

# **WORKING DRAFT ONLY**

## COMPUTING PROFESSIONALS BILL 2011

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A BILL

COMPUTING PROFESSIONALS ACT 2011

*intitule*

An Act to provide for the establishment of the Board of Computing Professionals Malaysia and for the registration of computing practitioners, computing professionals, sole proprietorships, partnerships and bodies corporate providing Computing Services and for purposes connected therewith.

**ENACTED** by the Parliament of Malaysia as follows:

## PART I

### PRELIMINARY

#### Short title and commencement

1. (1) This Act may be cited as the Computing Professionals Act 2011.

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

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## Application

2. (1) This Act applies throughout Malaysia.

(2) This Act applies to the Critical National Information Infrastructure (CNII).

(3) Every Registered Computing Practitioner, Registered Computing Professional and Registered Computing Services Provider shall be subject to this Act.

(4) The Minister may, by notification in the *Gazette*, suspend the operation of this Act in any part of Malaysia or suspend the operation of any part of this Act

## Interpretation

3. In this Act unless the context otherwise requires—

“appointed date” means the date appointed for the commencement of this Act;

“Board” means the Board of Computing Professionals Malaysia established by subsection 4(1);

“Computing” is a goal-oriented activity to plan, architect,

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design, create, develop, implement, use and manage information technology or information technology systems.

“Computing Graduate” means a person who has completed a computer science or equivalent degree programme of study.

“Computing Practitioner” means a person who has a job function in computing or qualification in computing.

"Registered Computing Professional" means a person registered under subsection 14(2);

“Critical National Information Infrastructure (CNII)” refers to those assets, systems and functions that are vital to the nation that their incapacity or destruction would have a devastating impact on National economic strength or National image or National defense and security or Government capability to function or Public health and safety;

“Minister” means the Minister charged with the responsibility for matters relating to Science Technology and Innovation;

" Computing Services" means services within the domain of Computing rendered by the scope of this Act;

“Register” means the Register kept and maintained under section 12;

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“Registered Computing Practitioner” means a person registered under subsection 14(1);

"Registered Computing Services Provider" means a sole proprietorship, partnership or body corporate providing professional Computing services, registered under section 15;

“Registrar” means the Registrar of Registered Computing Professionals appointed under subsection 13(1);

“Skills” means an acquired and practiced ability to competently carry out a task or job;

## **PART II**

### **BOARD OF COMPUTING PROFESSIONALS**

#### **Establishment of Board of Computing Professionals Malaysia**

4. (1) For the purposes of this Act there is hereby established a board to be called “Board of Computing Professionals Malaysia” which shall be a body corporate with perpetual succession and a common seal and which may sue and be sued.

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(2) The Board shall as far as possible consist of a balanced representation across the profession where each member who shall be Malaysian citizens appointed by the Minister in accordance to the following guidelines:

- (a) a President who shall be a Registered Computing Professional, and if there are none, an individual with expertise and skills in the field of computing shall be eligible;
- (b) not more than eighteen (18) other members of whom
  - (i) at least one but not more than five (5) Registered Computing Professionals who are in the public service of the Federation or its Agencies;
  - (ii) at least one but not more than five (5) Registered who are in the private sector;
  - (iii) at least one but not more than five (5) Registered Computing Professionals who are members of societies or associations representing the relevant disciplines of computing;
  - (iv) at least one but not more than five (5) Registered Computing Professionals who are in the service of institutions of higher learning; and

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- (v) at least one but not more than five (5) Registered Computing Professionals who are in the service of skills training;

provided that the members selected in the above combination fairly represents the various disciplines and services of computing.

(3) A member of the Board, including the President shall, unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years and subject to subsection (5) shall be eligible for reappointment.

(4) A member of the Board, including the President, shall not be appointed for more than two consecutive terms.

(5) If any member of the Board dies or resigns or his appointment is revoked, a new member shall as soon as practicable be appointed in his place and the member so appointed shall hold office for the remainder of the term for which his predecessor was appointed.

(6) The provisions of the First Schedule shall have effect with respect to the Board.

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## Common seal

5. (1) The Board shall have a common seal which shall bear a device approved by the Board and the seal may from time to time be broken, changed, altered and made anew as the Board thinks fit.

(2) Until a seal is provided by the Board, a stamp bearing the words “Board of Computing Professionals Malaysia” may be used and shall be deemed to be the common seal of the Board.

(3) The common seal shall be kept in the custody of the President or any other person authorised by the Board, and shall be authenticated by either the President or such person as may be authorised by the President in writing.

(4) All deeds, documents and other instruments purporting to be sealed with the seal and duly authenticated shall, until the contrary is proven, be deemed to have been validly executed.

(5) Any deed, document or other instrument which, if executed by a person not being a body corporate, is not required to be under seal may in like manner be executed by a member of the Board or any other person authorised by the President on behalf of the Board.

(6) The common seal of the Board shall be officially and judicially noticed.

## Allowances

6. The President and the members of the Board shall be paid such allowances as the Minister may determine.

## Revocation of appointment and resignation

7. (1) The Minister may, at any time, revoke the appointment of any member of the Board.

(2) A member of the Board may, at any time, resign from his appointment by giving thirty (30) days notice in writing to the Minister.

## Vacation of office

8. The office of a member of the Board shall be vacated if—

(a) he dies;

(b) there has been proved against him, or he has been convicted of, a charge in respect of—

(i) an offence involving fraud or dishonesty;

(ii) an offence under any law relating to corruption; or

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- (iii) any other offence punishable with imprisonment (in itself only or in the additional to or in lieu of a fine) for more than two years;
- (c) he becomes a bankrupt;
- (d) he is of unsound mind or otherwise incapable of discharging his duties;
- (e) in the case of the President, if he absents himself from three (3) consecutive meetings of the Board without leave in writing from the Minister;
- (f) in the case of a member of the Board, other than the President, if he absents himself from three (3) consecutive meetings of the Board without leave in writing from the President;
- (g) his resignation is accepted by the Minister; or
- (h) his appointment is revoked by the Minister.

### Schedule

9. (1) The provisions of the Schedule shall apply to members of the Board.

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

### Disclosure of interest

**10.** (1) Any member of the Board having directly or indirectly any interest in relation to any matter under discussion by the Board shall disclose to the Board, the fact of his interest and nature of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board in which the matter is discussed.

(3) Upon disclosure under subsection (1), the member—

(a) shall not be present or take part in any discussion or decision of the Board about the matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board when the matter is discussed or decided upon.

(4) A member of the Board who fails to disclose his interest as required under subsection (1) shall be liable to be deregistered.

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

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(6) For the purposes of this section—

“a member of his family”, in relation to a member of the Board includes—

- (a) his spouse;
- (b) his parent (including a parent of his spouse);
- (c) his child (including an adopted child or stepchild);
- (d) his brother or sister (including a brother or sister of his spouse); and
- (e) a spouse of his child, brother or sister; and

“associate”, in relation to a member of the Board or a committee, means—

- (a) a person who is a nominee or an employee of the member;
- (b) a firm of which the member or any nominee of his is a partner;
- (c) a partner of the member;

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- (d) a trustee of a trust under which the member or a member of his family is a beneficiary; or
- (e) any corporation within the meaning of the Companies Act 1965 [*Act 125*], of which the member or any nominee of his or a member of the member's family is a director or has a substantial shareholding in the corporation.

### Functions and Power of the Board

11. (1) The functions and power of the Board shall be—
- (a) to keep and maintain the Register;
  - (b) to approve or reject applications for registration under this Act according to criteria to be prescribed by the Board;
  - (c) to register Computing Practitioners and Computing Professionals;
  - (d) to register companies, sole proprietorships, partnerships and bodies corporate providing Computing Services
  - (e) to order the issuance of a written warning or reprimand, the imposition of a fine, suspension, cancellation, removal or reinstatement in accordance with Parts IV and V;

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- (f) to provide facilities for the promotion of learning and education and to hold or cause to be held professional development programmes, including continuing professional development programmes, for Registered Computing Practitioner and Registered Computing Professionals to further enhance their knowledge in the latest developments relating to that profession;
- (g) to appoint a council consisting of persons to be determined by the Board, to conduct examinations and/or assessments, or to cause examinations and/or assessments to be conducted by an institution or institutions recognised by the Board for the purpose of registration with the Board ;
- (h) to appoint any person to represent the Board in any committee, panel or institution, where that person would subsequently make recommendations to the Board on all matters regarding the qualifying for registration with the Board
- (i) to appoint a council consisting of members from the board, computing professionals and other persons as may be determined by the Board to advise the government and the public on matters relating to computing education, including the certification of such programmes.

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- (j) to establish any council as deemed fit by the Board;
- (k) to employ any person, as it deems necessary, to assist the Board in carrying out its functions, powers and duties subject to such terms and conditions as it may determine;
- (l) to determine and regulate the conduct and ethics of the Registered Computing Practitioners and Registered Computing Professionals;
- (m) to promote the growth of quality Registered Computing Professionals in Malaysia;
- (n) to hear and determine disputes relating to professional conduct or ethics of Registered Computing Practitioners, Registered Computing Professionals and Registered Computing Services Providers or to appoint a committee or arbitrator or arbitrators to hear and determine such disputes;
- (o) generally, to do all such acts and matters as are necessary to carry out the provisions of this Act.

(2) Without prejudice to the general powers conferred by subsection (1) the Board shall have power -

- (a) to enter into contract

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- (b) to purchase or lease any land or building required for any of the purposes of the Board;
- (c) from time to time to borrow or raise money by bank overdraft or otherwise for the purposes specified in paragraph (a); and
- (d) to lease out, dispose, or otherwise deal in any immovable property of the Board.

### **PART III**

#### **REGISTRATION OF COMPUTING PRACTITIONERS, COMPUTING SERVICES PROVIDERS AND COMPUTING PROFESSIONALS**

##### **Register**

**12.** (1) The Register shall contain the names, addresses and relevant particulars of Registered Computing Practitioners and Registered Computing Professionals and Registered Computing Services Providers.

(2) There shall be indicated against the name of each Registered Computing Practitioner and Registered Computing Professional kept in the Register a record of disciplines or specialisations on computing obtained or acquired by such personnel through academic qualification or training

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including on-the-job training or skill or specialist or professional certifications.

(3) For certifications mentioned in subsection (2), the Board may maintain a list of certifications provided by associations and bodies in Computing recognised by the Board and will keep the list updated from time to time.

(4) There shall be indicated against the name of each Registered Computing Services Provider kept in the Register the Computing Services it provides.

### **Appointment and duties of Registrar**

**13.** (1) The Minister may appoint a Registrar of Registered Computing Professionals who shall be under the general direction of the Board and who shall sign all certificates of registration and their renewal, and orders of the Board, and record all entries of registration, suspension, cancellation, removal and reinstatement in the Register.

(2) The Registrar shall publish through electronic means in the national language and the English language, the name, registration number and other particulars of a Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider whose registration has been—

*l.* by an order of the Board—

(i) suspended under subsection 24(2)(b); or

(ii) cancelled under subsection 24(2)(c);

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- II.* removed under section 25; or
- III.* reinstated under section 26, or

- (3) The publication under subsection (2) shall be made—
- (a) seven (7) days after the order of the Board or Disciplinary Committee is made, if there is no appeal to the Appeal Board against that order; or
  - (b) seven (7) days from the date after the order of the Board or Disciplinary Committee is confirmed by the Appeal Board, if there is an appeal filed against that order.

(4) In any proceedings, a certificate of registration shall be conclusive proof that the person, sole proprietorship, partnership or body corporate named in it is a Registered Computing Practitioner, Registered Computing Professional or a Registered Computing Services Provider.

(5) The Board shall maintain a register, in both physical form and electronic media, of all matters which are required to be registered under this Act and its subsidiary legislation.

(6) A person may, on payment of the charge (if any) to be decided by the Board —

- (a) inspect the register; and
- (b) make a copy of, or take extracts from, the register.

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(7) If a person requests that a copy be provided in an electronic media, the Board may provide the relevant information—

- (a) on a data processing device; or
- (b) by way of electronic transmission.

### Qualifications for Registration with Board

14. (1) (a) Subject to this Act, a person who holds –
- (i) the qualifications required for Graduate Membership of a professional body or organisation recognised by the Board, and the qualifications are recognised by the Board; or
  - (ii) any qualification in Information Technology or Computing which is recognised by the Board; or
  - (iii) any other qualifications, certifications or relevant experiences recognised by the Board,
- shall be entitled on application to be registered as a **Registered Computing Practitioner.**
- (b) Subject to this Act, a person who is registered as a Registered Computing Practitioner under paragraph (a) shall be required to obtain such practical experience as

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may be prescribed by the Board in order to be entitled to apply for registration as a Registered Computing Professional under subsection (2).

(2) Subject to this Act, the following persons shall be entitled on application to be registered as a **Registered Computing Professional**:

- (a) any person who is a Computing Graduate or any person who has other qualifications recognised by the board
  - (i) who has obtained the practical experience as prescribed under subsection (1)(b); and
  - (ii) who has passed a professional assessment examination conducted by the Board, or is a Corporate Member of a professional body or organisation recognised by the Board; and
  - (iii) who has paid the prescribed fee and
  - (iv) who has complied with all the requirements of the Board;
  
- (b) any person who, on the appointed date, was a Corporate Member of a professional body or organisation, or held a professional qualification which the Board considers to be equivalent thereto;
  
- (c) any person who satisfies the Board that he was practicing or was carrying on business or was employed as a *bona*

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*fide* computing professional immediately before the appointed date and who applies for registration within twelve (12) months of that date;

- (d) any person who, on the appointed date, had obtained a qualification which would have entitled him to be *registered* as a Registered Computing Practitioner by virtue of paragraph (1)(a) and who, after that date, has obtained outside Malaysia a professional qualification which the Board considers to be equivalent to that required for membership of a professional body or organisation recognised by the Board or has passed a professional assessment examination conducted by the Board

(3) For the purpose of paragraph (2)(d), a person shall be treated as having obtained a professional qualification outside Malaysia if, while undergoing the necessary course of studies, receiving the necessary instruction and training, and acquiring the necessary practical experience, he was entirely or mostly absent from Malaysia.

(4) No person shall be entitled to be registered as a Registered Computing Professional if at any time prior to his registration there exist any fact or circumstance which would have entitled the Board to cancel his registration pursuant to section 24.

(6) Subject to this section and such conditions or restrictions as the Board may think fit to impose, the Board shall, upon payment of the

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prescribed fee, approve the registration of a person who applies for registration with the Board of Computing Professionals Malaysia.

### **Registered Computing Services Provider**

**15.** (1) Notwithstanding subsection 14(1), a sole proprietorship, partnership or body corporate may practise as a Registered Computing Services Provider and recover in any court any fee, charge, remuneration or other form of consideration for any professional Computing services rendered by it pursuant to its practice as a Registered Computing Services Provider carried on by virtue of this section, if it is registered with the Board as a Registered Computing Services Provider and has been issued with a certificate of registration.

(2) Every application by a sole proprietorship, partnership or body corporate for registration as a Registered Computing Services Provider shall be made to the Board in the prescribed form and manner and shall be accompanied by the prescribed fee.

(3) A Registered Computing Services Provider shall, within thirty days of the occurrence of any change of its sole proprietorship, or the composition of its partners, board of directors or its shareholders, furnish to the Board a true report in writing giving full particulars of the change.

(4) A Registered Computing Services Provider may only provide Computing Services in the disciplines or specialisations of Computing

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where the personnel is/are Registered Computing Professionals is shown in the Register under subsection 12(2).

- (5) If the Board finds that -
  - (a) the Registered Computing Services Provider or sole proprietor or any partner, director or shareholder has breached, or failed to comply with or carry out, any of the terms, conditions or restrictions imposed by the Board upon registration of that Registered Computing Services Provider;
  - (b) the personnel who must be Registered Computing Professionals in such practice does not comply with subsection (4);
  - (c) the Registered Computing Services Provider has breached any of the requirements of subsection (3) and (4); or
  - (d) the sole proprietor or any partner, director, shareholder or employee in the Registered Computing Services Provider, being a person registered under this Act, has committed, or is guilty of, or has contributed to, any of the acts set out in paragraph 24(1)(a) or paragraphs 24(1)(b) to (o) except paragraph (e) the Board may, subject to subsection (7),

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by written notice to the Registered Computing Services Provider, order –

- (i) the issuance of a written warning or reprimand to;
  - (ii) the suspension of the registration for a period not exceeding one year of;
  - (iii) the cancellation of the registration of; or
  - (iv) any combination of the sanctions set out in paragraphs d(i) to (iii) on the Registered Computing Services Provider.
- (6) (a) The Board shall not make any order under paragraphs (5)(d)(i) to (iv) based upon any of the grounds of complaint set out in paragraphs (5)(a), (b) or (c), or subparagraphs 24(1)(b) to (o) except paragraph (e) unless-
- (i) there has been a hearing of the grounds of complaint against the Registered Computing Services Provider, or employees who have caused, contributed or been a party to, the grounds of complaint, conducted by at least five members of the Board; and
  - (ii) an opportunity to be heard, by representative appointed in writing or by counsel in the case of a Registered Computing Services Provider, or personally or by counsel in the case of a sole proprietor or any

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partner, director, shareholder or employee has been given to such Registered Computing Services Provider, sole proprietor, partner, director, shareholder or employee, as the case may be.

- (b) Notwithstanding paragraph (a), the Board may make an order under paragraphs (5)(d)(i) to (iv) if the Disciplinary Committee has under paragraph 24(2)(b) or (c) suspended or cancelled the registration of -
  - (i) a sole proprietor; or
  - (ii) the Registered Computing Professional in the employment of the Registered Computing Services Provider.
  
- (c) In any case where the grounds of complaint are based on paragraph (5)(d), the Board shall not make an order under paragraphs (5)(d)(i) to (iv) if, on the date of hearing, such Registered Computing Services Provider satisfies the Board -
  - (i) that the employee who has committed, or is guilty of, or has contributed to, such act as forms the grounds for the complaint has ceased to be an employee of such Registered Computing Services Provider;

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- (ii) that notwithstanding that such employee has ceased to be an employee, such Registered Computing Services Provider is able to comply with all the terms, conditions and restrictions imposed by the Board pursuant to subsection (3); and
- (iii) that no other employee of such Registered Computing Services Provider was, otherwise than by being its employee at the material date, in any way a party to, or connected with, the act as forms the grounds for the complaint.

(7) Upon the Board suspending or cancelling the registration of a Registered Computing Services Provider pursuant to paragraph (5)(d)(i) or (iv), respectively, the Registered Computing Services Provider shall cease to exercise any right or privilege conferred upon it under the registration, but it shall be entitled to recover in any court any fee, charge, remuneration or other form of consideration for Computing Services rendered by it prior to the date of receipt of the written notice from the Board suspending or cancelling its registration.

- (8) (a) Without prejudice to section 26, the Board may at any time upon receipt of an application from an Registered Computing Services Provider whose registration has been suspended or cancelled pursuant to paragraph (5)(d)(i) or (iv), respectively, reinstate its registration if it is satisfied that the reason which

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led to the suspension or cancellation of its registration no longer exists; and

(b) In reinstating the registration under paragraph (a) the Board may impose such additional terms, conditions and restrictions as it thinks fit.

### **Application for registration**

**16.** Application for registration shall be made to the Board in such manner as may be prescribed and accompanied by the prescribed fee.

### **Certificate of registration**

**17.** (1) The Registrar shall upon receipt of the prescribed fee issue to any person whose application for registration has been approved by the Board a certificate of registration in the prescribed form.

(2) Every certificate of registration, shall, subject to this Act, expire on the 31st day of December of the year in which it is issued and may be renewed annually upon payment of the prescribed fee and upon satisfying such conditions as may be determined by the Board.

### **Rights of Submission**

**18.** (1) Except as otherwise provided under any other written law, no person or body, other than a Registered Computing Professional who is residing in Malaysia or a Registered Computing Services Provider providing Computing Services that are within the scope stipulated in

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section 2, shall be entitled to submit proposals, plans, designs, drawings, schemes, reports, studies or others to be determined by the Board to any person or authority in Malaysia.

- (2) Nothing in this section shall prohibit -
- (a) any person who, on the appointed date, was registered with any Government department, local authority or statutory authority for the purpose of submitting plans, drawings, schemes, proposals, reports, designs or studies to that department or authority to continue to submit them to that department or authority, subject to such terms and conditions as may be or have been imposed under such registration; and
  - (b) any person from submitting plans or drawings where such plans, drawings, schemes, proposals, reports, designs or studies are in connection with equipment, plant or specialised product invented or sold by him or his employer. For the purpose of this paragraph the expression "employer" shall not include a client,

### **Restrictions on unregistered persons**

**19.** (1) In relation to section 2 no person shall, unless he is a Registered Computing Professional—

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- (a) practice, carry on business or take up employment which requires him to carry out or perform the services of a Registered Computing Professional;
- (b) be entitled to describe himself or hold himself out under any name, style or title—
  - (i) bearing the words “Registered Computing Professional”, or the equivalent thereto in any other language;
  - (ii) using abbreviation after his name or in any way in association with his name subject to the approval of the Board;
- (c) use or display any sign, board, card or other device representing or implying that he is a Registered Computing Professional;
- (d) be entitled to recover in any court any fee, charge, remuneration or other form of consideration for any professional technology services rendered.

(2) Notwithstanding subsection (1) -

- (a) a Registered Computing Practitioner may take up employment which requires him to perform Computing Services subject to the

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- i. work is carried out under the supervision or instruction by a Registered Computing Professional, or
- ii. similar work scope has been carried out by the Registered Computing Practitioner before.

(3) A Registered Computing Professional may only provide Computing Services in the disciplines or specialisations of Computing he is qualified to practise and as is shown in the Register under subsection 12(2).

### **Notification of change of address**

**20.** Every Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider shall notify the Registrar of any change of his or its business address.

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## PART IV

### DISCIPLINARY COMMITTEE

#### **Establishment of Disciplinary Committee**

21. The Board shall appoint a Disciplinary Committee which shall consist of the following members:

- (a) a Chairman; and
- (b) two other members,

who have been registered as Registered Computing Professionals.

#### **Powers of Disciplinary Committee**

22. The Disciplinary Committee –

- (a) shall conduct hearings of any misconduct or complaint against any Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider referred to it by the Investigating Committee;
- (b) may make any or any combination of the orders specified in section 24 against a Registered Computing Practitioner or Registered Computing Professional or Registered

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Computing Services Provider under such circumstances as set out in that section.

## Proceedings of the Disciplinary Committee

**23.** (1) Where a member of the Board has been appointed as a member of the Disciplinary Committee in pursuance of section 21 to conduct a hearing of any misconduct or complaint against a Registered Computing Practitioner or Registered Computing Professional, that member of the Disciplinary Committee shall not sit as a member of the Board when the Board conducts a hearing or makes an order under subsection 15(6) against a Registered Computing Services Provider of which the Registered Computing Practitioner or Registered Computing Professional is its sole proprietor, partner, director, shareholder or employee.

(2) Subject to the provisions of this Act, the Disciplinary Committee may regulate its own procedures in such manner as it deems fit.

## PART V

### CANCELLATION, REMOVAL AND REINSTATEMENT

#### Cancellation of Registration

**24.** (1) The Disciplinary Committee may make any or a combination of the orders specified in paragraphs (a) to (b) of subsection (2) against a Registered Computing Practitioner, or Registered Computing Professional under any of the following circumstances:

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- (a) there has been proved against him, or he has been convicted of, a charge in respect of—
  - (i) an offence involving fraud or dishonesty;
  - (ii) an offence under any law relating to corruption; or
  - (iii) any other offence punishable with imprisonment (in itself only or in the additional to or in lieu of a fine) for more than two years;
- (b) if his registration under this Act has been obtained by fraud or misrepresentation;
- (c) if his qualification under section 14 has been withdrawn or cancelled by the Authority through which it was acquired or by which it was awarded;
- (d) if he is found to be of unsound mind;
- (e) if he is found to be incapable or no longer able to perform his professional duties effectively;
- (f) if he is found by the Disciplinary Committee to have contravened, or failed to comply with this Act or any regulations made there under;

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- (g) if he fails to observe any conditions or restrictions subject to which he is registered;
- (h) if he is found guilty by the Disciplinary Committee of any act or conduct as may be determined by the board which in the opinion of the Disciplinary Committee
- (i) if he procures, or assists in procuring, or is knowingly a party to procuring, by fraud or misrepresentation, the approval of the Board for a sole proprietorship, partnership or body corporate to be registered as a Registered Computing Services Provider;
- (j) if he conceals or assists in concealing from the Board the existence of any facts or circumstances which, if known, would entitle the Board to cancel the registration of a sole proprietorship, partnership or body corporate, in which he is a sole proprietor, partner, director or shareholder, as a Registered Computing Services Provider;
- (k) if he contravenes, or fails to perform, or assists in the contravention of, any terms, conditions or restrictions imposed by the Board when registering a sole proprietorship, partnership or body corporate as a Registered Computing Services Provider under section 15 or subsection 15(3);

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- (l) if he causes or permits or suffers any sole proprietorship, partnership or body corporate in which he is a sole proprietor, partner, director or shareholder to practice as a Registered Computing Services Provider prior to its registration by the Board;
  - (m) if he causes or permits or suffers any Computing Services practice in which he is a sole proprietor, partner, director or shareholder to continue to practice as a Registered Computing Services Provider after the Board has suspended or cancelled its registration under paragraph 15(5)(bb) or (cc), respectively; or
  - (n) if he fails to discharge his professional duties with due skill, care and diligence.
- (2) The orders referred to in subsection (1) are—
- (a) the issuance of a written warning or reprimand;
  - (b) the suspension of registration for a period not exceeding one year; and
  - (c) the cancellation of registration.

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(3) The Disciplinary Committee shall not make any order under subsection (2), based upon any of the circumstances set out in paragraphs (1) (b) to (c), or paragraphs (1) (f) to (o), unless—

- (a) there has been a hearing in which at least five (5) members of the Disciplinary Committee are present; and
- (b) an opportunity of being heard either personally or by a person appointed by the Registered Computing Practitioner or Registered Computing Professional has been given to the Registered Computing Practitioner or Registered Computing Professional against whom the Disciplinary Committee intends to make the order.

(4) The Disciplinary Committee or Board may, if it deems fit, suspend the registration of any Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider for a period not exceeding six (6) months pending any investigation by an Investigating Committee under this Act and during the period of such suspension he shall not exercise any of the rights or privileges accorded to him under this Act.

(5) The Disciplinary Committee or Board, as the case may be, may upon the recommendation of the Investigating Committee suspend the registration of the Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider mentioned in subsection (4) for a further period of three months but not

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exceeding six months, if the Investigating Committee is unable to complete the investigation of such Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider within the period of suspension stipulated in subsection (4).

### **Removal from Register**

**25.** There shall be removed from the Register the name and other particulars of—

- (a) any Registered Computing Practitioner or Registered Computing Professional who has died;
- (b) any Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider who has failed to renew his registration within six months of the expiry of the registration; or
- (c) any Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider whose registration has been cancelled under paragraph 24(2)(c).

### **Reinstatement**

**26.** (1) Any Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider whose name has been removed from the Register pursuant to an order of the Disciplinary Committee or Board under paragraph 24(1)(a) or 15(6)

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respectively shall, if his or its appeal is allowed, forthwith be reinstated and the Registrar shall issue a certificate of registration to him or it.

(2) Any Registered Computing Professional or Registered Computing Practitioner or Registered Computing Services Provider whose name has been removed from the Register for failure to renew his or its registration for a period of not more than three years shall be reinstated as soon as may be after he or it has notified the Registrar of his or its desire to be reinstated and upon payment of such fees as may be prescribed and satisfying such conditions as may be determined by the Board, and the Registrar shall issue a certificate of registration to him or it.

(3) Any Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider whose name has been removed from the Register pursuant to an order of the Disciplinary Committee or Board under paragraph 24(1)(a) or 15(6) respectively, and who has not appealed against that order or whose appeal has been dismissed, may after the expiration of not less than six months from the date of the order of cancellation or from the date of the decision of the appeal apply for reinstatement.

(4) The Board upon receipt of satisfactory evidence of proper reasons for his or its reinstatement and upon reimbursement to it of all expenditure incurred by it arising out of the proceedings leading to cancellation of his or its registration and upon payment of the prescribed fee, shall issue a certificate of registration to him or it.

**Certificates to be returned**

**27.** Any Registered Computing Practitioner or Registered Computing Professional whose name is removed from the Register shall within fourteen (14) days after notification to him by registered post of the removal, surrender to the Board the certificate of registration issued to him under this Act.

PART VI  
GENERAL

**Appeal**

**28.** (1) Any person—

- (a) who has been refused registration by the Board;
- (b) who has been registered but is dissatisfied with any conditions or restrictions imposed by the Board under subsection 14(6) and subsection 17(2); or
- (c) who having been registered has had his name removed from the Register pursuant to an order made by the Board under subsection 25(b) and (c);

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- (d) who has been registered and has subsequently applied to have his registration extended to cover additional disciplines or specialisations of Information Technology and has had his application refused; or
  
- (e) who is not satisfied with an order of the Board made under paragraph 25(b) and (c).

may within twenty-one (21) days of being notified of the refusal, conditions, restrictions, removal or order appeal to the Appeal Board constituted under section 29 and the Appeal Board may thereupon make such orders as it may deem just or proper.

(2) The Board shall give effect to any order made by the Appeal Board forthwith.

### **Appeal Board**

**29.** For the purpose of this Part there shall be established an Appeal Board consisting of a Chairman and two other persons appointed by the Minister.

### **Tenure of office of members of the Appeal Board**

**30.** A member of the Appeal Board shall unless he resigns his office or his appointment is revoked holds office for such term as may be specified in the instrument appointing him and shall be eligible for reappointment.

## Procedure of appeal

31. (1) A notice of appeal against an order of the Board or Disciplinary Committee referred to in section 29 shall be made in writing to the Appeal Board and a copy of the notice sent to the President of the Board or Chairman of the Disciplinary Committee.

(2) On receipt of a copy of the notice of appeal, the President of the Board or the Chairman of the Disciplinary Committee or in the absence of the President or the Chairman, the member so delegated by the President or the Chairman, shall cause to be prepared and sent to the Chairman of the Appeal Board records or a summary of the records of the proceedings of the Board or the Disciplinary Committee and a statement setting out the grounds on which the Board or the Disciplinary Committee arrived at its decision.

(3) Upon receiving the records or summary of the records and the grounds of the decision of the Board or Disciplinary Committee the Chairman of the Appeal Board shall convene a meeting of the Appeal Board to hear the appeal.

(4) The Appeal Board after hearing the appeal may confirm or vary the decision of the Board or Disciplinary Committee.

(5) The decision of the Appeal Board shall be final.

## Procedure of Appeal Board

32. The Appeal Board shall at its discretion determine its own procedure.

## Penalties of obtaining registration by false pretences.

33. Any person, sole proprietorship, partnership or body corporate who –
- (a) procures or attempts to procure registration or a certificate of registration under this Act by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation whether in writing or otherwise;
  - (b) willfully makes or causes to be made any falsification in the Register;
  - (c) forges, alters or counterfeits any certificate of registration under this Act;
  - (d) uses any forged, altered or counterfeited certificate of registration under this Act knowing the same to have been forged, altered or counterfeited;

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- (e) impersonates a Registered Computing Practitioner or Registered Computing Professional;
- (f) buys or fraudulently obtains a certificate of registration under this Act issued to another Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider;
- (g) sells any certificate of registration issued under this Act; or

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit (RM 50,000), or to imprisonment for a term not exceeding one years, or to both.

### **Restriction on employment of unregistered person to provide Computing Services**

**34.** No CNII entities or person shall employ a person, sole proprietorship, partnership or body corporate, other than a Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider practice, to perform Computing Services

### **Investigating Committee and its powers**

**35.** (1) For the purposes of subsection 24(4), the Board shall appoint an Investigating Committee consisting of –

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- (a) a Chairman, who need not be a Registered Computing Professional; and
- (b) two Registered Computing Practitioner or Registered Computing Professional, to conduct an investigation.

(2) Where a member of the Investigating Committee is a member of the Board, he shall not sit as a member of the Board when the Board conducts a hearing or makes an order under subsection 15(6) in respect of the Registered Computing Services Provider practice which has been examined by the Investigating Committee of which he is a member.

(3) Where the Investigating Committee has conducted an investigation against a Registered Computing Practitioner or Registered Computing Professional, the member of the Investigating Committee shall not sit as a member of the Disciplinary Committee appointed in pursuance of Section 21 to conduct a hearing of any misconduct or complaint or to make an order under subsection 24(2) in respect of the Registered Computing Practitioner or Registered Computing Professional who has been investigated by the Investigating Committee of which he is a member.

(4) The Investigating Committee appointed under subsection (1) may, for the purpose of an investigation –

- (a) require any person, including a sole proprietor, partner, director, manager or secretary, to attend before it and give evidence on oath or affirmation, and the Chairman of

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the Investigating Committee presiding at the investigation may administer the oath; and

- (b) require such person to produce any book, document or paper relating to the subject matter of the investigation which is in the custody of that person or under his control.

(5) Upon completion of its investigation, the Investigating Committee shall submit a report together with its recommendations, if any, to the Board or Disciplinary Committee for its consideration.

(6) A person, including a sole proprietor, partner, director, manager or secretary, shall, unless with reasonable excuse –

- (a) attend and give evidence when required to do so by the Investigating Committee;
- (b) answer truthfully and fully any question put to him by any member of the Investigating Committee; or
- (c) produce to the Investigating Committee any book, document or paper required of him.

### **General penalty**

**36.** (1) Any person, sole proprietorship, partnership or body corporate who contravenes this Act or any regulations made there under shall be guilty of an offence and shall, where no penalty is expressly provided

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therefore, be liable, on conviction, to a fine not exceeding twenty thousand ringgit (RM20,000) or imprisonment not more than six months or both.

(2) If a sole proprietorship, partnership or body corporate contravenes this Act or any regulations made there under, the sole proprietor or every partner, director, manager, secretary or other similar officer thereof shall be guilty of the same offence and be liable to the same penalty as the sole proprietorship, partnership or body corporate is guilty of and liable to, unless he proves that the offence was committed without his knowledge, consent or connivance or was not attributable to any neglect on his part.

(3) If a Registered Computing Practitioner or Registered Computing Professional or Registered Computing Services Provider refuses or fails to comply with an order of the Board made under subsection 24(1)(a) or 15(6) respectively, or Appeal Board made under subsection 29, he shall be guilty of an offence, and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit (RM20,000).

### **Regulations**

**37.** The Board may, with the approval of the Minister, make regulations as may be expedient or necessary for giving full effect or the better carrying out of the provisions of the Act, and to prescribe anything which may be prescribed or is required to be prescribed under this Act or to enable it to perform any of its functions or to exercise any of its powers set out in this Act .

**Saving as to the right of Government**

**38.** Nothing in this Act contained shall apply to anything done or omitted to be done by or under the authority of the Federal Government or the Government of any State.

**Indemnity**

**39.** (1) No action or proceeding shall be instituted or maintained in any court against the Board, Disciplinary Committee, Appeal Board, Investigating Committee or any committee appointed by the Board, any members of the Board, Disciplinary Committee, Appeal Board, Investigating Committee or any such committee, or any person authorized to act for or on behalf of the Board for any act or omission done in good faith in the discharge of any of its or his functions, powers and duties under this Act or any regulations made under this Act.

(2) This section does not apply to powers conferred under subsection 11(2) or any power to enter into contracts exercised by the Board.

**Appointment of Advocate and Solicitor**

**40.** The Board may appoint an advocate and solicitor to institute and conduct proceedings on its behalf.

## Public servant

41. All members of the Board and any employees and agents of the Board while discharging their duties under this Act as such members, employees or agents, shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

## Protection against suits and legal proceedings

42. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

(a) the Board; or

(b) any member of the Board or any employee or agent of the Board, in respect of any act, neglect or default done or committed by it or him in good faith or any omission omitted by it or him in good faith, in such capacity.

## Obligation of secrecy

43. (1) Except for any of the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law or where otherwise authorised by the Board—

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- (a) no member of the Board or any of its committees or any employee or agent of the Board or any person attending any meeting of the Board or any of its committees, whether during or after his tenure of office or employment, shall disclose any information obtained by him in the course of his duties; and
- (b) no other person who has by any means access to any information relating to the affairs of the Board shall disclose such information.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit (RM20,000) or to imprisonment for a term not exceeding three (3) years or to both.

### **Actions done in anticipation of the enactment of this Act**

**44.** All act done by any person or authority on behalf of the Board in the preparation of and towards the proper implementation or administration of any of the provisions of this Act, and any expenditure incurred in relation thereto, in anticipation of the enactment of this Act shall be deemed to have been authorised by this Act, and all rights acquired or obligations incurred on behalf of the Board from anything so done shall, on the appointed date, be deemed to be the rights and obligations of the Board.

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## PART VII FINANCE

### **Board of Computing Professionals Fund**

**45.** (1) A fund to be known as the “Board of Computing Professionals Malaysia Fund” shall be established, administered and controlled by the Board.

(2) The Fund shall consist of—

(a) such sums as may be approved by the Minister;

(b) all moneys and properties which may in any manner become payable to or vested in the Board in respect of any matter incidental to its functions and powers;

(c) any costs paid to, or recovered by, the Board in any settlement of action or proceedings, civil or criminal; and

(d) all other moneys lawfully received by the Board.

### **Expenditure to be charged on the Fund**

**46.** The Fund shall be expended for the following purposes:

(a) paying any expenditure lawfully incurred by the Board;

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- (b) paying allowances and other expenses of the members of the Board and other benefits;
- (c) paying remuneration, allowances and other expenses of the administrative staff;
- (d) paying any other expenses, costs or expenditure in relation to the procurement of goods and services, including the engagement of consultants, assigning committees, legal fees and other costs, properly incurred or accepted by the Board in the performance of its functions and powers under this Act;
- (e) purchasing or hiring equipment, machinery and any other materials, acquiring land and any assets, and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or in the exercise of its powers under this Act; and
- (f) paying any general expenses for carrying into effect the provisions of this Act.

### Conservation of the Fund

**47.** It shall be the duty of the Board to conserve the Fund by performing its functions and exercising its powers under this Act so as to secure the total revenues of the Board are sufficient to meet all sums properly

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chargeable to its revenue account including depreciation and interest on capital, etc.

### **Bank accounts**

**48.** The Board shall open and maintain an account or accounts with such bank or banks in Malaysia as the Board thinks fit.

### **Financial procedure**

**49.** Subject to this Act and approval of the Minister, the Board shall determine its own financial procedure.

### **Financial year**

**50.** The financial year of the Board shall begin on 1 January and end on 31 December of each year.

### **Accounts and Reports**

**51.** (1) The Board shall keep an annual statement of account, as soon as possible after each financial year consisting of—

(a) a financial statement of the Board consisting of balance sheet, income and expenditure statement; and

(b) a statement of activities.

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(2) The Board shall as soon as possible submit a copy of the statement of activities as in subsection (1) audited by the Auditor General.

(3) The Statutory Body Act (Accounts and Annual Reports) 1980 [Act 240] shall apply to the Board.

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## EXPLANATORY STATEMENT

This Bill seeks to establish a body corporate by the name of the “Board of Computing Professionals Malaysia” to provide for the registration of computing professionals and for purposes connected therewith.

### PART I

2. Part I of the Bill deals with preliminary matters.

*Clause 1* contains the short title of the proposed Act. The Minister is empowered to appoint different dates for the coming into operation of different provisions of the Act.

*Clause 2* provides for the application of the proposed Act throughout Malaysia in the Critical National Information Infrastructure (CNII) and on all Registered Computing Practitioners, Registered Computing Professionals and Registered Computing Services Providers. The Minister is empowered to suspend the operation of the proposed Act in any part of Malaysia or suspend any part of the Act.

*Clause 3* contains the definitions of certain words and expressions used in the proposed Act.

### PART II

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3. Part II contains provision on the establishment of the Board of Computing Professionals Malaysia.

*Clause 4* seeks to provide for the establishment of the Board, the appointment of the members of the Board by the Minister and the tenure of office of members of the Board.

*Clause 5* allows the Board to have a common seal.

*Clause 6* provides for the payment of such allowances to the members of the Board as the Minister may determine.

*Clause 7* provides for the revocation of appointment of members of the Board and their resignation.

*Clause 8* spells out the circumstances in which the office of a member of the Board becomes vacant.

*Clause 9* provides for the procedures to be adhered to by the members of Board which are set out in the Schedule.

*Clause 10* requires a member of the Board to disclose his interest in any matter under discussion by the Board.

*Clause 11* provides for the functions and power of the Board.

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## PART III

3. Part III contains provision relating to the registration of Computing Practitioners, Computing Services Providers and Computing Professionals.

*Clause 12* provides for registration method.

*Clause 13* provides for the appointment and duties of the Registrar.

*Clause 14* specifies the qualifications for registration with the Board.

*Clause 15* deals with Registered Computing Services Provider provided by companies (including sole proprietorship, partnership)

*Clause 16* deals with application for registration.

*Clause 17* provides for the issuance of certificate of registration by the Registrar respectively.

*Clause 19* deals with restricting professional work to only Registered Computing Professionals and Registered Computing Services Providers.

*Clause 20* requires a Registered Computing Professionals notify the Registrar of any changes in his address.

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## PART IV

4. Part IV addresses disciplinary committee issues.

*Clause 21* sets the establishment of the Disciplinary Committee.

*Clause 22* defines the powers of the Disciplinary Committee.

*Clause 23* defines the proceedings of the Disciplinary Committee

## PART V

5. Part V contains provision relating to cancellation, removal and reinstatement of the registration.

*Clause 24* sets out the situations in which the Board may cancel or suspend any Registered Computing Professionals.

*Clause 25* provides for the removal from register under certain circumstances.

*Clause 26* provides for the reinstatement of the name of a Registered Computing Professionals in the Register.

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*Clause 27* provides for the surrender of certificates of registration issued under the proposed Act.

### PART VI

6. Part VI contains general and other provisions of the Act.

*Clause 28* sets the provision for Appeal against Board decisions.

*Clause 29* seeks to provide for the establishment of the Appeal Board.

*Clause 30* seeks to provide for the tenure of office of the Appeal Board.

*Clause 31* provides for the procedure of appeal.

*Clause 32* allows the Appeal Board to determine its own procedure.

*Clause 33* imposes Penalties for obtaining registration by false pretences.

*Clause 34* sets out the restriction on employment of unregistered person to provide Computing Services.

*Clause 35* deals with the Investigating Committee appointed by the Board and its powers.

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*Clause 36* sets out the general penalty for offences committed against the proposed Act for which no specific penalty is expressly provided.

*Clause 37* seeks to empower the Board, with the approval of the Minister, to make regulations under the proposed Act.

*Clause 38* provides the right of Federal and State Government that may overrule the provisions of this Act

*Clause 39* seeks to provide indemnity for any act or omission done in good faith in the discharge of the functions, powers and duties under this proposed Act.

*Clause 40* allows for the Board to appoint Advocate and Solicitor

*Clause 41* states that the members of the Board, members of the committees, employees or agents of the Board are deemed to be public servants within the meaning of the Penal Code.

*Clause 42* seeks to provide for the protection of the Board, members of the committees, any member of the Board or employee or agent of the Board in respect of any act, neglect, default or omission done or omitted by it or him in good faith in such capacity.

*Clause 43* deals with the provision relating to the duty to maintain secrecy.

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*Clause 44* provides for the validity of acts done in anticipation of the enactment of the proposed Act.

### PART VII

7. Part VII contains financial provisions.

*Clause 45* provides for the establishment of the “Board of Computing Professionals Malaysia Fund” (“the Fund”).

*Clause 46* sets out the expenditure that may be charged to the Fund.

*Clause 47* places a duty on the Board to conserve the Fund.

*Clause 48* allows the Board to open and maintain bank accounts.

*Clause 49* allows the Board to determine its own financial procedure.

*Clause 50* states that the financial year of the Board shall begin on 1 January and end on 31 December of each year.

*Clause 51* requires the Board to keep an annual statement of account and statement of activities. The Board is required to send the statement of accounts and statement of activities audited by the Auditor General and the Auditor General’s Report for the financial year to the Minister who will then cause them to be laid before both Houses of Parliament. This *clause* also

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provides that the Statutory Bodies (Accounts and Annual Reports) Act 1980 shall apply to the Board.