

## CHAPTER 2

# CLEARING PARTICIPANTSHIP

## GENERAL SECTION

### 2.1 ADMISSION OF CLEARING PARTICIPANT

- (a) An applicant for admission as a Clearing Participant shall apply in writing in such form or forms as may be prescribed by the Clearing House from time to time.
- (b) At anytime after receiving an application and before finally deciding upon it, the Clearing House may require the applicant to furnish additional information, whether relating directly to the applicant or not, which in the opinion of the Clearing House is, or could be material to its consideration of the application.
- (c) The Clearing House may in addition take into account any other information which it considers appropriate in relation to the applicant which may come into its possession or knowledge.
- (d) The Clearing House may, in approving an application, impose on the applicant, such additional requirements or conditions as it considers necessary.

### 2.2 CATEGORIES OF CLEARING PARTICIPANT

- (a) Clearing Participant shall be categorised as follows:
  - (i) Trading Clearing Participant; or
  - (ii) Non Trading Clearing Participant
- (b) Unless otherwise stipulated specifically as (i) or (ii) above, the term "Clearing Participant" under these Rules shall refer to both Trading Clearing Participant and Non Trading Clearing Participant.

### 2.3 FURTHER CATEGORIES OF CLEARING PARTICIPANT

The Clearing House may by notice from time to time establish further categories of Clearing Participant with such rights and obligations as the Clearing House may prescribe.

### 2.4 RIGHTS AND OBLIGATIONS OF THE CLEARING PARTICIPANT

Each category of the Clearing Participant shall have such rights and obligations as are set out in the Rules and/or the Agreement, wherever applicable, and the Clearing House may by notice from time to time vary the rights and obligations attaching to each category of Clearing Participant.

## **2.5 GENERAL CRITERIA FOR ADMISSION**

- (a) In addition to the specific criteria set out in these Rules for each category of Clearing Participant, an applicant for admission under any category, may not be admitted unless it is able to satisfy the Clearing House that it is suitable to carry out the functions and operations as a Clearing Participant of the Clearing House.
- (b) In order to determine whether the applicant is suitable, Clearing House may take account of all such considerations as in its absolute discretion it sees fit including, but not limited to, the following:
  - (i) Financial integrity;
  - (ii) Absence of convictions or civil liabilities;
  - (iii) Competence;
  - (iv) Good reputation and character;
  - (v) Efficiency and honesty;
  - (vi) Scope of authorisation under any laws of Malaysia, or by a regulatory authority in Malaysia;
  - (vii) Operational capability, including adequately trained personnel, data processing capacity and suitable premises; and
  - (viii) Minimum financial requirement as may be prescribed by the Clearing House.

### **2.5A NO OBLIGATION TO APPOINT**

The Clearing House need not be obligated to admit every person who is eligible under Rule 2.5 to be a Clearing Participant. Any person who is aggrieved by virtue of not being admitted as a Clearing Participant may appeal in writing to the Clearing House. Upon presentation of the appeal, such person shall submit to the decision of the Clearing House whose decision shall be final and binding on that person.

## **2.6 WAIVER OF CRITERIA OR STANDARDS**

The Clearing House may waive any criteria or any standard as to any applicant either unconditionally or subject to such conditions as it may consider appropriate in the circumstances, if the Clearing House determines that the said criteria or standard, as applied to such applicant, is unduly or disproportionately onerous or that the conduct of the said applicant is such that it would not be against the best interests of the Clearing House or the other Clearing Participants and/or the efficient operations of any of the Clearing House' services or facilities.

## **2.7 ACCEPTANCE OF APPLICATION**

If the Clearing House resolves to admit an applicant, the applicant shall be so informed in writing and shall, subject to the Rules, become a Clearing Participant under the category with respect to which the application was made.

## **2.8 REJECTED APPLICATIONS**

If an application for admission as a Clearing Participant is not granted by the Clearing House, the applicant shall be so informed in writing. For the avoidance of doubt, the Clearing House shall not be required to specify any ground or reason for its decision.

## **2.9 CONDITIONS PRECEDENT**

Unless otherwise agreed by the Clearing House, where an applicant is admitted as a Clearing Participant under any category with respect to which the application was made, such Clearing Participant shall not be permitted to utilise the services or facilities of the Clearing House to be made available to the Clearing Participant, until the Clearing Participant:

- (a) enters into the Agreement relevant to such category of Clearing Participants, wherever applicable;
- (b) pays to the Clearing House all the application fees, admission fees and other charges imposed by the Clearing House and applicable to such category of Clearing Participants; and
- (c) has complied with such other conditions that the Clearing House in its discretion may have imposed when approving the application.

## **2.10 UNDERTAKINGS BY THE CLEARING PARTICIPANT**

Each Clearing Participant undertakes to the Clearing House that:

- (a) it shall comply with all laws, decrees, regulations, any governmental orders, orders from any competent authority, court or tribunal, applicable to it or to its participation in any of the services or facilities of the Clearing House;
- (b) it shall comply with the Rules, Operational Procedures, directives, directions, orders or practice notes from time to time issued by the Clearing House in respect of any of the services and facilities of the Clearing House, whether of a permanent or temporary nature;
- (c) it shall notify the Clearing House of any changes in the details supplied to the Clearing House at the time of making an application for admission as a Clearing Participant or any time thereafter;
- (d) it shall notify the Clearing House forthwith upon it becoming aware of any restriction imposed upon it by any regulatory authority to which it is subject or by any government authority, department or other government body, the courts or tribunals, or any competent authority which may affect its participation in any of the services or facilities or operations of the Clearing House;
- (e) it shall notify the Clearing House forthwith upon it becoming aware of the presentation of any petition for its bankruptcy or winding-up or of any bankruptcy or winding-up order made against it, the convening of any meeting to consider the voluntary winding-up or the passing of such a resolution, the appointment or purported appointment of a receiver or manager in respect of any of its assets, any changes in its financial condition which may lead to its inability to meet any of its obligations to the Clearing House or to its winding-up, bankruptcy, or the appointment of a receiver or manager in respect of any of its property, or any other changes in its circumstances which may affect or is material to its participation in any of the services or facilities of the Clearing House.

## **2.11 BOOKS AND RECORDS**

The Clearing Participant shall maintain Books and Records in sufficient detail of all transactions and other matters relating to any of its activities and/or related to such activities in any of the services or facilities made available to the Clearing Participant by the Clearing House.

## **2.12 TERMINATION OF PARTICIPATION**

- (a) Subject as otherwise provided in these Rules or the Agreement, the Clearing House may at any time by giving of not less than thirty (30) Market Days' notice in writing terminate the participation of a Clearing Participant in any one or more or all of the services and/or facilities made available by the Clearing House to the Clearing Participant.
- (b) Subject as otherwise provided in these Rules and notwithstanding what is provided in the Agreement, any Clearing Participant may by giving of not less than thirty (30) Market Days' notice in writing to the Clearing House terminate its participation in all or any one or more of the services and/or facilities made available to it by the Clearing House and the termination takes effect at either:
  - (i) the expiration of that notice period; or
  - (ii) when the Clearing Participant is no longer a counterparty to any Novated Contract (if applicable) and there is no further obligation or liability owed by the Clearing Participant to the Clearing House in respect of the relevant services or facilities,whichever is later.
- (c) The Clearing House may, in its absolute discretion, refuse to accept any notice of termination given by a Clearing Participant, or reject such a notice after it had been served but prior to its taking effect, if the Clearing House considers that any matter affecting such a Clearing Participant should be investigated under the disciplinary procedures or for any other reason.

## **2.13 IMMEDIATE TERMINATION OF PARTICIPATION**

Without prejudice to any rights that it may have under the Rules or the Agreement, wherever applicable, and notwithstanding anything to the contrary in the Rules or the Agreement, wherever applicable, the Clearing House may forthwith terminate by notice in writing a Clearing Participant's participation in any one or more or all of its services and facilities, if:

- (a) The Clearing House considers in its absolute discretion that any delay in the termination of the Clearing Participant's participation will be materially prejudicial or detrimental to the interests of the Clearing House or other Clearing Participants or will adversely affect any of its operations or services or facilities; or
- (b) in the event that:-
  - (i) the Clearing Participant ceasing its business or a material part thereof in the determination of the Clearing House; or
  - (ii) the Clearing Participant being subject to an adverse finding by any regulatory body or competent authority to which it is subject; or

- (iii) the Clearing Participant having any license, authority, permission, exemption, authorisation or other similar grant to conduct its business withdrawn, suspended or revoked by any competent authority or regulatory body to which it is subject; or
- (iv) the bankruptcy, winding-up, liquidation or the initiation of any proceedings in relation thereto or if the Clearing House in its absolute discretion considers that the occurrence of such an event is imminent or likely; or
- (v) the appointment of receiver or manager over the assets or property of the Clearing Participant or if the Clearing Participant suffers a composition with its creditors or if a scheme of arrangement is approved by the courts or if the Clearing House considers in its absolute discretion that the occurrence of such an event is imminent or likely; or
- (vi) any distress, execution or other process being levied or enforced or served upon or against the Clearing Participant.

## **2.14 CONSEQUENCES OF TERMINATION**

- (a) If at any time after the receipt of any notice to terminate from a Clearing Participant but before such notice takes effect, the Clearing House shall have the absolute discretion to decline to accept any instructions or give effect to any transaction involving the Clearing Participant if the Clearing House considers it is appropriate in the interest of the Clearing House, other Clearing Participant or if it would adversely affect any of the services or facilities provided by the Clearing House to the Clearing Participant.
- (b) The termination of participation in any one or more or all of the services of the Clearing House of a Clearing Participant, for whatever reason, shall be without prejudice to the rights of the Clearing House to enforce or sue upon any obligation owed to it which arises out of any matter which has taken place prior to the effective date of such termination.
- (c) The rights, powers and remedies of the Clearing House under Rules 1.5, 1.16(d), 5.10(g), 7.17, 7.18, 8.12(k) and 8.20 in relation to a Clearing Participant will survive the Clearing Participant's termination or suspension as a Clearing Participant.

## **2.15 COMPLIANCE WITH REQUIREMENTS**

Each Clearing Participant shall:-

- (a) comply and/or ensure compliance with the Rules and directives imposed by the Clearing House;
- (c) submit monthly returns, which are based on the accounting records of the Clearing Participant prepared on generally accepted accounting principles, to in such form as may be prescribed by the Clearing House from time to time within one calendar month of the last Market Day of each month of year;
- (c) submit a certified copy of its audited accounts to the Clearing House within three (3) months after the close of each financial year or such further period as the Clearing House may permit; and
- (d) lodge with the Clearing House any other statement or report lodged with the Commission or the Exchange at the time of its lodgement with the Commission or the Exchange, as the case may be.

## **2.16 DISPUTES BETWEEN CLEARING PARTICIPANTS**

- (a) Any disputes between Clearing Participants with reference to clearing and settlement and/or any of its activities in any of the services or facilities of the Clearing House, shall be brought to the notice of the Clearing House by notice in writing by either party to the dispute.
- (b) Clearing Participants shall not resort to any outside tribunal or a court of law for determination of any such dispute, unless the Clearing House for any reason whatsoever fails to state within thirty (30) days of receipt of written notice of any dispute from any of the parties to the dispute whether or not it is willing to act in the matter in dispute.
- (c) If the Clearing House decides to act in any such dispute it shall inform the party or parties to the dispute which gave the notice referred to in sub-rule (a) within the said thirty (30) days period. If the Clearing House fails to so inform the said party or parties within the said thirty (30) days period then the parties to the dispute shall be free to resort to any outside tribunal or a court of law for determination of such dispute.
- (d) If the Clearing House decides to act as aforesaid and gives notice as aforesaid within the said period of thirty (30) days the Clearing House may, if the parties to the dispute are unable to reach an agreement for settlement of the matter in dispute, appoint in its sole discretion one or more arbitrators for the purpose of adjudicating in the dispute.
- (e) Any arbitrator or arbitrators appointed by the Clearing House pursuant to sub-rule (d) shall arbitrate in the matter in dispute in accordance with the provisions of, and with all the usual powers of an arbitrator appointed pursuant to the Arbitration Act 1952 and any such statutory modification thereof for the time being in force and the award of such arbitrator or arbitrators shall be final and binding upon the parties to such dispute.

## **2.17 INCONSISTENCY BETWEEN RULES AND AGREEMENT**

In the event of any conflict or inconsistency between these Rules and the Agreement, these Rules will prevail to the extent of the conflict or inconsistency.

## CHAPTER 2

### SECTION A

## TRADING CLEARING PARTICIPANT

### A2.1 APPLICATION FROM OUTSIDE MALAYSIA

Where an application for Clearing Participantship is from outside Malaysia, the the Clearing House may consider its eligibility for Clearing Participantship with stipulated criteria which may be determined by the Clearing House from time to time.

### A2.2 CONTRIBUTION TO THE CLEARING GUARANTEE FUND

Every Trading Clearing Participant shall contribute to the Clearing Guarantee Fund which may be established and administered by the Clearing House. The Clearing House may, in consultation with the Commission, prescribe directives pertaining to the Clearing Guarantee Fund from time to time.

### A2.3 OUTSOURCING BY TRADING CLEARING PARTICIPANTS

- (a) A Trading Clearing Participant which outsources its Clearing and Settlement Functions must comply with these Rules and the Commission's Licensing Handbook as though the Trading Clearing Participant is the CMSL holder mentioned in the Commission's Licensing Handbook.
- (b) A Trading Clearing Participant must ensure that the Service Provider(s) comply with the Rules that are applicable to the outsourced functions in the same manner as the Trading Clearing Participant is required to.
- (c) A Trading Clearing Participant remains accountable for all outsourced Clearing and Settlement Functions and will be held liable for any act or omission on the part of the Service Provider which results in a breach of these Rules.
- (d)
  - (i) This Rule is not applicable to a Trading Clearing Participant which is an Investment Bank.
  - (ii) A Trading Clearing Participant which is an Investment Bank must instead comply with the Guidelines on Investment Banks and such other requirements of the Central Bank relating to the matter.

### A2.4 INVESTMENT BANK

In relation to a Trading Clearing Participant that has acquired the status of an Investment Bank after its admission as a Trading Clearing Participant under Chapter 2 of these Rules, the said Trading Clearing Participant shall notify the Clearing House in writing of the same at least seven (7) days (or such other time as may be determined by the Clearing House) prior to the commencement of its business as an Investment Bank, which notification shall be accompanied with such information or Documents as may be required by the Clearing House.

## **A2.5 MINIMUM FINANCIAL REQUIREMENTS**

Every Trading Clearing Participant shall comply with the minimum financial requirements imposed by the Exchange, as may be amended, varied, modified, supplemented or substituted, from time to time, as if it were the Participating Organisation referred to in the Exchange Rules. Such requirements shall be deemed to form part of these Rules.

## CHAPTER 2

### SECTION B

#### NON TRADING CLEARING PARTICIPANT

##### B2.1 ELIGIBILITY CRITERIA FOR NON TRADING CLEARING PARTICIPANT

In addition to the general criteria for admission set out in the General Section of this Chapter, an applicant for admission as a Non Trading Clearing Participant shall establish that:

- (a) (i) it is an organisation carrying on financial services business by providing safe custody facilities and services with respect to Securities listed and traded on the Exchange; OR
- (a) (ii) it is an organisation authorised or licensed under the laws of Malaysia to engage in investment business (directly or indirectly) and such organisation invests in Securities listed on and traded on the Exchange for its own account and/or for the account of clients or other parties; AND
- (b) (i) it is an organisation with a paid-up capital of not less than RM2 million, if it's a company limited by shares or by guarantee of not less than RM2 million, or such other amount as may be prescribed by the Clearing House from time to time; OR
- (b) (ii) it is a statutory organisation or authority of Malaysia or any state of Malaysia; AND
- (c) it is an organisation that is an Authorised Direct Member of the Central Depository as defined in the Depository Rules.

##### B2.2 ORGANISATION ENGAGED IN INVESTMENT BUSINESS

In order to establish that it is an organisation which falls within the criteria of Rule B2.1 (a) above, the organisation must satisfy the Clearing House that it falls within one of the following:

- (a) A body corporate incorporated within Malaysia and by notice prescribed in the gazette declared to be a public authority or agency of the Government of Malaysia or any state of Malaysia and engages in investment business;
- (b) a statutory body established under an Act of Parliament and engages in investment business;
- (c) a bank licensed under the Islamic Banking Act 1983 or a bank, merchant bank or finance company licensed under the Banking and Financial Institutions Act 1989;
- (d) A unit trust fund approved by the Commission or an asset management corporation duly licensed under the Act;

- (e) An issuer within the meaning of Section 2 (1) (c) of the Insurance Act 1963 authorised by the Director General of Insurance and engages in investment business; or
- (f) Any organisation which in the ordinary course of business engages in financial services and/or holds or manages the investment or Securities listed and traded on the Exchange by virtue of a licence or under an exempt status granted by the Commission or other regulatory authority under any law of Malaysia.

### **B2.3 DISCRETION TO ADMIT**

Where an applicant does not meet any one or more of the admission criteria under Rule B2.1, an applicant may still submit an application, and the Clearing House may in its absolute discretion consider such an application. The Clearing House may admit such applicant either unconditionally or subject to such conditions the Clearing House considers necessary in the circumstances.

### **B2.4 OUTSOURCING BY NON TRADING CLEARING PARTICIPANTS**

- (a) A Non Trading Clearing Participant which outsources its Clearing and Settlement Functions to a Service Provider must comply with the conditions set out in this Rule B2.4.
- (b) The Non Trading Clearing Participant must ensure compliance by the Service Provider(s) of all relevant requirements stipulated in any provision in these Rules, agreement between the Non Trading Clearing Participant and the Clearing House and direction issued by the Clearing House.
- (c) A Non Trading Clearing Participant remains accountable for all outsourced Clearing and Settlement Functions and will be held liable for any act or omission on the part of the Service Provider which results in a breach of these Rules.
- (d) The Non Trading Clearing Participant must have in place an insurance policy to protect it against any liability, loss or damage arising from any action or omission of the Service Provider in performing the said Clearing and Settlement Functions.
- (e) The Non Trading Clearing Participant must ensure that the Clearing House or its agent shall at all times have access to and be allowed to make copies of the Books of the Non Trading Clearing Participant or the Service Provider. The Non Trading Clearing Participant shall procure a written consent through a letter of undertaking from the Service Provider to allow the Clearing House or its agent to exercise its powers as stated above.
- (f) A Non Trading Clearing Participant must notify the Clearing House within 2 weeks from the signing of the relevant agreement(s) setting out the terms and conditions of the outsourcing arrangement, including where applicable, the agreement setting out the terms and conditions for sub-contracting the Clearing and Settlement Functions to another Service Provider (“relevant service level agreement(s)”).
- (g) A Non Trading Clearing Participant must, in respect of the outsourcing of the Clearing and Settlement Functions, notify the Clearing House of:
  - (i) the termination or variation of the relevant service level agreement(s); or
  - (ii) any adverse development arising from or in connection with the outsourcing arrangement that could significantly affect the Non Trading Clearing Participant,within 2 weeks from the occurrence of such event.

## CLEARING PARTICIPANTSHIP

Form of Application under Chapter 2 of the Clearing House Rules  
for admission to Clearing Participantship

(Name/Address/Company Registration No)

(Date)

To The Board of Directors of  
Bursa Malaysia Securities Clearing Sdn Bhd

Gentlemen,

### **APPLICATION FOR CLEARING PARTICIPANTSHIP**

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We (Name of Corporation) \_\_\_\_\_  
are desirous of being admitted as a Clearing Participant of Bursa Malaysia Securities Clearing Sdn Bhd (the Clearing House), upon the terms of and under and subject in all respects to its constitution and the Rules, which are now or hereafter may be, for the time being in force and any agreement(s) the covenants of which as may be stipulated by the Clearing House.

We hereby solemnly undertake to be bound in all respect by and comply with the said constitution, Rules and agreement(s).

Yours faithfully

(To be executed under the Common Seal  
of the Corporation pursuant to the Corporation's  
Memorandum and Articles of Association)

(Common Seal)

\_\_\_\_\_

Witnessed by

\_\_\_\_\_  
(Director)

\_\_\_\_\_  
(Director/Secretary)