



SURUHANJAYA SYARIKAT MALAYSIA  
COMPANIES COMMISSION OF MALAYSIA

**PUBLIC  
CONSULTATION ON  
THE INTEREST  
SCHEMES BILL**

**JULY 2013**



**SURUHANJAYA SYARIKAT MALAYSIA  
COMPANIES COMMISSION OF MALAYSIA**

**CONSULTATION DOCUMENT ON THE PROPOSED INTEREST  
SCHEMES BILL**

**2 JULY 2013**

The Companies Commission of Malaysia (SSM) invites comments on the provisions of the proposed Interest Schemes Bill as set out in Section B of this consultation document by **1 August 2013**. Please provide your name and the organisation you represent (where applicable) and to provide reference on the provision/clause you are commenting. Comments may be forwarded by email to:

**email: [feedback.bills@ssm.com.my](mailto:feedback.bills@ssm.com.my)**

**Confidentiality:** Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

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## **SECTION A**

### **INTRODUCTION AND OVERVIEW**

## **INTRODUCTION AND OVERVIEW**

1. In line with the exercise of reviewing the Companies Act 1965, the initiative to introduce a standalone separate legislation for interest scheme which is currently reflected under Division 5 of Part IV is seen as timely and crucial to ensure that the provisions remain relevant that match the needs of both the business and the investing public. A new framework which is more forward looking is also essential to ensure that the climate for fundraising is properly regulated.

2. The wide definition of “interest” making the blue sky its limit which has been affirmed by the Federal Court in the case of *NV MULTI CORPORATION BHD & ORS VS. SURUHANJAYA SYARIKAT MALAYSIA [2010] 7 CLJ 22* has also prompted SSM to initiate efforts in enhancing the existing legal framework with regards to interest scheme in ensuring that the overall potential of interest scheme could be leveraged upon not only by local business community but also to attract those foreign operators to participate in the Malaysian interest scheme industry.

3. In view of recognising the importance of an alternative mode for capital raising through interest scheme, SSM views that the current framework should be reviewed to ensure that the application of the laws remain relevant and beneficial to all companies, in particular the Small and Medium Enterprises (SMEs).

4. The breadth of the definition of “interest” which covers any offering besides shares, stock or debentures also raises the need to formulate a more conducive framework to cater to all types of interests, both for investment purposes and non investment in nature.

5. In addressing investors as well as customer protection issues, regulatory oversights on the offering of interests is also important to provide certainty on matters that fall within the regulated framework and therefore appropriate and responsive governance mechanism should also be considered.

6. SSM also recognises that there is a real need for legislative reforms to ensure that products with similar economics are treated in like manner to provide functional regulatory consistencies in the market. The move for reform is to ensure that investors are provided with similar rights and protection irrespective of where the investment is made to avoid possible regulatory arbitrage.

## **JURISDICTIONAL BENCHMARKING**

7. Towards achieving a modern, responsive and dynamic framework that meets the needs of business community in Malaysia and abroad, a comparative jurisdictional study has been conducted to ascertain that the new regulatory framework is competitive worldwide.

8. The governing legislation for interest scheme has evolved over time in Australia and India, interest schemes are offered

through the “managed investment scheme” or “collective investment scheme” concepts respectively and closely resemble the current framework under the Companies Act 1965 and the Capital Market Services Act 2007.

9. As the fund raising activities increases, the interest scheme concept has also evolved whereby some of the interest scheme activities are more appropriately regulated under the securities laws whilst some other may not necessarily be categorised as securities product.

10. In cognisance of this fact, SSM is of the view that a separate piece of legislation is necessary to provide certainty on activities, products or assets that are best regulated as non-securities.

11. It is also noted that in recognition of interest scheme as an alternative mode of raising fund, more and more variation to the methods of raising capital through “interest scheme” concept has been introduced such as in the United Kingdom (UK), Singapore and Dubai.

## **THE WAY FORWARD FOR INTEREST SCHEMES IN MALAYSIA**

12. The current uncertain economic outlook offers both challenges and opportunities for the growth of interest scheme industry in Malaysia. In line with Government aspiration to make Malaysia a high income nation by 2020, SSM is proposing that the interest scheme under Division 5 of Part IV of the Companies Act 1965 be introduced as a separate piece of legislation.

13. The main objectives of the proposal are:

- (i) to provide visibility for interest schemes to be utilised by company as an alternative mode of fund raising;
- (ii) to provide clarity on the regulatory framework for schemes which is made based on the “common enterprise” principles and best regulated as non-securities;
- (iii) to enhance protection mechanisms in safeguarding the interest of interest holders.

14. To this end, SSM subscribes to a set of policy statements as the guiding principles in drafting the Interest Schemes Bill. The Bill will cover the general requirements for the registration, administration and dissolutions of interest schemes. To strike a balance between the objectives of interest scheme operators and investors’ protection, appropriate safeguards mechanisms are also proposed to ensure adequate safeguards and remedies are in place.

#### **POLICY STATEMENTS FOR THE INTEREST SCHEMES BILL**

15. The proposed Interest Schemes Bill was drafted based on the policy statements and guiding principles as set out below:



|          | <b>POLICY STATEMENT</b>  |
|----------|--|
| <b>1</b> | <p><b>Development of a modern, dynamic and relevant regulatory framework for interest scheme which caters for all segments of the economy:</b></p> <ul style="list-style-type: none"> <li>• Introduction of a standalone legal framework for interest schemes through a new piece of legislation to administer the registration, management and dissolutions of interest schemes.</li> </ul>   |
| <b>2</b> | <p><b>Removing obstacles for growth of interest schemes by:</b></p> <ul style="list-style-type: none"> <li>• allowing offering of interests by all companies irrespective of size and nature;</li> <li>• introducing an entry point for private companies to be allowed to register interest scheme, based on certain criteria;</li> <li>• recognising interest schemes which are offered outside Malaysia and those offered by foreign companies registered under the Companies Act.</li> </ul> |
| <b>3</b> | <p><b>Simplification of laws and procedures for capital raising by requiring:</b></p> <ul style="list-style-type: none"> <li>• prospectus (or product disclosure statement in cases of private companies); and</li> <li>• trust deed (or contractual agreement in cases of private companies);</li> </ul>  |
| <b>4</b> | <p><b>Enhancement of governance framework through:</b></p> <ul style="list-style-type: none"> <li>• specific duties, responsibilities and powers of scheme operator with regard to the interest holders such as: <ul style="list-style-type: none"> <li>(i) to act in the best interest of the interest holders;</li> <li>(ii) to appoint auditor of the interest scheme;</li> </ul> </li> </ul>   |

|          | <b>POLICY STATEMENT</b>  |
|----------|--|
|          | <ul style="list-style-type: none"> <li>(iii) to convene annual meeting of the interest holders;</li> <li>(iv) to circulate audited accounts of the scheme to interest holders;</li> <li>(v) to prepare report on periodical basis.</li> <li>• Codification of the qualification of the directors of the management company.</li> <li>• Strengthening the duties and powers of trustees of interest schemes.</li> <li>• Provisions relating to dissolutions of interest schemes and the grounds for such dissolutions.</li> </ul> |
| <b>5</b> | <p><b>Enhancement of rights of interest holders through:</b></p> <ul style="list-style-type: none"> <li>• right of interest holders to request for the audited accounts of the scheme operator;</li> <li>• rights of interest holders for annual meetings;</li> <li>• rights to request for dissolutions of the scheme.</li> </ul>   |
| <b>6</b> | <p><b>Enhancement of interest holders' protection through the power of the Registrar:</b></p> <ul style="list-style-type: none"> <li>• to intervene in the management of the scheme on the application of the interest holders or any directors of the scheme operator.</li> <li>• to issue guidelines, practice notes and power to take actions including the power to order for restitution.</li> </ul>  |

**SECTION B**

**THE INTEREST SCHEMES BILL**

# **INTEREST SCHEMES BILL 2013**

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**PART I**  
**PRELIMINARY**

**Short title and commencement**

1. (1) This Act may be cited as the Interest Schemes Act 2013.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

**Interpretation**

2. In this Act and in the Schedule, unless the context otherwise requires—

“approved company auditor” has the meaning assigned to it under the Companies Act 2013;

“company” means a company incorporated under the Companies Act 2012 or any corresponding previous written law and includes a corporation that is a public company which is registered as a foreign company in Malaysia;

“Commission” means the Companies Commission of Malaysia established under the Companies Commission of Malaysia Act 2001;

“compensation fund” means the compensation fund established under section 62;

"financial year" , in relation to a scheme, means the period of twelve months ending on the thirty-first day of December or on such other date as is specified in the deed;

“foreign company” has the meaning assigned to it in the Companies Act 2012;



“interest” means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent –

- (a) in any profits, assets or realization of any financial or business undertaking or scheme, whether in Malaysia or elsewhere;
- (b) in any common enterprise, whether in Malaysia or elsewhere, in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;
- (c) in any time-sharing scheme; or
- (d) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include

–

- (A) any share in or debenture of a corporation;
- (B) any interest in or arising out of a policy of life insurance;
- (C) any interest in a partnership agreement unless the agreement-
  - (i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is a party to the agreement; or
  - (ii) is an agreement, or is within a class of agreements, prescribed by regulations for the purposes of this paragraph; or

(D) any participatory interest in a unit trust scheme as defined in section 2 of the Securities Industry Act 1983;

(E) any participatory interest in any product offered by the licensees regulated under the Financial Services Act 2012 and Islamic Financial Services Act 2012;

"investment contract" means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances and includes any contract, scheme or arrangement which in substance and irrespective of the form thereof entitles the investor to a right to use or enjoy any sport, recreational, holiday or other related facilities for a consideration and for a duration of not less than twelve months whether or not on a recurring basis;

"interest holder" means a person who participate in an interest scheme;

"management company", in relation to any interests issued or proposed to be issued or any deed that relates to any interests issued or proposed to be issued, means a company by or on behalf of which the interests have been or are proposed to be issued and includes any person for the time being exercising the functions of the management company;

"Minister" means the Minister charged with the responsibility for domestic trade;

"premium scheme" means a scheme relating to an interest of which the right to participate or a right to the interest in the scheme is offered by a management company which is a public company limited by shares;

“recognised scheme” means a scheme relating to an interest whose deed and prospectus have been duly registered pursuant to Part 5 Division IV of the Companies Act 1965;

“Registrar” means the Registrar of Companies as provided for under the Companies Commission of Malaysia 2001 [*Act 614*];

“small scheme” means a scheme relating to an interest of which the right to participate or right to the interest in the scheme is offered by a management company which is a company incorporated under the Companies Act 2013 [*Act xxx*];

“scheme” in relation to an interest includes any arrangement, undertaking, enterprise, action plans or programmes;

“time-sharing scheme” means a scheme, undertaking or enterprise-

- (a) participants in which are, or may become, entitled to use, occupy or possess, for two or more periods during the period for which the scheme, undertaking or enterprise, whether in Malaysia or elsewhere is to operate, property to which the scheme, undertaking or enterprise relates; and
- (b) that is to operate for a period of not less than three years.

“unregistered scheme” means a scheme which is not registered under this Act or under Part 5 of Division IV of the Companies Act 1965.

(2) A reference in this Act to a deed shall be read as including a reference to any instrument amending or affecting the deed.

**PART II**  
**INTEREST SCHEMES PREREQUISITES**

**Prohibition of offering interest without complying with the provision of this Act**

3. (1) Unless a scheme is registered and authorised under this Act, no person shall—

- (a) issue or caused to be issued any advertisement inviting persons to become or offer to become participants in the scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in the scheme; or
- (b) advise or procure to any person to become or offer to become a participant in the scheme.

(2) Any person who contravenes this provision commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding fifty million ringgit or to both.

**Interests to be issued by companies only**

4. (1) No person except a company or an agent of a company authorised by the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

(2) Any person who contravenes this provision commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding fifty million ringgit or to both.

**Types of schemes that may be registered**

5. A scheme may be registered as -

- (a) a premium scheme;
- (b) a small scheme; or
- (c) a foreign scheme.

**Eligibility criteria to register a premium scheme**

6. (1) An application for the registration of a premium scheme may be made by a management company provided that-

- (a) it is a public company limited by shares incorporated under the Companies Act 2013 or any corresponding previous written law;
- (b) it specifies in its constitution the managing of interest scheme as one of its main objects;
- (c) it has a minimum amount of paid up capital as determined by the Registrar;
- (d) it has adequate infrastructure to enable it to operate a scheme in accordance with the provision of this Act and its regulations.

(2) The Registrar shall have the power to impose any other conditions that he deems fit from time to time.

**Eligibility criteria to register a small scheme**

7. (1) An application for the registration of a small scheme may be made by a management company provided that—

- (a) it is a company limited by shares incorporated under the Companies Act 2013 or any corresponding previous written law;
- (b) it specifies in its constitution the managing of interest scheme as one of its main objects;

- (c) it meets the minimum amount of paid up capital as determined by the Registrar;
- (d) it has adequate infrastructure to enable it to operate interest scheme in accordance with the provision of this Act and its regulations;
- (e) it will not offer or propose to offer for purchase or subscription of the interest to more than 50 persons; and
- (f) it will not raise fund exceeding the prescribed threshold as determined by the Registrar

(2) The Registrar shall have the power to impose any other conditions that he deems fit from time to time.

#### **Eligibility criteria to register a foreign scheme**

8. (1) An application for the registration of a foreign scheme shall be made by a foreign company registered under Division 1 of Part V of the Companies Act 2013 provided that—

- (a) it is a public company limited by shares at its origin country;
- (b) it specifies in its constitution the managing of interest scheme as one of its main objects;
- (c) it meets the minimum amount of paid up capital as determined by the Registrar; and
- (d) it has been given the recognition or authority to offer or proposed to offer interests to public.

(2) The Registrar shall have the power to impose any other conditions that he deems fit from time to time.

**PART III**  
**REGISTRATION OF SCHEMES**

**Application for registration of a scheme**

9. (1) An application to register a scheme shall be made to the Registrar by providing the following information:

- (a) name of the management company;
- (b) names and addresses of the directors, secretary and auditor of the management company;
- (c) the names and addresses of the trustees appointed by the management company;
- (d) in the case of a foreign scheme, the names and addresses of the foreign company, its directors and agents in Malaysia and the trustees appointed by the management company;
- (e) the amount proposed to be raised by the scheme; and
- (f) such other information as the Registrar may require.

(2) The application shall be accompanied by a prescribed fee and the following documents:

- (a) in the case of a premium scheme,-
  - (i) a copy of the constitution of the management company;
  - (ii) an approved trust deed;
  - (iii) a prospectus; or

- (b) in the case of a small scheme, --
  - (i) a copy of the constitution of the management company;
  - (ii) an approved product disclosure statement;
  - (iii) a contractual agreement; or
  
- (c) in the case of a foreign scheme,--
  - (i) a copy of certificate of incorporation of the foreign company at its origin country;
  - (ii) a copy of the constitution of the management company;
  - (iii) a copy of the approval or registration by the relevant foreign jurisdiction authorising the foreign company to carry out such activities;
  - (iv) a copy of a prospectus and an approved trust deed, or such other similar document in the origin country;
  - (v) an approved trust deed;
  - (vi) a prospectus; or
  
- (d) such other document that the Registrar may require.

(3) The Registrar may direct the management company to furnish such further information or clarification as may be required by him, for the purpose of processing the application.

(4) In connection with an application under this section, the Registrar may—

- (a) require the management company to appear before the Registrar for personal representation; or
- (b) direct the management company to compensate any person who have purchased any interest in the scheme prior to the application;
- (c) restrain the management company from carrying on the following activities:



- (i) promoting any interest scheme to members of the public;
- (ii) dealing, offering or products or generating interest in its products;
- (iii) printing, publishing or distributing or causing to be printed, published, or distributed, written materials promoting interest schemes; or
- (iv) making any recommendation, or offering advice, whether orally or in writing, to any person in relation to a product or a decision by a person regarding whether or not to invest in a product.

(5) Nothing in this section shall be construed to require the Registrar to register the application if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

### **Certificate of Authorisation**

10. (1) Upon approval of the application pursuant to section 9, the Registrar shall—

- (a) issue a certificate of authorisation; and
- (b) allocate an authorisation number,

to the management company in respect of the scheme.

(2) In granting a certificate of authorisation, the Registrar shall have the power to impose any terms and conditions that he deems fit.

(3) The certificate of authorisation issued shall be conclusive evidence that the requirements of this Act in respect of registration and matters precedent and incidental to such registration has been complied with and that the scheme is registered under this Act.

### **Revocation of Certificate of Authorisation**

11. (1) The Registrar may revoke the certificate of authorisation issued under section 10 if –

- (a) the management company has failed to comply with the any conditions imposed by the Registrar pursuant to section 10(2);
- (b) the management company has contravened any provision of this Act;
- (c) the management company has contravened any provision of the Companies Act 2012;
- (d) it is desirable or in the interest of interest holders or potential interest holders to do so; or
- (e) the scheme is used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order or contrary to the national security or interest.

(2) The Registrar shall notify the management company in writing on the revocation of the certificate of authorisation.

#### **Appeal to the Minister on Revocation**

12. The management company may appeal to the Minister in writing on the decision of the Registrar under section 11(1) and the decision of the Minister shall be final.

#### **Power to refuse registration**

13. Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register the application of a proposed scheme if he is satisfied that—

- (a) the proposed scheme is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Malaysia; or

- (b) it would be contrary to the national security or interest for the proposed scheme to be registered.

**Provision applicable to foreign schemes on reciprocity arrangement**

14. (1) If, in terms of-

- (a) any law of a foreign country; or
- (b) any regulatory or supervisory action taken by an authority or body in a foreign country,

a company offering a scheme is suspended, disqualified or restricted from administering a scheme in that country under the same requirements as persons connected with that country are able to administer such a scheme, the Minister may by notice served on a person connected with that country who is administering or intends to administer a collective investment scheme in Malaysia, suspend, disqualify or restrict the business of such person in a similar manner.

(2) Notice may not be served in terms of subsection (1) unless-

- (a) it is in the national interest; and
- (b) the Minister has consulted the person concerned or, if expedient, a body representing the interest of the person to be affected.

(3) A notice must-

- (a) state the grounds on which it is given;
- (b) identify the country to which the person is connected;
- (c) specify the date on which such notice comes into force; and
- (d) provide for a reasonable period to complete performance of transactions entered into before the date on which the notice in terms of this section comes into force or for the termination of contracts of a continuing nature.

(4) A notice in terms of subsection (1) may suspend, disqualify, restrict or partially restrict the administration of a collective investment scheme by a person and may provide for-

- (a) the withdrawal of the registration or approval under this Act of a manager to administer a scheme in the Malaysia;
- (b) the disqualification of a person from being registered or approved as a manager under this Act; or
- (c) the restriction or partial restriction of a manager registered or approved under this Act in respect of the administration of a collective investment scheme.

(5) A partially restrictive notice may prohibit a manager from-

- (a) entering into transactions of a specified kind or entering into them in specified circumstances or to a specified extent;
- (b) soliciting investments of a specified kind or otherwise than from a specified person; or
- (c) administering a collective investment scheme in a specified manner or otherwise than in a specified manner.

(6) For the purposes of this section a person or manager is connected with a foreign country, as the case may be, if-

- (a) in the case of an individual, he or she is a national of or resident in that country or Malaysia and administers a collective investment scheme from a principal place of business in that country or Malaysia;
- (b) in the case of a body corporate, it is incorporated or has a principal place of business in that country or the Republic or is controlled by a person or persons connected with that country or Malaysia;

- (c) in the case of a partnership, it has a principal place of business in that country or Malaysia or any partner is connected with that country or Malaysia; or
- (d) in the case of an unincorporated association which is not a partnership, it is formed under the law of that country or Malaysia, has a principal place of business in that country or Malaysia or is controlled by a person connected with that country or Malaysia.

### **Savings and Transitional**

15. (1) On the commencement of this Act, any recognized scheme shall continue and be deemed as a premium scheme and shall be subject to the provisions of this Act.

(2) The management company shall apply to the Registrar for the grant of certificate of authorisation to a recognized scheme within three months of the date of commencement of this Act or such longer period as the Registrar may allow.

(3) The Registrar shall have the power to request from the management company any information necessary for the purposes of granting the certificate of authorisation and may impose any terms or conditions that he may deem fit.

(4) Upon the expiry of the period referred to under subsection (2), the Registrar shall have the power—

- (a) to direct a management company to cease from acting as the management company of the recognized scheme; and
- (b) to wind up the recognized scheme in accordance with the provisions of this Act.

### **Conversion from small scheme to a premium scheme**

16. A small scheme may convert to a premium scheme if its management company fulfils the requirement stated in section 6.

**Statements and documents to be filed for conversion**

17. (1) A management company may apply to convert a small interest scheme to a premium scheme by filing with the Registrar—

- (a) a statement signed by all of its directors in such medium and form as the Registrar may determine containing information under section 9(1) and the following particulars:
  - (i) the name and authorisation number of the small scheme;
  - (ii) the date on which the small scheme was registered and authorised;
  - (iii) that as at the application date, the management company appears to be able to pay its debts as they become due in the normal course of business;
  - (iv) that as at the application date, all outstanding statutory fees or any amount owing to any government agency has been settled;
  - (v) that the management company has placed an advertisement in at least one widely circulated newspaper in Malaysia and in the *Gazette* of its intention to convert to a limited liability partnership;
  - (vi) that all of the interest holders relating to the small interest scheme have agreed with the application to convert to a premium interest scheme; and
  
- (b) documents referred to paragraph 9(2)(b) .

(2) The Registrar may, in any particular case, require the statement referred to in subsection (1) to be verified in such manner as the Registrar considers fit.

### **Registration of conversion**

18. (1) On receiving the statement from the management company of a small scheme under section 17 and upon payment of a prescribed fee, the Registrar may, subject to the provisions of this Act, register the scheme as a premium scheme and issue a certificate of authorisation in such form as the Registrar may determine stating that the premium scheme is, on and from the date specified in the notice, registered under this Act.

(2) Nothing in this section shall be construed as to require the Registrar to register the conversion if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

### **Effect of conversion**

19. On and from the date of registration—

- (a) there shall be a premium scheme as specified in the certificate of authorisation;
- (b) all properties vested in the small scheme, all interests, rights, privileges, liabilities and obligations relating to the scheme, and the whole of the undertaking of the scheme, as the case may be, shall be transferred to and shall vest in the premium scheme without further assurance, act or deed; and
- (c) the small scheme shall be deemed to have ceased.

**PART IV**  
**TRUST DEED, TRUSTEES & PROSPECTUS**

**CHAPTER 1**  
**Trust Deeds and Contractual Agreements**

**Approved Trust Deeds and Contractual Agreements**

20.(1) For the purposes of an application under section 9, a management company shall obtain prior approval from the Registrar of a trust deed or a contractual agreement in relation to a scheme.

(2) An approval from the Registrar for a trust deed or contractual agreement shall only be granted if—

- (a) an approval for the appointment of trustees referred to in section 23(2) has been obtained; and
- (b) that the approval for the appointment of the trustees has not been revoked and that the trustees have not ceased office.

**Content of Trust Deeds and contractual agreements**

21.(1) The Registrar shall not grant his approval to a deed or an agreement unless the deed or the agreement contains the following-

- (a) provisions relating to the appointment of trustees;
- (b) covenants as set out under First Schedule; and
- (c) provision for such other matters and things as are required by or under the regulations to be included in the deed and if regulations have been made prescribing the charges that may be made by a management company, unless the deed provides-



- (i) that the charges to be made by the management company do not exceed such percentages or amounts as are prescribed; and
- (ii) that the price at which the interests to which the deed relates are to be sold or purchased by the management company are consistent with the regulations relating to those prices.

(2) Within seven days after a trust deed or a contractual agreement has been approved under this section, the Management Company shall lodge with the Registrar the deed or the agreement as the case may be, or a copy of the deed or the agreement verified by statutory declaration, and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original.

### **Amendment to the Trust Deeds and Contractual Agreement and Void Provisions**

22. (1) A provision in a trust deed or a contractual agreement which is inconsistent with this Act is void.

(2) The parties to a deed or an agreement may by supplemental trust deed or contractual agreement amend a deed or contractual agreement as the case may be but no amendment of a deed or contractual agreement is valid unless the consent of a majority in value of interest holders has been obtained in the manner prescribed in the deed or contractual agreement.

(3) If the Registrar is satisfied that any such amendment-

- (a) is required only to enable the provisions of this Act or of the deed or the agreement to be given
- (b) will benefit the interest holders;
- (c) will not prejudice the interests of investors;
- (d) does not amend the fundamental provisions or objects of the deed or the contractual agreement; and

(e) does not release the trustee or custodian from any responsibility to the interest holders,  
he may direct that such consent be dispensed with.

## **CHAPTER 2**

### **Trustees**

#### **Appointment of Trustees**

23. (1) Prior to the registration of a scheme under section 9, a management company shall appoint a trustee, as the case may be, to act for interest holders.

(2) The appointment of trustees by the management company shall be subject to the approval of the Registrar.

(3) In granting his approval under subsection (2), the Registrar may, having regard to the nature of the undertaking, scheme or enterprise, contract or arrangement to which a trust deed or contractual agreement relates, impose on the trustee such terms and conditions as he thinks fit.

#### **Eligibility for appointment as Trustees**

24. (1) For the purposes of the registration of a scheme, only companies registered under the Trust Companies Act 1949 or such other person approved by the Minister, shall be eligible to be appointed as trustees.

(2) Notwithstanding of subsection (1), no person shall be eligible to be appointed as trustee, if he is directly or indirectly associated with the persons who have control over the management company.

## **Duties of Trustees**

25(1) The trustees shall-

- (a) exercise all due diligence and vigilance in carrying out their functions and duties and in monitoring the rights and interests of the holders of the interests to which the trust deed or contractual agreement, as the case may be, relates; and
- (b) ensure that the covenants in the trust deed, supplemental trust deeds or contractual agreement and contents in the prospectus or product disclosure statements are delivered.

(2) The trustees shall report to the Registrar, when—

- (a) there is any non-compliance of the Act, trust deed, contractual agreement, prospectus or product disclosure statement, as the case may be;
- (b) the scheme is unable to meet its obligation as they fall due; or
- (c) the management company is carrying on business in a manner that is, or likely to be, prejudicial to the interest holders.

(3) The trustees shall notify the Registrar if they know, or have reasonable cause to believe the occurrence of any matter which has or likely to have a “material adverse effect” on the interest scheme.

(4) For the purposes of subsection (4), “material adverse effect” includes circumstances that may endanger the continued existence of the scheme; or reduce the protection of interest holders in the scheme.

## **Liability of Trustees**

26. (1) Subject to this section, any provision contained in a trust deed or a contractual agreement that is or at any time has been approved by the Registrar, or

in any contract with the holders of interests to which such a deed or contractual agreement relates, shall be void so far as it would have the effect of exempting a trustee under the deed or agreement from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to show the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—
  - (i) on the agreement of a majority of not less than three-fourths of the holders of interests to vote in person or by proxy at a meeting summoned for the purpose; and
  - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

### **Resignation and removal of Trustees**

27. (1) The trustees may resign by giving three months written notice or such shorter period and in accordance to the provisions the trust deed or contractual agreement as the case may be.

(2) The management company may remove the trustees by giving three months written notice to the trustees and the interest holders.

(3) The notice under subsection (2) above shall be invalid if the removal is objected by—

- (a) in the case of a premium scheme or a foreign scheme, at least fifty interest holders; or
- (b) in the case of a small scheme, at least fifty percent of all of the interest holders.

(4) The interest holders may remove the trustees by giving three months notice to the trustees and the management company after the decision was made through an special resolution of the meeting of interest holders and agreed by fifty or more interest holders of the scheme.

(5) On the resignation and removal of the trustees, the management company shall appoint a new trustee by way of executing a supplementary trust deed or contractual agreement.

(6) Notwithstanding subsection (5), a resignation or removal of the trustees shall take not take effect unless and until a new trustee is appointed.

(7) The trustees shall, on resignation or removal, vest the trust accounts to the new trustees and deliver all books, documents, records and other property whatsoever relating to the same to the new trustees.

(8) The cost and incidental expenses incurred under subsection (7) shall be borne by the Management Company.

(9) Upon the execution of the supplementary trust deed or contractual agreement, the new trustees, shall thereafter exercise all its powers, duties and obligations to the schemes.

### **Bankruptcy of Trustees**

28. (1) If a trustee has been adjudicated bankrupt, he shall no longer be eligible to act as a trustee.

(2) The management company shall, as soon as practicable, appoint a new trustee, as the case may be.

**Chapter 3**  
**Prospectus and Product Disclosure Statement**

**Prohibition of issuing a prospectus or product disclosure statement without approved trust deed or approved contractual agreement**

29. (1) A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest—

- (a) in the case of a premium scheme or a foreign scheme, an approved trust deed; or
- (b) in the case of a small scheme, an approved contractual agreement.

(2) A person shall not in any deed, prospectus, product disclosure statement, advertisement or other document relating to any interest make any reference to an approval granted under this Act relating to —

- (a) a trust deed or a contractual agreement; or
- (b) a trustee or representative granted under this Act.

(3) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit or imprisonment for a term not exceeding three years or to both.

**Requirement to register and lodge prospectus or product disclosure statement**

30. (1) A prospectus or product disclosure statement to which this Chapter applies, shall not be issued, circulated or distributed by any person unless:

- (a) the prospectus or product disclosure statement has first been registered by the Registrar; and
- (b) the prospectus or product disclosure statement has complied with the provisions of this Act.

(2) A prospectus or product disclosure statement registered with the Registrar under this Act shall be lodged with the Registrar before the date of issue of the prospectus or product disclosure statement.

(3) Unless authorised in writing by the Registrar, a person shall not issue, circulate or distribute any form of application for interest of a scheme unless the form is accompanied by a copy of a prospectus or product disclosure statement which has been registered by the Registrar.

(4) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

### **Registration of prospectus or product disclosure statement**

31. (1) The Registrar shall refuse to register a prospectus or product disclosure statement if—

- (a) the Registrar is of the opinion that the prospectus or product disclosure statement does not comply with any provision of this Act;
- (b) the issue or invitation in respect of shares or debentures to which the prospectus or product disclosure statement relates does not comply with any other requirement or provision of this Act;

- (c) the Registrar is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;

(2) In furtherance to the subsection (1) if the Registrar is of the opinion that the management company or the directors of the management company making such offer or invitation is not a fit and proper person to make such an issue or invitation to the public, the Registrar may refuse to register the prospectus or product disclosure statement, as the case may be.

(3) For the purposes of subsection (2), a director shall include a proposed director named in the prospectus or product disclosure statement and any other person falling under the definition of a director.

(4) No prospectus or product disclosure statement shall be registered unless-

- (a) a copy of it, signed by every director and by every person who is named therein as a proposed director of the management company, or by his agent authorized in writing, is lodged with the Registrar on or before the date of its issue;
- (b) it is submitted to the Registrar together with—
  - (i) a written application for its registration;
  - (ii) copies of all consents required under section 34 from any person named in the prospectus as having made a statement that is included in the prospectus or product disclosure statement or on which a statement made in the prospectus or product disclosure statement is based;
  - (iii) copies of all material contracts referred to in the prospectus or product disclosure statement or, in the case of a contract not reduced into writing, a memorandum giving full particulars



- thereof, verified in accordance with any requirements specified by the Registrar; and
- (iv) all such information or documents as may be required by the Registrar.

### **Keeping of documents relating to prospectus or product disclosure statement**

32. (1) A management company shall cause a copy of—

- (a) any consent required under section 34 in relation to the issue of the prospectus or product disclosure statement; and
- (b) every material contract or document referred to in the prospectus or product disclosure statement, to be deposited at the registered office of the management company in Malaysia, within three days after the registration of the prospectus or product disclosure statement and shall keep each such copy, for such period as may be specified by the Registrar, for inspection by any person without charge.

(2) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

### **Contents of prospectuses or product disclosure statement**

33. (1) Every prospectus or product disclosure statement issued pursuant to this Act shall comply with the requirements relating to the contents of the prospectus as specified by the Registrar as follows:

- (a) in the case of a premium scheme or a foreign scheme, in the Second Schedule;
- (b) in the case of a small scheme, in the Third Schedule.

(2) Where a prospectus or product disclosure statement relating to any interest of a scheme is issued and the prospectus or product disclosure statement does not comply with this section, each director of the corporation and other person responsible for the prospectus or product disclosure statement commits an offence and shall upon conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(3) In the event of non-compliance with or contravention of this section, a director or other person responsible for the prospectus or product disclosure statement shall not incur any liability by reason of the non-compliance or contravention, if-

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof;
- (b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or
- (c) the non-compliance or contravention was in respect of matter which in the opinion of the court dealing with the case was immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused.

(4) A condition requiring or binding an applicant for interests of a scheme to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract document or matter not specifically referred to in the prospectus shall be void.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or any written law or under this Act apart from subsection (2).

### **Consent from person to issue of prospectus or product disclosure statement containing statement by him**

34(1) A prospectus or product disclosure statement that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Registrar, purporting to be made by any person including experts, or to be based on a statement made by such person, shall not be issued unless–

- (a) the person has given his written consent to the issue of the prospectus or product disclosure statement with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus or product disclosure statement withdrawn such consent; and
- (b) there appears in the prospectus or product disclosure statement, a statement that the person has given and has not withdrawn his consent.

(2) If any prospectus or product disclosure statement is issued in contravention of this section, the management company and every person who is knowingly a party to the issue thereof commits an offence, and shall upon conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

### **Relief from requirements as to form and content of a prospectus**

35. (1) Without prejudice to section 30(3) and section 33, the Registrar may, on the application in writing by any person required to comply with section 29(3), make an order relieving him or approving any variation from the requirements of this Act relating to the form and content of a prospectus or product disclosure statement.

(2) In making an order under subsection (1), the Registrar may impose such terms and conditions as he deems fit.

(3) The Registrar shall not make an order under subsection (1) unless he is satisfied, having considered the nature and objectives of the scheme, that -

- (a) such relief or variation shall not cause the non-disclosure to the public of information necessary for the assessment of the investment in the interests of the scheme; and
- (b) compliance with the requirements, for which such relief or variation is applied for, would impose unreasonable burden on the applicant.

(4) A prospectus or product disclosure statement shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus or product disclosure statement, as the case may be, if it is issued in compliance with an order made under subsection (1).

### **Certain advertisements deemed to be prospectuses**

36. (1) Every advertisement offering or calling attention to an offer or intended offer to the public in respect of interests shall be deemed to be a prospectus unless it:

- (a) only contains the following information:
  - (i) the number and description of the interests concerned;
  - (ii) the name and date of registration of the management company and its paid up share capital;
  - (iii) a concise statement of the general nature of the activity of the scheme; the names, addresses and occupations of the directors or proposed directors and the trustees, as the case may be;

- (iv) particulars of the opening and closing dates of the offer and the time and place at which copies of the full prospectus and forms of application for the interest may be obtained; and
- (b) states that applications for interests will proceed only on one of the forms of application being referred to, and attached to a printed copy of the prospectus.

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall affect the operation of this section.

(3) This section shall apply to advertisements published or disseminated in Malaysia by newspaper, broadcasting, television, cinematograph or any other means whatsoever.

(4) Where an advertisement is deemed to be a prospectus by virtue of subsection (1), provisions under this Chapter regarding the contents of prospectuses and liability in respect of false or misleading statements and material omissions, shall apply and have effect accordingly.

(5) Where an advertisement that is deemed to be a prospectus by virtue of subsection (1) does not comply with the requirements of this Act as to prospectuses, the person who published or disseminated the advertisement, and every officer of the corporation concerned, or other person, who knowingly authorized or permitted the publication or dissemination, commits an offence and upon conviction, shall be liable to a fine not exceeding two hundred and fifty thousand ringgit or to an imprisonment for a term of three years or to both.

(6) For the purposes of this section where –

- (a) an advertisement offering or calling attention to an offer or intended offer of interests of a scheme to the public for subscription or purchase is published or disseminated;

- (b) the person who published or disseminated the advertisement before so doing, obtained a certificate signed by at least two directors of the management company, that the proposed advertisement is an advertisement that will not be deemed to be a prospectus by virtue of subsection (1); and
- (c) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of that subsection, the corporation and each person who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement, but no other person shall be deemed to be such a person.

(7) Any person who has obtained a certificate referred to in subsection (6) (b) shall, when so requested by the Registrar forthwith deliver the certificate to the Registrar.

(8) Any person who fails to comply with subsection (7) commits an offence and shall upon conviction be liable to a fine not exceeding twenty thousand ringgit.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or under any provision of this Act apart from this section.

**Document containing offer of interests for sale to be deemed prospectus or product disclosure statement**

37. (1) Where a management company allots or agrees to allot to any person any interest of the scheme with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made, shall for all purposes be deemed to be a prospectus issued by the management company.

(2) Where documents are deemed to be prospectus for the purposes of subsection (1), the provisions under this Chapter regarding the contents of prospectuses and liability in respect of false or misleading statements and material omissions, shall

be applicable and have effect accordingly as if the interests had been offered to the public and as if persons accepting the offer in respect of any interests were subscribers, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of false or misleading statements or material omission in the document or otherwise.

(3) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, interests was made with a view to the interests being offered for sale to the public if it is shown -

- (a) that an offer of the interests for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the management company in respect of the interests had not been so received.

(4) The requirements of this Chapter as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(5) In addition to complying with the other requirements of this Part the document making the offer shall state-

- (a) the net amount of the consideration received or to be received by the corporation in respect of interests to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the interests have been or are to be allotted may be inspected.

(6) Where an offer to which this section relates is made by a management company, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the management company by two directors of the management

company, as the case may be, and any such director may sign by his agent authorized in writing.

### **Information memorandum deemed to be prospectus**

38 Any information memorandum purporting to describe the business affairs of the person making the offer issued by the said person or his agent shall be deemed to be a prospectus, in so far as regarding the liability of the person or his agent, for any untrue statement or non-disclosure of material information and a copy of the memorandum shall be lodged with the Registrar within seven days after it is first issued.

### **Supplementary or replacement prospectus**

39. (1) This section applies if, after the registration of a prospectus, but before its issue, the person who registered or lodged the prospectus became aware that-

- (a) a significant new matter has arisen being a matter, the information of which is required by this Act to be disclosed in a prospectus;
- (b) there has been a significant change affecting a matter disclosed in the prospectus;
- (c) the prospectus contained a material statement that is false or misleading; or
- (d) there is a material omission from the prospectus,

(2) As soon as practicable, after becoming aware of the matters in subsection (1), the person shall submit a supplementary or replacement prospectus, as the case may be.

(3) A supplementary prospectus shall clearly identify the prospectus to which it relates and shall contain on each page of the supplementary prospectus, a statement in bold or coloured print stating that it is a supplemental prospectus to be read in



conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the same original prospectus, both the original prospectus and previous supplementary prospectuses.

(4) A replacement prospectus shall clearly identify the prospectus which it replaces and shall contain at the beginning of the prospectus a statement in bold or coloured print stating that it is a replacement prospectus.

(5) A supplementary prospectus shall be deemed to be part of the original prospectus to which it relates and provisions under this Chapter regarding the contents of prospectuses and liability in respect of false or misleading statements and material omissions in a prospectus, shall apply and have effect accordingly.

(6) A replacement prospectus shall be regarded as replacing the original prospectus previously registered under section 31.

(7) Where a supplementary prospectus has been registered with the Registrar pursuant to subsection (1), every copy of the original prospectus shall be issued, accompanied by a copy of the supplementary prospectus.

(8) A supplementary or replacement prospectus may be registered for the purpose of subsection (1), notwithstanding that the original prospectus to which it relates or replaces, as the case may be, has been issued, if-

- (a) the original prospectus relates to an invitation or offer which is addressed to an identifiable category of persons to whom it is directly communicated by the person making the invitation or offer or by his appointed agent, and a copy of the supplementary or replacement prospectus is sent to each of those persons in compliance with subsection (9); or
- (b) the original prospectus relates to an invitation or offer to the general public and a copy of the supplementary or replacement prospectus is

advertised in every newspaper which originally advertised the invitation or offer or calling attention to the invitation or offer in compliance with subsection (9).

(9) For the purpose of subsection (8), a notice shall-

- (a) in the case of subsection (8)(a), be sent together with a copy of the supplementary or replacement prospectus to every person referred to in that subsection;
- (b) in the case of subsection (5)(b), be advertised together with the supplementary or replacement prospectus, stating that—
  - (i) a copy of the supplementary or replacement prospectus has been registered with the Registrar; and
  - (ii) every person who has submitted his application prior to the date of the notice is entitled to withdraw his application within fourteen days of the date of the notice and all application money received in respect thereof will be repaid in full without penalty.

(10) Any person who contravenes this section commits an offence and shall upon conviction, be liable to a fine not exceeding one million ringgit or imprisonment for a term not exceeding three years or to both.

#### **Civil liability for misstatement in prospectus**

40. (1) A person who subscribes for or purchases any interest and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d) and (e) and to the extent provided for—

- (a) the management company and each director of the management company at the time of the issue of the prospectus, for any loss or damage;
- (b) person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;
- (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;
- (d) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or
- (e) a person who authorised or caused the issue of a prospectus in contravention of section 41, for any loss or damage caused by such contravention.

(2) No person shall be so liable if he proves-

- (a) that, having consented to become a director of the management company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
- (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice after he became aware of its issue;
- (c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any false or misleading statement therein, withdrew his consent and gave reasonable public notice of the withdrawal together with the reason; or
- (d) that as regards-

- (i) every false or misleading statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true;
- (ii) every false or misleading statement purporting to be a statement made by a person under section 34 or to be based on a statement made by a person under section 34 or contained in what purports to be a copy of or extract from a report of valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given the consent required by section 34 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to that person's knowledge, before any allotment or sale thereunder; and
- (iii) every false or misleading statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Subsection (2) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 34, as a person who has authorized or caused the issue of the prospectus in respect of a false and misleading statement purporting to have been made him.

(4) A person who apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required by him by section 34, as a person who has authorized the issue of a prospectus in respect of a false or misleading statement purporting to be made by him shall not be so liable if he proves-

- (a) that, having given his consent under section 34 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, he, on becoming aware of the false or misleading statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal together with the reason; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.

(5) Where-

- (a) the prospectus contains the name of a person as a director of the management company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or
- (b) the consent of a person is required under section 34 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the management company except any without whose knowledge or consent the prospectus was issued, and any other person who authorized or caused the issue thereof shall be liable to indemnify the person so named or whose consent was so required against all damages costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him, or in defending himself against any action or legal proceeding brought against him in respect thereof.

(6) Subject to such modifications and adaptation as may be necessary, this section shall be applicable to product disclosure statement issued by a management company by replacing any references to “prospectus” with “product disclosure statement”.

### **Criminal liability for statement in prospectus**

41. (1) No person shall authorize or cause the issuance of a prospectus that contains:

- (a) any statement or information that is false or misleading; or
- (b) any statement or information from which there is a material omission.

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

(3) For the purposes of this section, it shall be a defence for a person if he proves either that:

- (a) the statement or omission was immaterial; or
- (b) he had made all enquiries as were reasonable in the circumstances and after making such enquiries, he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe the statement was true or the omission was immaterial.

(4) Subject to such modifications and adaptation as may be necessary, this section shall be applicable to product disclosure statement issued by a management company by replacing any references to “prospectus” with “product disclosure statement”.

### **Persons not to be taken to have authorised or caused issue of prospectus**

42. (1) For the purposes of this Part, the Registrar shall not be taken to have authorised or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Registrar under the Companies Act 2013.

(2) For the purpose of sections 39 and 40, a person shall not be deemed to have authorised or caused the issue of a prospectus by reason only:

- (a) of his having given a consent as required under section 34; or
- (b) of his name being included in the prospectus as a trustee for debenture holders, auditor, banker, advocate and solicitor or stock or share broker.

### **Stop order**

43. (1) Where in the opinion of the Registrar-

- (a) a prospectus or product disclosure statement does not comply with or is not prepared in accordance with any provision of this Act;
- (b) a prospectus or product disclosure statement contains a statement or information that is false or misleading;
- (c) a prospectus or product disclosure statement contains a statement or information from which there is a material omission; or
- (d) the corporation has contravened any provision of the Companies Act 2013,

the Registrar may, by order in writing served on the corporation or such other person as the Registrar may determine, direct the corporation or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell,

further interests to which the prospectus or product disclosure statement relates, as the case requires.

(2) Subject to subsections (3) and (4), the Registrar shall not make an order under subsection (1) unless the Registrar has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Registrar considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Registrar may make an interim order without giving the opportunity to be heard.

(4) An interim order under subsection (3) shall, unless sooner revoked, have effect until the end of twenty-one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is the later.

(5) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Part shall apply as if the prospectus had not been registered.

(6) An interim order made under subsection (3) may, by further order in writing made by the Registrar, be revoked if the Registrar becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(7) Where applications to subscribe for or purchase interests to which the prospectus relates have been made prior to the order made under subsection (1)–

- (a) where the interests have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days



of the stop order, the corporation shall be liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Registrar from the expiration of that period; or

- (b) where the interests have been issued to the applicants, the issue of the interests shall be deemed to be void and the corporation or such other person shall—
  - (i) forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the date of service of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Registrar from the expiration of that period; and
  - (ii) take necessary steps to effect the order.

(8) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) commits an offence, and shall upon conviction be liable to a fine of one million ringgit or for imprisonment for a term not exceeding three years or to both.

#### **Issuance of deeds, agreements, prospectus or product disclosure statements in accordance with syariah principles**

44. A trust deed, contractual agreement, prospectus or product disclosure statements as required under this Part may be issued in accordance with syariah principles as provided for by the Registrar.

## **PART V MANAGEMENT, AUDIT AND MEETINGS**

## **Chapter 1**

### **Management Company**

#### **General Duty and Obligations of Management Company**

45. Every management company shall-

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the trust deed or contractual agreement relates is carried on and conducted in a proper and efficient manner;
- (b) be responsible for managing the funds or properties of the scheme on behalf of the interest holders;
- (c) take all reasonable steps and exercise due diligence to ensure that the scheme is managed in accordance with the provisions of this Act, offer document and the trust deed or the contractual agreement;
- (d) exercise due diligence and care in managing assets and funds of the scheme;
- (e) not sell any interest to which the trust deed or contractual agreement relates otherwise than at a price calculated in accordance with the deed or product disclosure statement;
- (f) be responsible for the acts of commissions and omissions by its employees, any person for the time being exercising its functions or the persons whose services have been availed by it;
- (g) remain liable to the interest holders for its acts of commission or omissions, notwithstanding anything contained in any contract or agreement;
- (h) ensure that its officers or employees do not make improper use of their position or information to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the scheme; and

- (i) comply with the covenants contained in the trust deed or with the terms of the contractual agreement.

### **Obligation to trustees**

46. A management company shall-

- (a) pay to the trustees, within thirty days after their receipt by the company, any moneys that, under the trust deed, are payable by the company to the trustee;
- (b) not without the approval of the trustees, publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of interests to which the deed relates or the yield there from or containing any invitation to buy interests;
- (c) make available, or ensure that there is made available, to the trustees such details as the trustees, as the case may be, requires with respect to all matters relating to the undertaking, scheme or enterprise to which the trust deed relates;
- (d) make available to the trustee, for inspection the whole of the books of the company whether kept at the registered office or elsewhere; and
- (e) give to the trustee such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof.

### **Duty to buy back interests**

47. A management company shall at the request of the holder of an interest, purchase that interest from the holder and that the purchase price will be a price calculated in accordance with the trust deed or contractual agreement.

### **Separation of funds of interest holders and other persons**

48. (1) A management company shall open and maintain a separate trust account controlled by the trustees for each of the scheme that it administers.

(2) Funds deposited into a trust account referred to in subsection (1) may only be withdrawn for the purposes of making payment—

- (a) to an interest holder or person entitled to such payment; or
- (b) in terms of this Act, any other law and the deed or contractual agreement:

(3) Any excess remaining in the trust account after payment of or provision for all claims of interest holder whose funds have, or should have been deposited in such account, is not trust property.

(4) The Registrar or any other person having a financial interest or in claim against a trust account may, on good cause shown, apply to the Court to prohibit the trustees from operating such account in any way and may appoint the Registrar to control and administer such account with such duties and powers in relation thereto as the court may deem fit.

### **Prohibition to lend money to management company, trustees, etc**

49. (1) No moneys available for investment under the trust deed or the contractual agreement shall be invested in or lent to the management company, or to the

trustee, or to any company deemed to be related to the management company or the trustees pursuant to section 6 of the Companies Act 2012, other than a prescribed corporation.

(2) For the purpose of this section, “prescribed corporation” means-

- (a) a banking corporation;
- (b) a corporation or a corporation of a class which, on the recommendation of Bank Negara Malaysia, has been declared by the Minister charged with the responsibility for finance by notice in the Gazette to be a prescribed corporation.

### **Management company to have a registered office in Malaysia**

50. (1) A management company shall maintain a registered office in Malaysia at all times.

(2) Whenever a management company changes its registered office, it shall within 30 days from such change notify the Registrar.

## **Chapter 2**

### **Accounts and Audit**

#### **Accounting records and audit**

51.(1) A management company shall in respect of every scheme administered by it—

- (a) maintain the accounting records and prepare annual financial statements in conformity with the approved accounting standards;

- (b) keep such records at its registered address or such other place the Registrar, may allow, for a period of at least seven years as from the date of the latest entry therein; and
- (c) cause such records and annual financial statements to be audited, not later than three months after the financial year end of the scheme, or such later date as the Registrar may allow.

(2) The management company shall cause the audited financial statement of the scheme—

- (a) to be circulated to the interest holders at least 14 days before the date of annual meeting; and
- (b) to be tabled at the annual meeting held pursuant to section 55.

#### **Appointment and approval of auditor**

52. (1) A management company shall appoint an auditor for the purpose of auditing the whole of the business of the scheme administered by it.

(2) No director or employee of a management company, trustee or custodian and no firm of which any such director or employee is a member may be appointed as an auditor of an interest scheme.

(3) A management company shall within 30 days from the date of appointment of an auditor apply to the Registrar for approval of such appointment.

(4) An auditor, who has been removed by a management company from his or her office as auditor, shall inform the Registrar thereof.

## **Duties and responsibilities of auditor**

53. (1) The auditor shall-

- (a) examine the accounting records and annual financial statements of the scheme;
- (b) satisfy himself or herself that the accounting records comply with the requirements of this Act; and
- (c) ensure that the financial statements are properly drawn up so as to fairly represent the financial position, and that the results of the operations of the management company and every portfolio of its scheme are in accordance with the approved accounting standards.

(2) When the auditor of a scheme has conducted an audit in accordance to subsection (2), he shall report to the management company that the accounting records and the annual financial statements have been examined in accordance with the approved accounting standards and in the manner required by this Act and state whether in his considered opinion they fairly present the financial position and the results of the operations of the management company and its scheme.

(3) If the auditor is unable to make such a report or to make it without qualification, he shall include in his or her report a statement explaining the facts or circumstances which prevented him or her from making his or her report or from making it without qualification.

(4) The auditor's report under subsection (3) shall, unless all the members present agree to the contrary be read out at the annual general meeting of the management company.

(5) An auditor who fails to perform any of the duties referred to in this section, commits an offence and shall, upon conviction be liable to a fine not exceeding

three million ringgit or to imprisonment for a term not exceeding ten years or to both.

### **Duty of auditor to disclose irregularity or undesirable practice**

54.(1) The auditor shall-

- (a) in the ordinary course of fulfilling his audit responsibilities or performing other functions under this Act, report to the management company—
  - (i) any irregularity or undesirable practice in the administration of the scheme which has come to his notice; or
  - (ii) any serious offence involving fraud or dishonesty has been committed by the officers of the management company; and
- (b) submit a copy of such report to the Registrar if there is reasonable cause to believe that such report is or might be of material significance to the Registrar.

(2) For purposes of this section a report is of material significance to the Registrar if it deals with a matter which, because of its nature or potential financial impact, has caused or is likely to cause financial loss to the scheme or any of its interest holders or creditors.

(3) An auditor who fails to perform any of the duties referred to in this section commits an offence and shall, upon conviction, be liable to a fine not exceeding three million ringgit or for imprisonment for a term not exceeding ten years or to both.



### **Chapter 3**

#### **Meetings of the Scheme**

##### **Annual meeting of interest holders**

55. (1) The management company shall hold an annual meeting of the interest holders in every calendar year.

(2) The annual meeting shall be held-

- (a) within 6 months of the scheme's financial year end; and
- (b) not more than fifteen months after the last preceding annual meeting.

(3) Notwithstanding subsection (1), the first annual meeting of the interest holders shall be held within eighteen months of the issuance of certificate of authorization under section 10.

(4) An annual meeting under this section shall be convened for, but not limited to, the following purposes:

- (a) the tabling the accounts and balance sheet which were laid before the last preceding annual general meeting of the management company;  
or
- (b) the tabling the last audited statement of accounts of the trustees; or
- (c) providing directions the trustees as the meeting thinks proper.

(5) If a management company fails to comply with subsection (1), the company and every officer who is in default commit an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

### **Requisition of meeting by interest holders**

56. (1) The interest holders of a scheme may require the directors of a management company to call a meeting of interest holders.

(2) The directors of the management company shall call the meeting of interest holders if the management company received an application from not less than fifty or 10%, of the interest holders whichever is the less.

(3) A meeting summoned for the purposes of this section shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice, under the chairmanship of-

- (a) such person as is appointed in that behalf by the holders of the interests to which the deed relates present at the meeting; or
- (b) where no such appointment is made, a nominee of the trustee approved by the Registrar,

and shall be conducted in accordance with the deed or, so far as the deed makes no provision, as directed by the chairman of the meeting.

(4) If a management company fails to comply with subsection (1), the company and every officer who is in default commit an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand.

### **Notice of meetings of interest holders**

57. (1) A meeting of the interest holders shall be called by a notice of-

- (a) in the case of an annual meeting, at least fourteen days or any longer period as specified in the trust deed; or
- (b) in any other case, at least twenty one days or any longer period as specified in the trust deed or contractual agreement.

(2) A notice of meeting shall be sent to—

- (a) every interest holder;
- (b) every trustee; and
- (c) every auditor,

of the scheme.

### **Manner in which notice is given**

58. (1) Notice of a meeting of a scheme shall be given—

- (a) in hard copy form;
- (b) in electronic form; or
- (c) by means of a website,

or partly by one such means and partly by another.

(2) Unless otherwise stated in a trust deed or contractual agreement, notice of annual meeting—

- (a) given in hard copy form shall be given to any interest holder either personally or by sending it by post to the address supplied by the interest holder to the management company for such purpose; or
- (b) given in electronic form shall be given to the address or number supplied by the member to the management company for such purpose.

### **Publication of notice of meeting on website**

59. (1) Notice of a meeting shall not be validly given by a management company by means of a website unless it is given in accordance with this section.

(2) Any provision in the constitution which is contrary to this section shall be void.

(3) When the management company informs an interest holder of the presence of the notice on the website the notification shall—

- (a) state that it concerns a notice of an annual meeting; and
- (b) specify the place, date and time of the meeting.

(4) The notice shall be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

### **Procedures at meetings**

60. Unless specified in the trust deed or contractual agreement, the provisions under Chapters 5 and 6 of Division 4 of Part III of the Companies Act (so far as they relate to a company limited by shares) shall apply, subject to such modifications and adaptations as may be necessary, and in particular the following modifications:

- (a) references to “constitution” shall be taken as references “trust deed” or “contractual agreement”;
- (b) references to “general meeting” shall be taken as references to “annual meeting”; and
- (c) references to “member” shall be taken as references to “interest holders”.

### **Records of resolutions and meetings, etc**

61. (1) Every management company shall keep records comprising minutes of all proceedings of annual meetings.

(2) The records shall be kept for at least ten years from the date of the meeting or decision.

(3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default and shall, upon conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Records as evidence of resolutions, etc**

62. (1) The minutes of proceedings of an annual meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are sufficient evidence of the proceedings at the meeting.

(2) Where there is a record of proceedings of an annual meeting of a scheme, then, until the contrary is proved—

- (a) the meeting is deemed duly held and convened; and
- (b) all proceedings at the meeting are deemed to have duly taken place.

## **PART VI WINDING UP OF SCHEMES**

### **Winding up required by scheme's constitution**

63. (1) The trust deed or contractual agreement of a registered scheme may provide that the scheme is to be wound up:

- (a) at a specified time; or
- (b) in specified circumstances or on the happening of a specified event.

(2) Notwithstanding subsection (1) and any provision in this Act, a provision of the trust deed or contractual agreement that purports to provide that the scheme is to be wound up if a particular company ceases to be its management company shall be void.

### **Winding up at direction of interest holders**

64. The interest holders of a scheme may call a meeting to consider and to consider and vote on a special resolution to direct the management company to wind up the scheme.

### **Winding up if scheme's purpose accomplished or cannot be accomplished**

65. (1) If the management company of a registered scheme considers that the purpose of the scheme:

- (a) has been accomplished; or
- (b) cannot be accomplished;

it may, in accordance with this section, take steps to wind up the scheme.

(2) The management company shall give to the interest holders of the scheme and to the Registrar a notice in writing:

- (a) explaining the proposal to wind up the scheme, including explaining how the scheme's purpose has been accomplished or why that purpose cannot be accomplished; and
- (b) informing the interest holders of their rights to call a meeting of interest holders to consider the proposed winding up of the scheme and to vote on the proposal to wind up of the scheme; and
- (c) informing the interest holders that the management company is permitted to wind up the scheme unless a meeting is called to consider the proposed winding up of the scheme within twenty eight days of the management company giving the notice to the interest holders.

(3) If no meeting is called within that twenty eight days to consider the proposed winding up, the management company may wind up the scheme.

### **Winding up ordered by Court**

66. (1) The Court may order the management company of a registered scheme to wind up the scheme if:

- (a) it thinks it is just and equitable to do so; or
- (b) within three months before the application for the application to Court was made, execution or other process was issued on a judgement, decree or order obtained in a court, whether in Malaysia or not, in favour of a creditor of, and against, the management company in its capacity in relation to the scheme and the execution or process has been returned unsatisfied.

(2) An order based on paragraph (1)(a) may be made on the application of:

- (a) the management company; or
- (b) the trustees;
- (c) a director of the management company; or
- (d) an interest holder of the scheme; or
- (e) the Registrar.

(3) An order based on paragraph (1)(b) may be made on the application of a creditor.

### **The winding up of the scheme**

67. (1) The management company of a registered scheme shall ensure that the scheme is wound up in accordance with its trust deed or contractual agreement and any order under subsection 68(2) if:

- (a) the trust deed or contractual agreement of the scheme provides that the scheme is to be wound up at a specified time, in specified circumstances or on the happening of a specified event and that time is reached, those circumstances occur or that event occurs; or
- (b) the interest holders pass an special resolution directing the management company to wind up the scheme; or
- (c) the Court makes an order directing the management to wind up the scheme.

(2) The management company of a registered scheme may wind up the scheme in accordance with its trust deed and any order under subsection 68(2) if the management company is permitted by subsection 63(1) to wind up the scheme.

(3) Any interest shall not be issued by a registered scheme at a time after the management company has become obliged to ensure the scheme is wound up, or after the scheme has started to be wound up.

#### **Other orders about winding up**

68. (1) The Court may appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its trust deed and any order under subsection (2) if the Court thinks it necessary to do so, including for the reason that the management company has ceased to exist or is not properly discharging its obligations in relation to the winding up.

(2) The Court may give directions about how a registered scheme is to be wound up if it thinks it necessary to do so, including for the reason that the provisions in the trust deed or contractual agreement are inadequate or impracticable.

(3) An order under subsection (1) or (2) may be made on the application of:

- (a) the management company; or
- (b) the trustees;



- (c) a director of the management company; or
- (d) an interest holder of the scheme; or
- (e) the Registrar.

### **Unclaimed money to be paid to the Registrar**

69. (1) If, on completion of the winding up of a registered scheme, the person who has been winding up the scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the property of the scheme, the person must, as soon as practicable, pay the money or transfer the property to the Registrar.

(2) The provisions under Chapter 2 of Division IV of Part IV of the Companies Act 2013 shall be applicable in dealing with the money or property so vested with the Registrar with the necessary adaptations and modifications.

### **Voluntary deregistration**

70. (1) The management company of a registered scheme may lodge an application for deregistration of the scheme with the Registrar.

(2) The management company may only apply if the scheme did not meet the minimum requirement of interest holders as determined by the Registrar and all the interest holders agree that the scheme shall be deregistered.

(3) If the Registrar is satisfied that the application complies with subsections (1) and (2), the Registrar shall give notice of the proposed deregistration in the website of the Commission and a copy of the notice shall be given to —

- (a) to the management company; and
- (b) the trustees,

of the scheme.

(4) After the lapse of sixty days from the date it was gazetted, the Registrar may deregister the scheme.

## **PART VIII**

### **ENFORCEMENT OF THE ACT**

#### **Injunctions**

71. (1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute –

- (a) a contravention of this Act;
- (b) an attempt to contravene this Act;
- (c) an attempt that aids, abets, advises or procures a person to contravene this Act;
- (d) an attempt to induce, whether by threats, promises or otherwise, a person to contravene this Act;
- (e) an attempt by which any person would be in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) an attempt of conspiracy with others to contravene this Act,

the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is intending to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of the Registrar or any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant

an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.

(3) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised whether or not-

- (a) it appears to the Court that the person intends to engage again or to continue to engage, in conduct of that kind;
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(4) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not –

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) the person has previously refused or failed to do that act or thing; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(5) Where the Registrar applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(6) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(7) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(8) The Court may revoke or vary an injunction granted under subsection (1), (2) or (7).

(9) In granting an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

### **Power of Registrar to intervene**

72. (1) Notwithstanding anything in this Act, the Registrar shall have the power to intervene in the management of a scheme when he is satisfied that—

- (a) the scheme is unable to meet its obligation when they fall due;
- (b) the operation, management or administration of the scheme has not been conducted in a fit and proper manner; or
- (c) the terms and conditions for the authorisation of a scheme are no longer satisfied.

(2) In exercising the power under subsection (1), the Registrar may make the following direction—

- (a) order the management company to cease the issue or offer of interests until further notice;
- (b) require the auditor of the scheme to carry out an audit on the scheme and submit his report within a specified timeframe;
- (c) order the management company to wind up the scheme; or
- (d) such other actions necessary to protect the interests of interest holders.

### **Power of Registrar to terminate unregistered scheme**

73. (1) The Registrar shall have the power to terminate an unregistered scheme and shall have the power to direct any person to—

- (a) compensate any person who have purchased any interest in the scheme;
- (b) restrain the person from carrying on the following activities:
  - (i) promoting any interest scheme to members of the public;
  - (ii) dealing, offering or products or generating interest in its products;
  - (iii) printing, publishing or distributing or causing to be printed, published, or distributed, written materials promoting interest schemes; or
  - (iv) making any recommendation, or offering advice, whether orally or in writing, to any person in relation to a product or a decision by a person regarding whether or not to invest in a product; or
- (c) such other direction that the Registrar deems fit.

(2) The Court may, upon an application by the Registrar, order that any contract made as a result of the offer of interest in an unregistered scheme shall be void and may give such consequential direction as it thinks proper for the repayment of any money; and an appeal against the order and any consequential directions shall lie with the court.

### **Power to exempt from compliance with the Act**

74. (1) The Minister may, by notice published in the Gazette and subject to such terms and conditions as are specified in the notice, exempt any company or class of companies or person or class of persons from complying with all or any of the

provisions of this Act in relation to any interest or class of interests specified in the notice.

(2) Where a company or person contravenes or fails to comply with any term or condition specified in a notice of exemption granted under subsection (1), every officer of the company or person who is in default commits an offence.

### **Protection to certain officers who make disclosures**

75. (1) Where an officer of a management company in the course of performance of his duties has reasonable belief of any matter which may or will constitute a breach or non-observance of any requirement or provision of this Act or its regulations, or has reason to believe that a serious offence involving fraud or dishonesty, is being or is likely to be committed against the management company or this Act by other officers of the management company, he may report the matter in writing to the Registrar.

(2) The management company shall not remove, demote, discriminate against, or interfere with the lawful employment or livelihood of such officer of the company by reason of the report submitted under subsection (1).

(3) No officer of a management company shall be liable to be sued in any court nor be subject to any tribunal process, including disciplinary action for any report submitted by him under subsection (1) in good faith and in the intended performance of his duties as an officer of the company.

### **General penalty**

76. (1) A person who –

- (a) does that which by or under this Act he is forbidden to do;
- (b) does not do that which by or under this Act he is required or directed to do; or

(c) otherwise contravenes or fails to comply with any provision of this Act,  
shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a penalty not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

(3) The penalty or punishment, pecuniary or other, set out in, or at the foot of, any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

## **PART IX ADMINISTRATION OF THE ACT**

### **Register of Interest Holders**

77. (1) The management company shall, in respect of each trust deed or contractual agreement with which the company is concerned, keep a register of the holders of interests under the deed or the agreement and enter therein-

- (a) the names and addresses of the holders;
- (b) the extent of the holding of each holder and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;
- (c) the date at which the name of each person was entered in the register as a holder;

- (d) the date at which any person ceased to be a holder; and
- (e) any other information as required by the Registrar, from time to time.

(2) A management company which keeps a register of holders of interests at a place other than its registered office shall inform the Registrar of such situation.

**Duty to lodge returns, information, etc., relating to interests**

78. (1) Where a trust deed or contractual agreement, as the case may be, is or has at any time been an approved deed and remains in force, the Management Company shall lodge with the Registrar, within two months after the end of each financial year applicable to the scheme-

- (a) a return containing a list of all persons who, at the end of the financial year, were holders of the interests to which the trust deed relates, showing the name and address of each holder and the extent of his holding and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;
- (b) a summary of—
  - (i) all purchases and sales of property and marketable securities affecting the interests of the holders during the financial year; and
  - (ii) all other investments affecting the interests of the holders made during the financial year, showing the descriptions and quantities of those investments;
- (c) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the Management Company during the financial year and the proportion thereof paid to any stock or share broker, or any partner, employee or nominee of any stock or share



broker, who is an officer of the company and the proportion retained by the company;

- (d) a list of all parcels of property and marketable securities, and other investments, held by the trustee in relation to the deed, as at the end of the financial year, showing the value of the property, securities or other investments and the basis of the valuations; and
- (e) such other statements and particulars, if any, as may be required by the Registrar.

(2) The return shall be accompanied with the audited accounts of the scheme prepared under section 51.

(3) Any document required to be lodged with the Registrar by the management company under subsections (1) and (2) shall be signed by at least one director of the management company.

(4) A company to which subsection (1) applies shall, if so requested by any holder of an interest to which the deed relates within a period of one month after the end of the financial year, send by post or cause to be sent by post to the holder, within two months after the end of the financial year, a copy of the documents which the company is required to lodge with the Registrar by virtue of paragraphs (1) (b) to (e).

### **Documents to be kept at registered office**

79. (1) A management company shall keep at its registered office —

- (a) any trust deed or contractual agreement;
- (b) any prospectus or product disclosure statement;
- (c) certificates given under this Act;
- (d) all registers, statutory books, records and documents as required under this Act;

- (e) minutes of all meetings and resolutions of interest holders;
- (f) copies of all written communications to all shareholders or all holders of the same class of shares;
- (g) copies of all accounts of the scheme; and
- (h) the accounting records of the scheme required under section 230.

(2) The documents referred to under paragraph (1)(f) to (1)(g) shall be kept at the registered office for a period of 7 years.

(3) Any document referred to in subsection (1) may be kept at a place other than at the registered office of a company provided that prior notice to the Registrar has been given.

(4) The management company shall notify the Registrar of any changes to the address of the place referred to in subsection (3) within fourteen days after the date of such change.

(5) If default to this section, the management company commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Forms of documents, use of computer and other means for recording documents**

80. (1) The records of a scheme referred to under section 79 shall be—

- (a) in written form; or
- (b) in a form or manner that allows the documents and information to be easily accessible and reproduced into written form.

(2) The management company shall ensure that reasonable precautions have been taken to—

- (a) prevent documents from being falsified; and
- (b) detect any falsification of documents.

(3) If default is made to this section, the management company commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Registers**

81. (1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such forms as he thinks fit.

(2) Any person may, on payment of the prescribed fee –

- (a) inspect any document filed or lodged with the Registrar;
- (b) require a certificate of the authorization of a scheme or any other certificate issued under this Act; or
- (c) require a copy or extract from any document that he is entitled to inspect pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given or given and certified by the Registrar.

### **Inspection of documents and registers at registered office**

82. (1) Any document that is to be made available for inspection under this Act, shall be made available for inspection to any person who is entitled to inspect such document at the registered office of a management company or any other place allowed by the Act.

(2) The person who is entitled under this Act to inspect the documents referred to in subsection (1) shall be allowed to make copies or take of the documents or part thereof, or take extracts from the documents.

(3) A management company shall provide proper facilities to enable the documents to be inspected.

(4) If default is made to this section, every officer of the company who is in default commits an offence and shall upon conviction, be liable to a fine not exceeding ten thousand ringgit.

### **Evidentiary value of copies certified by Registrar**

83. (1) A copy or extract from any document filed or lodged at the office of the Registrar certified to be a true copy or extract under the hand and seal of the Registrar shall in any proceedings be admissible in evidence as of equal validity with the original document.

(2) The reference in subsection (1) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency.

### **Evidence of statutory requirements**

84. In any legal proceedings -

- (a) a certificate under the hand and seal of the Registrar that, at a date or during a period specified in the certificate, no interest scheme was registered under this Act or a corresponding previous law by a name specified in the certificate shall be received as *prima facie* evidence that at the date or during that period, as the case may be, no interest scheme was registered by that name under this Act or any corresponding previous law; and
- (b) a certificate under the hand and seal of the Registrar that a requirement of this Act specified in the certificate -

- (i) had or had not been complied with at a date or within a period specified in the certificate; or
  - (ii) had been complied with at a date specified in the certificate but not before that date,
- shall be received as *prima facie* evidence of matters specified in the certificate.

### **Rectification of registers**

85. (1) A person may apply to the Registrar for the rectification of a register if an entry in the register—

- (a) contains matter contrary to law;
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
- (c) by reason of an omission or misdescription has not been duly completed; or
- (d) is incorrect or erroneous.

(2) Upon receipt of the application under subsection (1), the Registrar may—

- (a) require the applicant to produce any document or to furnish the Registrar with any information as the Registrar thinks necessary in order for the Registrar to rectify the entry; or
  - (b) require the applicant to give notice of that application to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest in the business,
- in order for the Registrar to decide whether to approve or refuse the application.

(3) Notwithstanding subsection (1), the Registrar may refuse any application if the error, mistake or omission does not arise in the ordinary course of the discharge of the duties of the Registrar.

(4) On appeal by any aggrieved person by the decision of the Registrar under subsection (2), the Court may—

- (a) refuse the application; or
- (b) order the register to be rectified by the making of an entry, variation or deletion therein.

(6) Any order made by the Court under this section shall direct that the notice of the order to be served on the Registrar in the manner as determined by the Court and the Registrar shall, on receipt of the notice, rectify the register accordingly.

(7) The Registrar may, without an application being made under subsection (1), rectify the register if, in his view, an entry—

- (a) contains matter contrary to law;
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
- (c) by reason of an omission or misdescription has not been duly completed; or
- (d) is incorrect or erroneous.

### **Provisions relating to electronic lodgement**

86. The provisions relating to electronic lodgement under Division 3 of Part V of the Companies Act 2013 shall be applicable to this Act.

### **Fees**

87. The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by this Act.

## **Power to amend Schedules**

88. The Minister may, by order, published in the *Gazette* vary, delete, add to, substitute or otherwise amend all the Schedules to this Act.

## **Regulations**

89. (1) The Minister may make regulations for or with respect to—

- (a) the establishment and administration of compensation fund for the purposes of interest schemes registered under this Act and the manner the compensation fund is to be applied;
- (b) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;
- (c) prescribing forms for the purposes of this Act;
- (d) prescribing fees to be paid to the Registrar in respect of any document required to be lodged, filed, registered with or issued by the Registrar under this or any other Act or for any act required to be performed by the Registrar or for the inspection of any such document;
- (e) prescribing times for the lodging of any documents with the Registrar;  
or
- (f) any matters as may be expedient or necessary for carrying out the purposes of this Act.

(2) Regulations made under subsection (1) may prescribe any act in contravention of such regulations to be an offence and may prescribe penalties of a fine not exceeding five hundred thousand ringgit or to imprisonment for or a term not exceeding five years or to both for such offence.

## FIRST SCHEDULE

### (Section 21)

#### COVENANTS TO BE INCLUDED IN A TRUST DEED OR CONTRACTUAL AGREEMENT

A trust deed or contractual agreement shall contain the following covenants:

**1. Covenants binding the Management Company:**

- (a) That the management company will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner;
- (b) That the management company will not sell any interest to which the deed relates otherwise than at a price calculated in accordance with the deed;
- (c) That no moneys available for investment under the deed or contractual agreement will be invested in or lent to the management company, or to the trustee, or to any company (other than which is allowed under this Act);
- (d) That the management company will give such particulars as are sufficient to disclose the nature of the undertaking, scheme, enterprise or investment contract, and the nature of the interests, to which the trust deed or contractual agreement relates;
- (e) That where applicable, in the case of a premium interest scheme or a foreign interest scheme, a provision creating a trust or containing a declaration of trust, and setting out full particulars of the trust, including precise information as to the circumstances in which the money, marketable securities, investments and other property



subject to the trust are or will be vested in the trustee , and the obligations towards the holders of those interests in regard to that property;

- (f) That where applicable, in the case of a small interest scheme, a provision stating that the money, marketable securities, investments and other property are to be held in trust by the trustees and the obligations towards the holders of those interests in regard to that property;
- (g) That the management company undertakes and declare –
  - (i) to keep and maintain an up-to-date register of interest holder and to make that register available for inspection, free of charge, to any interest holder at any time at its registered office or some other place of which notification to the Registrar has been given;
  - (ii) no units or sub-units of interests purchased or subscribe for pursuant to the prospectus or product disclosure statement issued by the management company under section 33 of the Act shall be allotted later than six months after the date of the statement;
  - (iii) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates shall be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the allotment of the units or sub-units;

- (iv) where the deed or contractual agreement requires, or confers a right on, interest holders to enter into an agreement in connection with the undertaking, scheme, enterprise or investment contract, a provision incorporating, whether by way of annexure or otherwise, the terms and form of that agreement.
- (h) That the management company will provide provisions relating to –
- (i) the duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract or, if the duration is not ascertainable, a statement of that fact;
  - (ii) where the interests consist of rights or interests in or arising out of an investment relating to property that tends to depreciate in value through use or effluxion of time, particulars of the provision made or to be made for the replacement of that property and the source or sources from which the replacement is to be made or from which the cost of the replacement is to be met or, if no provision is made a statement of that fact;
  - (iii) the method of calculation of the highest price at which an interest to which the deed relates may be sold by the management company;
  - (iv) the circumstances in which the management company or any other person may be required to purchase from the holder of an interest any interest for which the holder has subscribed or which he has acquired, and the method of calculation of the purchase price of the interest;

- (v) the circumstances in which, and methods by which, all or any of the investments or other property comprising or forming part of an interest to which the deed relates may be varied;
- (vi) the conditions governing the transfer of the interests to which the deed relates;
- (vii) the conditions governing the distribution of income to the holders of those interests;
- (viii) a provision governing the modification of the trust deed or contractual agreement;
- (ix) a provision expressly appointing a trustee;
- (x) provisions relating to the retirement, removal and replacement of the trustee;
- (xi) provision governing the retirement, removal and replacement of the management company or, if the management company is not liable to be removed by trustees or by the interest holders;
- (xii) provision governing the appointment, retirement, removal and replacement of the auditor of the accounts relating to interests under the trust deed or the contractual agreement;
- (xiii) that the management provides for provision governing the termination or winding up of the undertaking, scheme, enterprise or investment contract;

- (xiv) that the management company officers involved in the development, management and operation of the scheme have had prior experience and expertise in managing public companies or related businesses;
- (xv) that the management company has obtain approval and consents, if any, for the development of the scheme from related local authorities;
- (xvi) that the management company to comply with all relevant laws, statutes, enactment, regulations, by-laws, notices, directions, orders, requirements or demands of any government, semi government or other authority affecting the scheme;
- (xvii) that the management company without the prior written consent of Registrar should not use the land for any other purpose except for the purposes of the scheme only;
- (xviii) That the management company without the prior written consent of Registrar to alter or vary it's nature of business of the scheme.

**2. Covenants binding on the Management Company to the trustees:**

- (a) to give to the trustee or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;

- (b) to make available to the trustee or to any approved company auditor appointed by it, for inspection the whole of the books of the company whether kept at the registered office or elsewhere;
- (c) to make available, or ensure that there is made available, to the trustee such details as the trustee requires with respect to all matters relating to the undertaking, scheme or enterprise to which the trust deed or contractual agreement relates;
- (d) to pay to the trustee, within thirty (30) days after their receipt by the company, any moneys that, under the deed or contractual agreement, are payable by the management company to the trustee;
- (e) to furnish the trustee copies of notices of all annual general meetings or extraordinary general meetings of the management company and in this respect, the management company shall invite the trustee to attend such meetings provided always that the trustee shall have no right to vote as such meetings;
- (f) To obtain the approval of the trustee in relation to publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of interests to which the deed relates or the yield there from or containing any invitation to buy interests;
- (g) Not to sell, transfer, charge or otherwise dispose or encumber the land or property to any party whatsoever in any way except with the prior written consent of the trustee.

### **3. Covenants binding the trustee**

- (a) to exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates;
- (b) to ensure that the interest of interest holders are preserved and protected at all times;
- (c) to investigate and take appropriate steps to ensure any complaints made by interest holders are resolved;
- (d) to keep or cause to be kept proper books of account in relation to those interests;
- (e) to cause those accounts to be audited at the end of each financial year by an approved company auditor;
- (f) to send or cause to be sent by post a statement of the accounts with the report of the auditor thereon within two (2) months of the end of the financial year, to each of the holders of those interests;
- (g) to hold the monies standing in the trust accounts as prescribed in the trust deed or contractual agreement and invest them in suitable liquid and secured investment in accordance with the terms of the trust deed;
- (h) To report to the Registrar immediately on any known non-compliance or breach of trust deed by the management company or its agents.

## **SECOND SCHEDULE**

**(Section 33(1)(a))**

### **PROSPECTUS RELATING TO A SCHEME OF INTERESTS**

#### **PART I - Matters required to be stated in the prospectus**

1. The date of the statement.
2. The date of and parties to the deed referred to in section 29.
4. The date of and parties to any deed or instrument by which any of the provisions of the approved deed relating to the interest has been amended or abrogated.
5. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
6. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
7. The name of the management company and the address of its registered office.
8. The names, descriptions, and addresses of all the directors of the management company.
9. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
10. The name and address of the auditor of the accounts relating to interests under the deed.

11. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
12. The duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract to which the deed relates or if the duration is not ascertainable, that fact.
13. Full particulars with respect to the termination or winding up of the undertaking, scheme, enterprise or investment contract.
14. Such particulars as are sufficient to disclose the true nature of the undertaking, scheme, enterprise or investment contract in respect of which the interest is to be issued or offered to the public for subscription or purchase and the general nature of the property to which the interest relates.
15. The nature of the interest to be so issued or offered and of any units or sub-units into which the interest is divided and the rights in relation thereto of the persons who become the holders thereof.
16. The address where the register of interest holders is or will be kept and the days on and the hours during which it is or will be accessible to the public.
17. The method of calculation provided by the deed of the price at which the management company may sell the interest or any right in respect thereof or any unit or sub-unit of the interest.
18. Such particulars as are sufficient to describe the duties and obligations imposed on the trustee or representative appointed by the deed relating to the interest.



19. The name and address of each person or corporation with whom or with which a holder of the interest is required, obliged or entitled, in connection with the undertaking, scheme, enterprise or investment contract, to enter into any contract whether by way of lease or otherwise.
20. The full names, descriptions and residential addresses of the directors of each corporation referred to in paragraph 18.
21. Whether any property to which the interest relates is or will become vested in the trustee or representative, the nature and description of the property and the conditions or circumstances under which it is or will become so vested.
22. Where the interest consists of rights or interests in or arising out of an investment relating to property that ordinarily depreciates in value through use or effluxion of time, such particulars as are sufficient to disclose the true particulars of the provision made for replacement of that property and the source or sources from which the replacement is to be made or from which the cost of the replacement is to be met.
23. Except where the interest relates only to marketable securities which were purchased or acquired at not more than the ruling market prices the full names and residential addresses of the vendors of any property to which the interest relates, whether the property was purchased or acquired by the management company or by any person or corporation referred to in paragraph 18 or is proposed to be so purchased or acquired, a full and true description of the property and the amount paid or to be paid therefore to each vendor.
24. Such particulars as are sufficient to disclose the true nature and extent of the interest, if any, of each director of the management company, whether

as a director, direct or indirect shareholder, partner or otherwise, in the business of each vendor and in such property.

25. The obligations imposed upon the management company or any other person to purchase from any holder thereof the interest or any rights in respect thereof or the units or sub-units of the interest for which he has subscribed or which he has purchased, and a statement of the method provided by the deed for the calculation of the purchase price thereof.
26. A summary of the rights and obligations of the management company and of the trustee or representative governing the valuation of any investment made or property held in relation to the interest.
27. A summary of the provisions of the deed whereby investments or other property comprising or forming part of the interest to which the deed relates may be varied.
28. Full information regarding the remuneration of the trustee or representative and the management company respectively, the manner in which under the provisions of the deed the remuneration is provided for, and the charges, if any, that will be made by way of that remuneration upon the sale or purchase of any such interest and upon the distribution of income and capital or otherwise in connection with the relevant undertaking, scheme, enterprise or investment contract.
29. Whether the interest or any rights in respect thereof or any units or sub-units of the interest are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating the transfer.
30. A summary of the provisions of the deed relating to the distribution to the holders of the interest or of units or sub-units of the interest of the income derived from the undertaking, scheme, enterprise or investment contract.

31. Full information as to whether and to what extent any factor other than cash receipts by way of dividend, interest or bonus has been or will be taken into account in calculating the amount of income that will be payable to an interest holder.
32. If any reference is made to the yield of income obtained or likely to be obtained by the holders of the interest or of units or sub-units of the interest, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
33. A summary of the provisions of the Act and of the deed regulating the convening of meetings of holders of the interest or of units or sub-units of the interest.
34. The name and description and the date of commencement of operation of every other undertaking, scheme, enterprise or investment contract involving the issue of interests to the public conducted by the management company within the five years immediately preceding the date of the statement.
35. A declaration -
  - (a) that no units or sub-units of interests issued pursuant to the statement shall be allotted later than six months after the date appearing in the statement pursuant to paragraph 1; and
  - (b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued that certificates shall be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the allotment of the units or sub-units.

36. A summary of the provisions of the deed with respect to the undertakings -
- (a) by or on behalf of the management company relating to the allotment of interests and of units or sub-units of interests to which the deed relates; and
  - (b) by or on behalf of the trustee or representative relating to the issue to holders of interests and of units or sub-units of interests of certificates of title thereto.

## **PART II - Reports to be set out in Statement**

1. A report or reports by a person who at the time of making the report or reports was an approved company auditor, and whose name must appear as such in the statement, setting out –
- (a) such information as sufficiently discloses the number of distributions, if any, of income to holders of interests or of units or sub-units of interests to which the deed relates in each of the five years immediately preceding the date of the statement during which those interests had been in existence, the amount of each distribution and the extent to which each distribution consisted of any component other than dividends, interest and bonuses, and where it consisted of any component other than dividends, interest and bonuses, the nature and value of each of those components;
  - (b) such information, as sufficiently discloses the selling price and the purchase price, respectively, of those interests, units or sub-units on the date upon which each distribution was made;
  - (c) such information as sufficiently discloses the selling price and purchase price, respectively, of those interests, units or sub-units on

such date, being a date within a period of fourteen days immediately preceding the date of the statement as is specified in the relevant report;

- (d) in respect of every issue of interests relating to any other undertaking, scheme, enterprise or investment contract conducted or entered into by the management company within the period of five years immediately preceding the date of the statement, similar information to that required under subparagraphs (a), (b) and (c); and
  - (e) the profits or losses of the management company (and of every corporation with which a holder of the interest is required, obliged or entitled, pursuant to the undertaking, scheme, enterprise or investment contract to enter into any contract) in respect of each of the five years during which the company and corporation, respectively, were carrying on business immediately preceding the date of the statement, and the rates of dividend, if any, paid by that company and that corporation in respect of each of those years, and the assets and liabilities of that company and of that corporation as at the last date to which its accounts were made up.
2. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.
  3. Report from independent consultants or expert on the viability of the undertaking, scheme, enterprise or investment contract to enter into any

contract including risks associated with the undertaking, scheme, enterprise or investment contract to enter into any contract.

## **THIRD SCHEDULE**

**(Section 33(1)(b))**

### **PRODUCT DISCLOSURE STATEMENT RELATING TO A SCHEME OF INTERESTS**

#### **PART I - Matters required to be stated in the prospectus**

1. The date of the statement.
2. The date of and parties to the deed referred to in section 29.
3. The date of and parties to any deed or instrument by which any of the provisions of the approved deed relating to the interest has been amended or abrogated.
4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
6. The name of the management company and the address of its registered office.
7. The names, descriptions, and addresses of all the directors of the management company.
8. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.

9. The name and address of the auditor of the accounts relating to interests under the deed.
10. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
11. The duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract to which the deed relates or if the duration is not ascertainable, that fact.
12. Full particulars with respect to the termination or winding up of the undertaking, scheme, enterprise or investment contract.
13. Such particulars as are sufficient to disclose the true nature of the undertaking, scheme, enterprise or investment contract in respect of which the interest is to be issued or offered to the public for subscription or purchase and the general nature of the property to which the interest relates.
14. The nature of the interest to be so issued or offered and of any units or sub-units into which the interest is divided and the rights in relation thereto of the persons who become the holders thereof.
15. The address where the register of interest holders is or will be kept and the days on and the hours during which it is or will be accessible to the public.
16. The method of calculation provided by the deed of the price at which the management company may sell the interest or any right in respect thereof or any unit or sub-unit of the interest.



17. Such particulars as are sufficient to describe the duties and obligations imposed on the trustee or representative appointed by the deed relating to the interest.
18. The name and address of each person or corporation with whom or with which a holder of the interest is required, obliged or entitled, in connection with the undertaking, scheme, enterprise or investment contract, to enter into any contract whether by way of lease or otherwise.
19. The full names, descriptions and residential addresses of the directors of each corporation referred to in paragraph 18.
20. Whether any property to which the interest relates is or will become vested in the trustee or representative, the nature and description of the property and the conditions or circumstances under which it is or will become so vested.
21. Where the interest consists of rights or interests in or arising out of an investment relating to property that ordinarily depreciates in value through use or effluxion of time, such particulars as are sufficient to disclose the true particulars of the provision made for replacement of that property and the source or sources from which the replacement is to be made or from which the cost of the replacement is to be met.
22. Except where the interest relates only to marketable securities which were purchased or acquired at not more than the ruling market prices the full names and residential addresses of the vendors of any property to which the interest relates, whether the property was purchased or acquired by the management company or by any person or corporation referred to in paragraph 18 or is proposed to be so purchased or acquired, a full and true

description of the property and the amount paid or to be paid therefore to each vendor.

23. Such particulars as are sufficient to disclose the true nature and extent of the interest, if any, of each director of the management company, whether as a director, direct or indirect shareholder, partner or otherwise, in the business of each vendor and in such property.
24. The obligations imposed upon the management company or any other person to purchase from any holder thereof the interest or any rights in respect thereof or the units or sub-units of the interest for which he has subscribed or which he has purchased, and a statement of the method provided by the deed for the calculation of the purchase price thereof.
25. A summary of the rights and obligations of the management company and of the trustee or representative governing the valuation of any investment made or property held in relation to the interest.
26. A summary of the provisions of the deed whereby investments or other property comprising or forming part of the interest to which the deed relates may be varied.
27. Full information regarding the remuneration of the trustee or representative and the management company respectively, the manner in which under the provisions of the deed the remuneration is provided for, and the charges, if any, that will be made by way of that remuneration upon the sale or purchase of any such interest and upon the distribution of income and capital or otherwise in connection with the relevant undertaking, scheme, enterprise or investment contract.

28. Whether the interest or any rights in respect thereof or any units or sub-units of the interest are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating the transfer.
29. A summary of the provisions of the deed relating to the distribution to the holders of the interest or of units or sub-units of the interest of the income derived from the undertaking, scheme, enterprise or investment contract.
30. Full information as to whether and to what extent any factor other than cash receipts by way of dividend, interest or bonus has been or will be taken into account in calculating the amount of income that will be payable to an interest holder.
31. If any reference is made to the yield of income obtained or likely to be obtained by the holders of the interest or of units or sub-units of the interest, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
32. A summary of the provisions of the Act and of the deed regulating the convening of meetings of holders of the interest or of units or sub-units of the interest.
33. The name and description and the date of commencement of operation of every other undertaking, scheme, enterprise or investment contract involving the issue of interests to the public conducted by the management company within the five years immediately preceding the date of the statement.
34. A declaration -

- (a) that no units or sub-units of interests issued pursuant to the statement shall be allotted later than six months after the date appearing in the statement pursuant to paragraph l; and
- (b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued that certificates shall be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the allotment of the units or sub-units.

35. A summary of the provisions of the deed with respect to the undertakings -

- (a) by or on behalf of the management company relating to the allotment of interests and of units or sub-units of interests to which the deed relates; and
- (b) by or on behalf of the trustee or representative relating to the issue to holders of interests and of units or sub-units of interests of certificates of title thereto.

## **PART II - Reports to be set out in Statement**

1. A report or reports by at least two directors of the management company, and whose names must appear as such in the statement, setting out –
  - (a) such information as sufficiently discloses the number of distributions, if any, of income to holders of interests or of units or sub-units of interests to which the deed relates in each of the five years immediately preceding the date of the statement during which those interests had been in existence, the amount of each distribution and the extent to which each distribution consisted of any component other than dividends, interest and bonuses, and

where it consisted of any component other than dividends, interest and bonuses, the nature and value of each of those components;

- (b) such information, as sufficiently discloses the selling price and the purchase price, respectively, of those interests, units or sub-units on the date upon which each distribution was made;
- (c) such information as sufficiently discloses the selling price and purchase price, respectively, of those interests, units or sub-units on such date, being a date within a period of fourteen days immediately preceding the date of the statement as is specified in the relevant report;
- (d) in respect of every issue of interests relating to any other undertaking, scheme, enterprise or investment contract conducted or entered into by the management company within the period of five years immediately preceding the date of the statement, similar information to that required under subparagraphs (a), (b) and (c); and
- (e) the profits or losses of the management company (and of every corporation with which a holder of the interest is required, obliged or entitled, pursuant to the undertaking, scheme, enterprise or investment contract to enter into any contract) in respect of each of the five years during which the company and corporation, respectively, were carrying on business immediately preceding the date of the statement, and the rates of dividend, if any, paid by that company and that corporation in respect of each of those years, and the assets and liabilities of that company and of that corporation as at the last date to which its accounts were made up.

2. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.
  
3. Report from the directors of the management company on the viability of the undertaking, scheme, enterprise or investment contract to enter into any contract including risks associated with the undertaking, scheme, enterprise or investment contract to enter into any contract.

