the comma at the end of subparagraph (iv) of paragraph (b) of the definition of “securities” and inserting the word “; or”;

(h) by inserting, immediately after subparagraph (iv) of paragraph (b) of the definition of “securities”, the following subparagraph:

15 “(v) such other product or class of products as the Authority may prescribe as a security;”;

(i) by deleting the word “or” at the end of subparagraph (B) of paragraph (b) the definition of “securities”; and

20 (j) by deleting the word “and” at the end of subparagraph (C) of paragraph (b) of the definition of “securities” and substituting the word “or” and inserting, immediately thereafter, the following subparagraph:

“(D) such other product or class of products that would otherwise fall within subparagraphs (i) to (iv) as the Authority may prescribe as not being a security; and”.

#### 25 **Amendment of section 204**

**50.** Section 204 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after –

30 (a) a court has made an order against him for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of the contravention.”.

### **Amendment of section 212**

**51.** Section 212 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

- 5                   “(2) No proceedings shall be instituted against a person for an  
offence in respect of a contravention of this Division after –
- (a) a court has made an order against him for the payment  
of a civil penalty under section 232; or
  - (b) the person has entered into an agreement with the  
10                   Authority to pay, with or without admission of  
liability, a civil penalty under section 232(5),  
in respect of the contravention.”.

### **Amendment of section 214**

**52.** Section 214 of the principal Act is amended -

- 15           (a) by deleting the word “or” at the end of subparagraph (C) of  
paragraph (a) of the definition of “securities”;
- (b) by inserting the word “or” at the end of subparagraph (iv) of  
paragraph (a) of the definition of “securities” and inserting,  
immediately thereafter, the following subparagraph:
- 20                   “(v) such other product or class of products as the  
Authority may prescribe as a security,”;
- (c) by inserting, at the end of paragraph (a) of the definition of  
“securities”, the words “but does not include such product or  
class of products that would otherwise fall within subparagraphs  
25           (i) to (iv) as the Authority may prescribe as not being a security,”;
- (d) by deleting the word “or” at the end of subparagraph (iii) of  
paragraph (b) of the definition of “securities”;
- (e) by deleting the word “and” at the end of subparagraph (iv) of  
paragraph (b) of the definition of “securities” and substituting the  
30           word “or” and by inserting, immediately thereafter, the following  
subparagraph:
- “(v) such other product or class of products as the  
Authority may prescribe as a security,”;

- 5 (f) by inserting, at the end of paragraph (b) of the definition of “securities”, the words “but does not include such product or class of products that would otherwise fall within subparagraphs (i) to (v) as the Authority may prescribe as not being a security; and”;
- (g) by deleting the word “or” at the end of subparagraph (vi)(C) of paragraph (c) of the definition of “securities”;
- 10 (h) by inserting the word “or” at the end of subparagraph (vii) of paragraph (c) of the definition of “securities” and inserting, immediately thereafter, the following subparagraph:
- “(viii) such other product or class of products as the Authority may prescribe as a security,”;
- (i) by deleting the word “or” at the end of subparagraph (BB) of paragraph (c) of the definition of “securities”; and
- 15 (j) by inserting the word “or” at the end of subparagraph (CC) of paragraph (c) of the definition of “securities” and inserting, immediately thereafter, the following paragraph:
- “(DD) such other product or class of products that would otherwise fall within subparagraphs (i) to (vii) as the Authority may prescribe as not being a security;”.
- 20

### **Amendment of section 218**

**53.** Section 218 of the principal Act is amended -

- 25 (a) by deleting the word “only” in subparagraph (ii) of subsection (1A)(a) and substituting the word “primarily”;
- (b) by deleting the words “within the meaning of Division 4 of the Companies Act (Cap. 50)” in subsection (5)(b)(ii); and
- (c) by deleting the words “within the meaning of Division 4 of the Companies Act” in subsection (5)(b)(iii)(B).

### **Amendment of section 221**

- 30 **54.** Section 221 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after –

- 5 (a) a court has made an order against him for the payment of a civil penalty under section 232; or
  - (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),
- in respect of the contravention.”.

#### 10 **New section 232A**

**55.** The principal Act is amended by inserting, immediately after section 232, the following section:

#### **“Disgorgement against third parties**

**232A.** – (1) Where -

- 15 (a) a person has been convicted of an offence under this Part;
- (b) a person has an order for the payment of a civil penalty made against him under section 232, other than by way of a default judgment or a consent order made with or without admission of contravention under section 232(4), in respect
- 20 of the contravention of any of the provisions in this Part; or
- (c) the court is satisfied on a balance of probabilities that a contravention by a person of any of the provisions in this Part has taken place,

the court may, on the application of the Authority or any person

25 who has suffered loss, make an order (referred to in this section as the order of disgorgement) against any other person who has benefited from a trade or trades conducted on behalf of the second-mentioned person (referred to in this section as the third party) by a person

30 specified in paragraph (a), (b) or (c) in contravention of any of the provisions in this Part, that the third party shall disgorge the whole or part of the benefit.

(2) An application for an order of disgorgement under subsection (1) shall not be commenced after the expiration of 6 years from the date of the contravention of the relevant provision.

(3) Subject to subsection (4), the court shall not make an order of disgorgement against the third party if the third party satisfies the court, on a balance of probabilities, that –

- 5 (a) the third party acquired the benefit without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the benefit was derived from the contravention referred to in subsection (1); and
- 10 (b) the third party has acted on the benefit such that it has altered its position in reliance on it having an indefeasible interest in the benefit and that, in the opinion of the court, it would be inequitable to make an order of disgorgement.

15 (4) Nothing shall prevent the court from making an order of disgorgement under this section against the third party who, on a balance of probabilities, satisfied the court under subsection (3), for an amount that is, in the opinion of the court, equitable.

(5) A person who has suffered loss as a result of the trade or trades referred to in subsection (1) (referred to in this section as the claimant) may lodge a claim for compensation out of the amount ordered to be disgorged by the court under that subsection.

20 (6) Where an order of disgorgement is not the subject of an appeal and not subject to further appeal, the Authority or any person who has suffered may apply to the Court for the court to fix a day (which shall not be less than 3 months from the date of the order) on or before which all claimants are to file and prove their claims for compensation.

25

(7) The court may, after expiry of the date fixed under subsection (6), make an order for the third party to pay to any person who has filed and proven its claim for compensation an amount —

- 30 (a) equal to the amount of compensation which that person has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself, less any compensation received from the contravening person from an action under section 234 or 236 in respect of the same
- 35 contravention; or

(b) equal to the pro-rated portion of the amount disgorged, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

5       whichever is the lesser, and the court shall order the third party to pay to the Authority any amount remaining under the order of disgorgement.

10       (8) After the expiry of the date fixed under subsection (5), no person shall bring any action or claim against the third party for any compensation that he would have been entitled to arising out of the order of disgorgement referred to in subsection (1).

(9) For the purposes of this section, “benefit” means a profit gained or loss avoided.”.

#### **Amendment of section 236**

15       **56.** Section 236 of the principal Act is amended -

(a) by inserting, immediately after the word “than” in subsection (1)(b), the words “by way of a default judgment or”; and

20       (b) by inserting, immediately after the word “himself” in subsection (3)(a), the words “less any compensation received under section 232A”.

#### **Amendment of section 237**

**57.** Section 237 of the principal Act is amended by inserting, immediately after the number “232,”, the number 232A,”.

#### **Amendment of section 238**

**58.** Section 238 of the principal Act is amended -

(a) by inserting, immediately after the number “232,” in subsection (1)(a), the number 232A,”; and

30       (b) by inserting, immediately after the word “section” in subsection (2), the words “232A or”.

### **New sections 238A and 238B**

**59.** The principal Act is amended by inserting, immediately after section 238, the following sections:

#### **“Attribution of liability to corporations**

5       **238A.** – (1) Where a contravention of any provision of this Part committed by an employee or officer of a corporation for the benefit of the corporation, is proved to have been committed with the consent or connivance of the corporation, the corporation shall be guilty of the same offence and liable for the same contravention for the purposes of proceedings under Division 4 as the employee or officer,  
10 as the case may be, and shall be liable to be proceeded against and punished accordingly.

(2) Where a contravention of any provision of this Part committed by an employee or officer of a corporation for the benefit of the corporation, is attributable to any neglect on the part of the corporation, the corporation shall be liable for the same contravention for the purposes of proceedings under Division 4 as the employee or officer, as the case may be, and shall be liable to be proceeded against and punished accordingly.  
15

(3) For the purposes of subsection (2), in determining whether a contravention is attributable to any neglect on the part of the corporation, the court shall take into account the following matters:  
20

(a) whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;  
25

(b) whether the corporation has consistently enforced compliance with its policies and procedures referred to in paragraph (a); and

(c) such other factors as the court may consider relevant.

#### **Attribution of liability to partnerships and limited liability partnerships**

30       **238B.** – (1) Where a contravention of any provision of this Part committed by a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (referred to in this section as the contravening person) for the benefit of the  
35

partnership or limited liability partnership, as the case may be, is proved to have been committed with the consent or connivance of the partnership or limited liability partnership, as the case may be, the partnership or limited liability partnership shall be guilty of the same offence and liable for the same contravention for the purposes of proceedings under Division 4 as the contravening person, and shall be liable to be proceeded against and punished accordingly.

(2) Where a contravention of any provision of this Part committed by a contravening person of a partnership or limited liability partnership, as the case may be, for the benefit of the partnership or limited liability partnership, as the case may be, is attributable to any neglect on the part of the partnership or limited liability partnership, as the case may be, the partnership or limited liability partnership shall be liable for the same contravention for the purposes of proceedings under Division 4 as the contravening person, and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of subsection (2), in determining whether a contravention is attributable to any neglect on the part of the partnership or limited liability partnership, as the case may be, the court shall take into account the following matters:

- (a) whether the partnership or limited liability partnership, as the case may be, has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;
- (b) whether the partnership or limited liability partnership, as the case may be, has consistently enforced compliance with its policies and procedures; and
- (c) such other factors as the court may consider relevant.”.

### **Amendment of section 239**

**60.** Section 239(1) of the principal Act is amended –

- (a) by deleting the definition of “chief executive officer”; and
- (b) by deleting the definition of “securities” and substituting the following definition:

““securities” means —

- (a) shares or units of shares of a corporation;

- (b) debentures or units of debentures of an entity;
  - (c) interests in a limited partnership or limited liability partnership; or
  - (d) such other products or class of products as the Authority may prescribe as securities,
- but does not include such product or class of products that would otherwise fall within paragraphs (a) to (c) as the Authority may prescribe as not being a security;”.

### **Amendment of section 268**

61. Section 268 of the principal Act is amended by deleting subsection (10) and substituting the following subsection:

“(10) Notwithstanding anything in subsection (8), a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with –

- (a) subsection (6)(a) need not be audited; and
- (b) subsection (6)(b) —
  - (i) need not be audited; or
  - (ii) the audit thereof may be of a limited nature or extent,

if the trustee for the holders of the debentures of the borrowing entity has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.”.

### **Amendment of section 272A**

62. Section 272A(1) of the principal Act is amended –

- (a) by deleting the word “and” at the end of paragraph (c); and
- (b) by deleting the full-stop at the end of paragraph (d) and substituting with the words “; and” and inserting immediately thereafter the following paragraph:

“(e) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has previously been registered -

(i) the prospectus has expired pursuant to section 250;  
or

(ii) the person making the offer has prior to the making  
of this offer –

5 (A) informed the Authority by notice in writing  
of its intent to make this offer in reliance on  
the exemption under this subsection; and

10 (B) taken reasonable steps to inform in writing  
the investor to whom this offer is made that  
the offer is made in reliance on the  
exemption under this subsection.”.

### **Amendment of section 272B**

**63.** Section 272B(1) of the principal Act is amended –

(a) by deleting the word “and” at the end of paragraph (b); and

15 (b) by deleting the full-stop at the end of paragraph (c) and  
substituting the words “; and” and inserting immediately  
thereafter the following paragraph:

20 “(d) no prospectus in respect of the securities being offered has  
been registered by the Authority or, where a prospectus has  
previously been registered -

(i) the prospectus has expired pursuant to section 250;  
or

(ii) the person making the offer has prior to the making  
of this offer –

25 (A) informed the Authority by notice in writing of  
its intent to make this offer in reliance on the  
exemption under this subsection; and

30 (B) taken reasonable steps to inform in writing the  
investor to whom this offer is made that the  
offer is made in reliance on the exemption  
under this subsection.”.

### **Amendment of section 273**

**64.** Section 273 of the principal Act is amended —

(a) by deleting paragraph (d) of subsection (1) and substituting the following paragraph:

“(d) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted, and are traded on a securities exchange;”;

(b) by inserting, immediately after the word “debentures” in the first line of paragraph (e) of subsection (1), the words “(not being such units of excluded shares or excluded debentures as may be prescribed by the Authority)”; and

(c) by deleting sub-paragraph (i) of subsection (1)(e) and substituting the following sub-paragraph:

“(i) the units of shares or debentures (not being such excluded units of shares or debentures as may be prescribed by the Authority) have been previously issued, are listed for quotation or quoted, and are traded on a securities exchange; or”.

### **Amendment of section 275**

**65.** Section 275 of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (a) of subsection (1);

(b) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:

“(c) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has been registered -

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has prior to the making of this offer –

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

- (B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”;
- 5 (c) by deleting the number “200,000” in paragraph (a) of subsection (1A) and substituting the number “100,000”;
- (d) by deleting the word “and” at the end of paragraph (b) of subsection (1A); and
- 10 (e) by deleting the full-stop at the end of paragraph (c) of subsection (1A) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:
- “(d) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has previously been registered –
- 15 (i) the prospectus has expired pursuant to section 250; or
- (ii) the person making the offer has prior to the making of this offer –
- (A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and
- 20 (B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”.

25 **Amendment of section 276**

**66.** Section 276 of the principal Act is amended –

- (a) by deleting the word “Notwithstanding” in subsection (1) and substituting the words “Subject to subsection (7) and notwithstanding”;
- 30 (b) by deleting the word “Securities” in subsection (3) and substituting the words “Subject to subsection (7), securities”;
- (c) by deleting the word “Where” in subsection (4) and substituting the words “Subject to subsection (7), where”; and

(d) by inserting, immediately after subsection (6), the following subsections:

“(7) Subsections (1), (3) and (4) shall not apply in relation to an offer of restricted securities of a corporation where -

5           (a) an offer of securities in the corporation has been made in or accompanied by a prospectus and these securities are listed for quotation on a securities exchange; and

10           (b) the restricted securities are of the same class or can be converted into securities of the same class as the securities referred to in paragraph (a).

15           (8) In subsection (7), “restricted securities” means securities of a corporation that are previously acquired pursuant to an offer made in reliance on an exemption under section 274 or 275.”.

#### **Amendment of section 277**

**67.** Section 277 of the principal Act is amended —

(a) by deleting the words “subsection (1A)” in subsection (1) and substituting the words “subsections (1A) and (1B)”; and

20       (b) by inserting, immediately after subsection (1A), the following subsection:

“(1B) For the avoidance of doubt, section 251 shall not apply to an offer of securities to be made in reliance on the exemption under subsection (1).”.

#### **Amendment of section 282A**

**68.** Section 282A of the principal Act is amended by deleting the definitions of “chief executive officer” and “trustee-manager” in subsection (1).

#### **Amendment of section 282C**

30       **69.** Section 282C of the principal Act is amended by inserting, immediately after the words “registered business trust” in paragraph (a) of subsection (1), the words “or recognised business trust”.

### **New Subdivision (2A) of Division 1A of Part XIII**

**70.** The principal Act is amended by inserting, immediately after Subdivision (2) of Division 1A of Part XIII, the following Subdivision:

*“Subdivision (2A) — Recognised business trusts*

5       **Power of Authority to recognise business trusts constituted  
outside Singapore**

**282TA.**—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

10       (2) The Authority may recognise a business trust constituted outside Singapore under subsection (1) if and only if the Authority is satisfied that —

15           (a) the laws and practices of the jurisdictions under which the business trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them under the Business Trusts Act (Cap. 31A) in the case of registered business trusts;

20           (b) the business trust complies with, and satisfies, such criteria as may be prescribed by the Authority for the purposes of the Authority making the decision whether to grant the recognition; and

25           (c) the person making the offer, the issuer or the trustee-manager of the business trust complies with, and satisfies, such criteria as may be prescribed by the Authority for the purposes of the Authority making the decision whether to grant the recognition.

(3) Without prejudice to subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

30       (4) The Authority may refuse to recognise any business trust constituted outside Singapore under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a business trust constituted outside Singapore under subsection (1) without giving the

person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

- 5           (a) the person making the offer (being an entity), the issuer, the trustee-manager or the business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- 10           (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- 15           (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager or the business trust, or in relation to or in respect of the trust property of the business trust.

20           (6) Any person making an application under subsection (1) may, within 30 days after he is notified that the Authority has refused to recognise that business trust constituted outside Singapore under subsection (1), appeal to the Minister whose decision shall be final.

          (7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

25           (8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust constituted outside Singapore that is recognised under subsection (1).

30           (9) The person making the offer, the issuer or the trustee-manager of a business trust constituted outside Singapore which is recognised under subsection (1), as the case may be, shall ensure that the criteria prescribed by the Authority in accordance with subsection (2) which are applicable to each of the mentioned persons shall continue to be satisfied.

35           (10) The trustee-manager of a business trust constituted outside Singapore which is recognised under subsection (1) shall furnish such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Power of Authority to impose conditions or restrictions**

**282TB.**—(1) The Authority may recognise a business trust constituted outside Singapore under section 282TA(1) subject to such conditions or restrictions as it thinks fit to impose and the recognised business trust, the trustee-manager of the recognised business trust, the person making the offer or the issuer shall comply with such conditions or restrictions applicable to it as may be imposed by the Authority.

(2) The Authority may, at any time, by notice in writing to the trustee-manager of the recognised business trust, the person making the offer or the issuer, as the case may be, vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

(3) Any person who contravenes any condition or restriction applicable to him as may be imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Revocation, suspension or withdrawal of recognition**

**282TC.**—(1) The Authority may revoke the recognition of a recognised business trust constituted outside Singapore granted under section 282TA(1) if —

- (a) the application for recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;

- (b) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;
- (c) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or
- (d) person making the offer, the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself fails to comply with section 282TA(9) or (10) or 282TB.

(2) Where the Authority revokes the recognition of a recognised business trust constituted outside Singapore under subsection (1), the Authority may issue such directions as it deems fit to the person making the offer, the issuer or the trustee-manager of the recognised business trust including a direction that it allows the unitholders, on such terms as the Authority may approve, to obtain compensation for any loss or damage suffered as a result of the revocation; and the person making the offer, the issuer or the trustee-manager, as the case may be, shall comply with any such directions.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider —

- (a) whether the trustee-manager of the recognised business trust is able to liquidate the property of the recognised business trust without material adverse financial effect to the unitholders, and for this purpose, the factors which the Authority may take into account include —
- (i) the liquidity of the property of the recognised business trust;
- (ii) the penalties, if any, payable for liquidating the property;
- (iii) in the case where the units of the recognised business trust are also listed for quotation or quoted on an overseas securities exchange, the potential impact on unitholders in the overseas jurisdiction; and
- (b) where the units of the recognised business trust are listed for quotation on the official list of a securities exchange, whether a reasonable exit alternative has been offered to

unitholders pursuant to the listing rules of the securities exchange.

5 (4) A person who contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

10 (5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.

15 (6) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (5), it shall notify the person who made the application to the Authority for recognition of that business trust under section 282TA(1).

20 (7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the person who made the application to the Authority for recognition of a business trust under section 282TA(1) in such form and manner as may be prescribed, withdraw the recognition of that recognised business trust.

25 (8) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (7) where the Authority is of the opinion that —

(a) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or

30 (b) the withdrawal of the recognition would not be in the public interest.

(9) The Authority shall not —

(a) revoke the recognition of a recognised business trust under subsection (1);

35 (b) suspend the recognition of a recognised business trust under subsection (5); or

(c) refuse the withdrawal of the recognition of a recognised business trust under subsection (8),

without giving the person referred to in subsection (6) or (7), as the case may be, an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager, or in relation to or in respect of the trust property of the recognised business trust.

(10) The person referred to in subsection (6) or (7), as the case may be, may, within 30 days after he is notified that the Authority —

(a) has revoked the recognition of that recognised business trust under subsection (1);

(b) has suspended the recognition of that recognised business trust under subsection (5); or

(c) has refused to withdraw the recognition of that recognised business trust under subsection (8),

appeal to the Minister whose decision shall be final.

(11) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (5) or withdraws a recognition under subsection (8), it may —

(a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and

(b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.”.

#### **Amendment of section 282V**

71. Section 282V(1) of the principal Act is amended –

- 5 (a) by deleting the word “and” at the end of paragraph (c); and
- (b) by deleting the full-stop at the end of paragraph (d) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:
- 10 “(e) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has previously been registered –
- (i) the prospectus has expired pursuant to section 282K; or
- (ii) the person making the offer has prior to the making of this offer –
- 15 (A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and
- (B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is
- 20 made in reliance on the exemption under this subsection.”.

#### **Amendment of section 282W**

72. Section 282W(1) of the principal Act is amended –

- (a) by deleting the word “and” at the end of paragraph (b); and
- 25 (b) by deleting the full-stop at the end of paragraph (c) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:
- “*(d)* no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a
- 30 prospectus has been previously registered –
- (i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has prior to the making of this offer –

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”.

#### 10 **Amendment of section 282X**

**73.** Section 282X of the principal Act is amended —

(a) by deleting paragraph (d) of subsection (1) and substituting the following paragraph:

“(d) it is an offer of units in a business trust (not being such excluded units as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted, and are traded on a securities exchange;”;

(b) by inserting, immediately after the words “derivatives of units” in the first line of paragraph (e) of subsection (1), the words “(not being such derivatives of excluded units as may be prescribed by the Authority)”;

(c) by deleting sub-paragraph (i) of subsection (1)(e) and substituting the following sub-paragraph:

“(i) the derivatives of units (not being such excluded derivatives of units as may be prescribed by the Authority) have been previously issued, are listed for quotation or quoted, and are traded on a securities exchange; or”.

#### **Amendment of section 282Z**

**74.** Section 282Z of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (a) of subsection (1);

(b) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:

“(c) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has been registered -

(i) the prospectus has expired pursuant to section 282K; or

5 (ii) the person making the offer has prior to the making of this offer –

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

10 (B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”;

(c) by deleting the number “200,000” in paragraph (a) of subsection (2) and substituting the number “100,000”;

(d) by deleting the word “and” at the end of paragraph (b) of subsection (2); and

20 (e) by deleting the full-stop at the end of paragraph (c) of subsection (2) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:

“(d) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has been registered -

25 (i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has prior to the making of this offer –

30 (A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”.

**Amendment of section 282ZA**

75. Section 282ZA of the principal Act is amended —

- 5 (a) by deleting the word “Notwithstanding” in subsection (1) and substituting the words “Subject to subsection (7) and notwithstanding”;
- (b) by deleting the word “Securities” in subsection (3) and substituting the words “Subject to subsection (7), securities”;
- (c) by deleting the word “Where” in subsection (4) and substituting the words “Subject to subsection (7), where”; and
- 10 (d) by inserting, immediately after subsection (6), the following subsections:
- “*(7)* Subsections (1), (3) and (4) shall not apply in relation to an offer of restricted units or derivatives of units in a business trust where -
- 15 (a) an offer of units or derivatives of units in the business trust has been made in or accompanied by a prospectus and these units or derivatives of units are listed for quotation on a securities exchange; and
- 20 (b) the restricted units or derivatives of units are of the same class or can be converted into securities of the same class as the units or derivatives of units referred to in paragraph (a).
- (8) In subsection (7), “restricted units or derivatives of units” means units or derivatives of units in a business trust that are previously acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z.”.
- 25

**Amendment of section 282ZB**

76. Section 282ZB of the principal Act is amended —

- 30 (a) by deleting the words “subsection (2)” in subsection (1) and substituting the words “subsections (2) and (2A)”; and
- (b) by inserting, immediately after subsection (2), the following subsection:

“(2A) For the avoidance of doubt, section 282L shall not apply to an offer of units or derivatives of units in a business trust to be made in reliance on the exemption under subsection (1).”.

### **Amendment of section 283**

5     **77.** Section 283 of the principal Act is amended by deleting the definition of “chief executive officer” in subsection (1).

### **Amendment of section 283A**

**78.** Section 283A of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

10     “(1) No person shall, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term “real estate investment trust” or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

15     (a) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;

20     (b) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or

(c) the person —

(i) makes the offer or intended offer of rights or interests in an arrangement only to —

(A) an institutional investor;

25     (B) a relevant person as defined in section 305(5); or

30     (C) a person who, if he acquires any right or interest in the arrangement, does so as principal and on terms that the right or interest is acquired at a consideration of not less than \$100,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(ii) informs every person to whom it makes the offer or intended offer that the offer or intended offer does not relate to a collective investment scheme which is authorised under section 286 or recognised under section 287; and

(iii) if the offer or intended offer is made to a person referred to in paragraph (B) or (C), satisfies the conditions under subsection (1A); or

(d) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order published in the Gazette as persons who may use such term or derivative.

(1A) Where a person makes an offer or intended offer under subsection (1)(c)(i)(B) or (C), that person shall comply with the following conditions:

(a) that the offer or intended offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(b) that no selling or promotional expenses are paid or incurred in connection with the offer or intended offer, other than expenses incurred —

(i) for administrative or professional services in respect of the offer or intended offer; or

(ii) by way of commission or fee for services rendered in respect of the offer or intended offer by —

(A) the holder of a capital market services licence to deal in securities;

(B) an exempt person in respect of dealing in securities; or

(C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.”

**Amendment of section 284A**

79. Section 284A of the principal Act is amended by inserting, immediately after the words “this Division” in the last line, the words “(other than section 283A)”.

5 **Amendment of section 284B**

80. Section 284B of the principal Act is amended by inserting, immediately after the words “This Division”, the words “(other than section 283A)”.

**Amendment of section 285**

10 81. Section 285 of the principal Act is amended by deleting the section heading and substituting the following section heading:

“**Requirement for authorisation or recognition**”.

**Amendment of section 300**

82. Section 300 of the principal Act is amended –

15 (a) by deleting the words “holds a representative’s licence” in paragraph (b)(iii) of subsection (2B) and substituting the words “is a representative”; and

(b) by deleting subsection (2C) and substituting the following subsection:

20 “(2C) In subsection (2B), “exempt financial adviser” and “representative” shall have the same meanings as in section 2(1) of the Financial Advisers Act (Cap. 110).”.

**Amendment of section 302B**

83. Section 302B(1) of the principal Act is amended –

25 (a) by deleting the word “and” at the end of paragraph (c); and

(b) by deleting the full-stop at the end of paragraph (d) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:

30 “(e) no prospectus in respect of the units being offered has been registered by the Authority or, where a prospectus has been previously registered –

- (i) the prospectus has expired pursuant to section 299; or
- (ii) the person making the offer has prior to the making of this offer –
  - (A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and
  - (B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”.

10 **Amendment of section 302C**

**84.** Section 302C(1) of the principal Act is amended –

- (a) by deleting the word “and” at the end of paragraph (b); and
- (b) by deleting the full-stop at the end of paragraph (c) and substituting the words “; and” and inserting, immediately thereafter, the following paragraph:

“*(d)* no prospectus in respect of the units being offered has been registered by the Authority or, where a prospectus has previously been registered –

- (i) the prospectus has expired pursuant to section 299; or
- (ii) the person making the offer has prior to the making of this offer –
  - (A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and
  - (B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”.

**Amendment of section 305**

**85.** Section 305 of the principal Act is amended —

- (a) by deleting the number “\$200,000” in subsection (2) and substituting the number “\$100,000”;

(b) by deleting paragraph (c) of subsection (3) and substituting the following paragraph:

“(c) no prospectus in respect of the units being offered has been registered by the Authority or, where a prospectus has been previously registered -

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has prior to the making of this offer –

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.”; and

(c) by deleting subsection (4).

#### **Amendment of section 305A**

**86.** Section 305A of the principal Act is amended —

(a) by deleting the word “Notwithstanding” in subsection (1) and substituting the words “Subject to subsection (5) and notwithstanding”;

(b) by deleting the word “Securities” in subsection (2) and substituting the words “Subject to subsection (5), securities”;

(c) by deleting the word “Where” in subsection (3) and substituting the words “Subject to subsection (5), where”; and

(d) by inserting, immediately after subsection (4), the following subsections:

“(5) Subsections (1), (2) and (3) shall not apply in relation to an offer of restricted units in a collective investment scheme where -

(a) an offer of units in the collective investment scheme has been made in or accompanied by a prospectus and these units are listed for quotation on a securities exchange; and

(b) the restricted units are of the same class or can be converted into units of the same class as the units referred to in paragraph (a).

5 (6) In subsection (5), “restricted units” means units of a collective investment scheme that are previously acquired pursuant to an offer made in reliance on an exemption under section 305.”

### **Amendment of section 305B**

**87.** Section 305B of the principal Act is amended —

- 10 (a) by deleting the words “subsection (2)” in subsection (1) and substituting the words “subsections (2) and (2A)”; and
- (b) by inserting, immediately after subsection (2), the following subsection:

15 “(2A) For the avoidance of doubt, section 300 shall not apply to an offer of units in a collective investment scheme to be made in reliance on the exemption under subsection (1).”

### **New Section 316A**

**88.** The principal Act is amended by inserting, immediately after section 316, the following section:

20 **“Registration of representative office**

**316A.** –(1) No person shall establish a representative office in Singapore without being registered by the Authority.

(2) A person who -

- 25 (a) establishes or operates a market in Singapore or elsewhere (referred to in this section as market operator), whether or not such person is required under section 6 of the Act to be an approved exchange or recognised market operator;
- (b) establishes or operates a clearing facility in Singapore or elsewhere (referred to in this section as clearing facility operator) whether or not such person is required to make a notification to the Authority under section 49 of the Act; or
- 30 (c) is a corporation who carries on business in any regulated activity (referred to in this section as corporation) which –

(i) is not required under section 82 of the Act to hold a capital markets services licence; or

(ii) is not an exempt person,

and who desires to establish a representative office may apply in writing to the Authority for registration under this section and shall furnish such information or documents as the Authority may require.

(3) The Authority may refuse an application to register a representative office under subsection (2) if the market operator, clearing facility operator or corporation, as the case may be, fails to satisfy such criteria as may be determined by the Authority.

(4) The market operator, clearing facility operator or corporation, as the case may be, who establishes and registers a representative office shall furnish such information or documents as the Authority may require.

(5) The Authority may impose such conditions or restrictions as it considers necessary for the registration of a representative office on a market operator, clearing facility operator or corporation and the market operator, clearing facility operator or corporation, as the case may be, shall comply with such conditions or restrictions.

(6) The Authority may at any time vary or revoke any existing conditions or restrictions or impose additional conditions or restrictions on such market operator, clearing facility operator or corporation, as the case may be, under subsection (5).

(7) The Authority may withdraw the registration of a representative office of any market operator, clearing facility operator or corporation if the market operator, clearing facility operator or corporation, as the case may be, fails to comply with any condition or restriction imposed by the Authority in respect of the operations of the representative office.

(8) Subject to subsection (9), the Authority shall not –

(a) refuse an application to register a representative office under subsection (3); or

(b) withdraw the registration of a representative office under subsection (7),

without giving the market operator, clearing facility operator or corporation, as the case may be, an opportunity to be heard.

(9) The Authority may refuse an application to register a representative office under subsection (3) or withdraw the registration of a representative office under subsection (7) on any of the following grounds without giving the market operator, clearing facility operator or corporation, as the case may be, an opportunity to be heard:

(a) the market operator, clearing facility operator or corporation, as the case may be, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the market operator, clearing facility operator or corporation, as the case may be;

(c) the market operator, clearing facility operator or corporation, as the case may be, has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(10) Any person who is aggrieved by –

(a) the refusal of the Authority to register a representative under subsection (3); or

(b) the withdrawal of registration of a representative office by the Authority under subsection (7),

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

(11) Any person who establishes a representative office without being registered by the Authority or continues to operate a representative office notwithstanding the withdrawal of registration by the Authority under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction.”.

**Amendment of section 317**

**89.** Section 317 of the principal Act is amended –

(a) by deleting the words “section 94” in subsection (1) and substituting the words “sections 94 and 99J”; and

5 (b) by deleting paragraph (a) of subsection (2) and substituting the following paragraph:

“(a) inspect any record kept by the Authority under section 94 or 99J or any prospectus or profile statement lodged with the Authority under Part XIII; or”.

10 **Repeal and re-enactment of section 331**

**90.** Section 331 of the principal Act is repealed and the following section substituted therefore:

**“Corporate offenders and unincorporated associations**

15 **331.** —(1) Where a contravention of any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly.

20 (2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

25 (3) Where a contravention of any provision of this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly.

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(4) Where a contravention of any provision of this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly .

(5) Where a contravention of any provision of this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly.

(6) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

"officer" —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

"partner", in relation to a partnership, includes a person purporting to act as a partner.

(7) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.”.

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### **Amendment of section 341**

**91.** Section 341(2) of the principal Act is amended –

(a) by deleting the words “or renewal of licences by persons holding a capital markets services licence to carry on business in any regulated activity” in paragraph (c); and

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(b) by inserting, immediately after paragraph (s), the following paragraph:

“(sa) the expenses to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such expenses;”.

15

### **Amendment of First Schedule**

**92.** Part II of the First Schedule to the principal Act is amended by deleting sub-paragraph (b) of the definition of “clearing facility” in paragraph 4(1) and substituting the following sub-paragraph:

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“(b) such other facility or class of facilities for clearing or settlement as the Authority may, by order, prescribe;”.

### **Miscellaneous amendments**

**93.** The principal Act is amended —

(a) by deleting the word “defalcation” wherever they appear in the following provisions and substituting in each case the word “misapplication”:

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Sections 186(1), 186(13)(b), 187(2), 188(2), 188(2)(b), 189(1), 189(2)(b), 189(6)(a), 189(7), 190(1), 191, 193(2) and 193(3);

30

(b) by deleting the words “securities exchange or futures exchange” wherever they appear in the following provisions and substituting in each case the words “approved exchange”:

Sections 175(a), 180(2), 180(3), 183(1), 183(2), 184(2) and section heading, 188(2), 188(3), 188(4), 189(2) and section heading, 189(2)(a), 189(2)(b), 189(6)(b), 189(7), 190 section heading, 190(2), 191 and section heading, 192, 193(1), 193(2) and 194(1) and section heading;

- (c) by deleting the words “a securities exchange or futures exchange” wherever they appear in the following provisions and substituting in each case the words “an approved exchange”:

Sections 175, 176(2), 177, 179, 180(1), 181, 182, 183(1), 183(3), 184(1), 184(2), 185, 186(1)(b), 186(2), 186(3), 186(5), 186(13), 187(1), 187(2), 188(1), 188(4), 189(1), 189(2), 189(3), 189(4), 189(5), 189(6)(a), 189(7), 190(1), 192, 193(2), 194(1) and 194(3); and

- (d) by deleting the words “securities exchange and each futures exchange” in section 176(1) and substituting the words “approved exchange”.

### **Consequential amendments**

**94.** The Minister may, by order published in the *Gazette*, repeal or amend any written law which appears to him unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act.

### **Transitional and savings provisions**

**95.** The Authority may, by regulations, prescribe such transitional and savings provisions as it may consider necessary or expedient within \_\_\_ years of the date of commencement of this Act.

### **Consequential amendments to Companies Act (Cap. 50)**

**96.** *[Deliberately left blank pending finalisation.]*

### **Consequential amendments to Business Trusts Act (Cap. 31A)**

**97.** The Business Trusts Act (Cap. 31A) is amended –

- (a) by inserting, immediately after the definition of “public accountant” in section 2, the following definition:

“recognised business trust” means a business trust that is recognised by the Authority under section 5B(1);”;

(b) by deleting the definition of “substantial unitholder” in section 2;

5 (c) by inserting, immediately after subsection (17) of section 13, the following subsection:

“(18) Subsections (8), (9), (10), (11), (12), (13), (14) and (15) shall not apply in respect of a registered business trust –

10 (a) all or any of which units are listed for quotation on the official list of a securities exchange; and

(b) in respect of which disclosure that is required under subdivision (2) of Division 3 of Part VII of the Securities and Futures Act (Cap. 289) is applicable.”;

(d) by repealing sections 37 to 39; and

15 (e) by inserting, immediately after subsection (3) of section 69, the following subsection:

“(4) The trustee-manager of a registered business trust is not by reason of anything done under subdivision (1) of Division 3 of Part VII of the Securities and Futures Act (Cap. 289) –

20 (a) to be taken for any purpose to have notice of; or

(b) to be put upon inquiry as to,

a right of a person to or in relation to a unit in the registered business trust for the purposes of this section.”.