



CONSULTATIVE DOCUMENT ON PROPOSED TRUST COMPANIES BILL

Dated: 2 April 2024

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The Companies Commission of Malaysia (SSM) invites comments on proposed Trust Companies Bill as set out in this Consultative Document by **2 May 2024**.

Please provide your name and the organisation you represent (where applicable) and to provide reference on the question(s) you are commenting.

Comments must be forwarded by email to: lrpia@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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PART I: BACKGROUND

Objective

This consultative document seeks to obtain feedback and views on the proposed Trust Company Bill (TC Bill) particularly relating to the questions under Part IV of this document.

Introduction

2. The Trust Companies Act 1949 [*Act 100*] (TCA 1949) came into force on 28 September 1949 for West Malaysia and on 1 January 1973 for East Malaysia. The TCA 1949 provides for the registration and regulation of companies carrying out trust business or trust related activities in Malaysia. The TCA 1949 has never been reviewed since its last revision which came into force on 15 March 1973.

3. As part of its corporate law reform programme, in 2018 Suruhanjaya Syarikat Malaysia (SSM) had commenced the initiative to review the TCA 1949 with the proposal to repeal and modernise the Act by replacing it with a new TC Bill.

4. The following are the objectives of the review:

- (a) To provide clarity and certainty in law by addressing any inconsistencies and/or overlapping provisions in different legislations relating to trust business or trust activities which fall under the jurisdictions of different regulators;

- (b) To introduce a new and modern legislation for the efficient management of trust companies by abolishing outdated policies or complex rules in tandem with modern corporate legislations;
- (c) To modernize the trust company law to facilitate more effective trust administration;
- (d) To promote trust business and strengthen the competitiveness and attractiveness of trust companies' services industry in Malaysia; and
- (e) To harmonize the law with relevant international standards and best practices of other jurisdictions.

The Consultation Process

5. Apart from the comprehensive study, the drafting of the TC Bill also reflects the recommendations made by the Financial Action Task Force (FATF) as well as the legislative and technical gaps identified by the FATF as published in the Mutual Evaluation Report following the mutual evaluation exercise conducted on Malaysia in 2015 relating to money laundering and terrorist financing.

6. On 7 March 2018, SSM published a consultation document, "Consultation Document on the Review of the Trust Companies Act 1949" and received responses from the industry, government agencies and statutory bodies listed as below:

- (a) The industry:
 - (i) Association of Trust Companies Malaysia
 - (ii) Kensington Trust Malaysia Berhad
 - (iii) Rockwills Trustee Berhad
 - (iv) The Nehsons Trust Company Berhad
 - (v) As-Salihin Trustee Berhad
 - (vi) Pacific Trustees Berhad
 - (vii) MTrustee Berhad
 - (viii) Deutsche Trustees Malaysia Berhad
 - (ix) Affin Hwang Trustee Berhad
 - (x) CIMB Trustee Services
 - (xi) AmanahRaya Trustees Berhad
 - (xii) UBB Amanah Bhd

- (b) Government agencies and statutory bodies:
 - (i) Lembaga Pemasaran Pertanian Persekutuan
 - (ii) Suruhanjaya Sekuriti
 - (iii) Suruhanjaya Komunikasi dan Multimedia Malaysia
 - (iv) Bank Negara Malaysia
 - (v) Perbadanan Insurans Deposit Malaysia
 - (vi) Majlis Pembangunan Wilayah Ekonomi Pantai Timur

7. In addition to the responses received based on the consultation document, SSM had also conducted a series of engagement sessions with relevant stakeholders after the publication of the consultation document.

8. The engagement sessions were carried out from May until September 2018 involving stakeholders from the industry (trust

companies and several association of insurers), relevant Ministries, government agencies and statutory bodies as follows:

ENGAGEMENT DATE	PARTIES
8 May 2018	All trust companies listed in paragraph 6(a)
26 June 2018	The Nehsons Trust Company Berhad
6 July 2018	AmanahRaya Berhad
18 July 2018	Jabatan Akauntan Negara
19 July 2018	All agencies and statutory bodies listed in paragraph 6(b) together with Kementerian Kewangan Malaysia and Bahagian Hal Ehwal Undang-Undang, Jabatan Perdana Menteri
23 July 2018	Kementerian Kewangan Malaysia
6 August 2018	Association of Insurers comprising: (i) Insurance Association of Malaysia (ii) Malaysian Takaful of Association (iii) Life Insurance Association of Malaysia
21 September 2018	Bahagian Undang-Undang, Kementerian Perdagangan Dalam Negeri dan Hal-Ehwal Pengguna

PART II: POLICIES FOR THE NEW TRUST COMPANIES BILL

A. Parameter of Activities and Mandatory Registration Regime

Proposed Policy Statement #1	Providing a new definition of “trust business” to provide clarity on the parameter of trust business or trust related activities. Companies that carry on trust business or activity that fall under the definition must be registered as trust company for monitoring and enforcement purposes.
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9. The policy objective of this proposal is to clarify the scope of activities that can be carried out by trust companies under the TC Bill.

10. Under the current framework, there is no specific definition of “trust business” although inference can be made to subsection 8(1) of the TCA 1949 to establish what constitutes as trust business. This has created an uncertainty as there is no clear parameter of activities or businesses that fall under that scope given that besides SSM, there are other regulators that govern trust activities in Malaysia.

11. As such, SSM is proposing a new definition of “trust business” be introduced under the new section 2 and the First Schedule of the TC Bill which include the following:

- (a) the provision of services with respect to the creation of an express trust;
- (b) acting as trustee in respect of an express trust;

- (c) arranging for any person to act as trustee in respect of an express trust;
- (d) the provision of trust administration services in respect of an express trust;
- (e) acting as nominee shareholder for another person in respect of an express trust;
- (f) arranging for another person to act as nominee shareholder in respect of an express trust; and
- (g) activities invoked on trust companies pursuant to section 3 and First Schedule of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

12. A clear definition will ensure companies that wish to carry on trust business or trust related activities as specified under the definition of "trust business" will be governed by the TC Bill. This proposal is important as it will allow effective monitoring and enforcement on trust companies.

13. A clear definition of "trust business" under the new section 2 also seek to set a definite parameter that will exclude other trust business or trust activities regulated by other regulators under other written laws in Malaysia.

14. As a supervisory authority of trust companies under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful

Activities Act 2001 [Act 613] (AMLATFAPUA 2001), SSM has the duty to supervise and regulate trust companies as reporting institutions. As such, this proposal will further assist SSM in ensuring trust companies registered under the TC Bill will also comply with the AMLATFAPUA 2001.

Proposed Policy Statement #2	Providing clarity that only public companies limited by shares are allowed to be registered as trust companies if the companies wish to carry on a trust business. Registration as trust company is mandatory before companies are allowed to commence or carry on trust business to ensure effective monitoring.
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15. Section 3 of the TCA 1949 states that only public companies limited by shares may register as a trust company.

16. The existing policy which only allows companies incorporated as a public company limited by shares under the Companies Act 2016 [Act 777] (CA 2016) to be registered as trust companies will be maintained under the new section 4 of the TC Bill. This is because public companies are subjected to a more stringent governance requirement which augurs well with the fiduciary capacity expected of that trust companies. Public companies are expected to demonstrate higher degree of governance, accountability and transparency which would be in line with the duties and responsibilities of trust companies.

17. However, the current provision in the TCA 1949 does not expressly mention that companies must be registered as trust companies before they can carry on trust business in Malaysia.

18. As such, it is proposed under new section 4 that it is mandatory for public companies to register as trust companies before they can carry out trust business in Malaysia.

19. The clarity accorded under the TC Bill will ensure a more effective supervision activities as trust companies are vulnerable to be used as a medium to launder money, finance terrorists or any other illegal activities.

Proposed Policy Statement #3	Imposing mandatory requirement on trust companies to have a constitution with specific objects that relate to trust business as the constitution will bind the company, directors and shareholders. This requirement will serve as a control mechanism for monitoring purposes.
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20. Paragraph 3(a) of the TCA 1949 states that the objects of trust companies are restricted to some, or all objects as set out under subsection 8(1). Although the policy objective is to only allow trust companies with specific objects, the TCA 1949 does not expressly provide to that effect.

21. On this note, SSM is proposing a clearer provision to reflect the policy where the new section 4 of the TC Bill provides the requirement for trust companies to have a constitution with specific objects relating to trust business. Since a constitution of a trust company will bind the company, its directors and shareholders, this proposal will serve as a control mechanism over trust company for monitoring purposes.

22. To further strengthen the policy objective, prior approval from the Registrar must be obtained to amend the constitution of a trust company. This is important to protect the interest of beneficiaries in a trust business managed by the trust company as well the interest of the public at large.

Proposed Policy Statement #4	Providing clarity that the TC Bill is not applicable to trust business that falls under other written laws as this will provide certainty and avoid overlapping in laws which are governed by other regulators.
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23. In general, the TC Bill applies to all public companies that wish to carry on trust business and these companies are required to register as a trust company, unless excluded. Companies which are excluded are companies which are regulated under other written laws such as the Trustee (Incorporation) Act 1952 [Act 258], the Capital Market Services Act 2007 [Act 671], the Financial Services Act 2013 [Act 758] and the Islamic Financial Services Act 2013 [Act 759] as provided under the new First Schedule of the TC Bill.

Proposed Policy Statement #5	Retaining the current policy under the TCA 1949 and provide clarity that shareholders of trust companies cannot hold more than 20% shares each in a trust company to serve as a control mechanism in ensuring proper management in the operation of the trust company and its trust business.
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24. To further strengthen the governance of trust companies, SSM is maintaining the current policy under section 32 of the TCA 1949 that provides restriction on members of a trust company from holding more than one-fifth or 20% of its shares¹.

25. The new section 22 of the TC Bill provides clarity where a shareholder must not hold more than 20% shareholding in a trust company. This policy provides clarity and serves as a control mechanism to refrain any person from having control over the affairs of the trust company through shares as well as to promote independence, good governance and transparency in the running of the trust company.

Proposed Policy Statement #6	Retaining the current policy under the TCA 1949 on the requirement for trust companies to place securities deposit. The amount of securities deposit is determined based on the percentage that will reflect the current value of trust business undertaken by the trust company.
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26. SSM is proposing to retain the current policy under section 7 of the TCA 1949 on securities deposit as the policy is still relevant as these securities will cover liabilities arising from the discharge of the duties of a trust company since the trust industry is expected to display a high degree of fiduciary duties and obligations.

¹ Section 32 of the TCA 1949 states “No member of a trust company shall at any time hold, or have any interest in shares in the capital of the company to an amount exceeding one-fifth of the issued capital of the company for the time being”.

27. Under the new section 7 of the TC Bill, trust companies in discharging its duty as trustee must ensure:

- (a) the securities deposited are sufficient to the value of each trust business undertaken by trust companies; and
- (b) additional securities must be deposited as ordered by the Registrar for any decline in the value of securities or increase of the gross liabilities of trust companies based on the current practice and future exposure.

28. The TC Bill also proposes that the Registrar be empowered to determine the amount of the security deposit to reflect the industry's need from time to time.

Proposed Policy Statement #7	Deleting the current reciprocal provisions relating to trust laws in Singapore.
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29. Section 5 of the TCA 1949 allows any public company incorporated in Singapore and registered in Malaysia under the Division 2 of Part XI of the Companies Act 1965 to be registered as trust company for as long as there is a reciprocal arrangement to that effect.

30. The reciprocal provision in Singapore under their Trust Companies Act (Cap. 336, 1985 Rev Ed) was no longer in effect as the Act was repealed and replaced with the current Trust Companies Act (Cap. 336, 2006 Rev Ed). The new Act allows a foreign company (including a company incorporated in Malaysia) to apply for and obtain

a trust business licence if the company is registered under Singapore’s Companies Act (Cap. 50) and meets all the relevant requirements relating to the application for a trust business licence.

31. Therefore, there is no longer a requirement to retain such policy and the policy will be abolished under the TC Bill and only locally incorporated public companies will be allowed to carry out trust business or trust related activities in Malaysia for governance transparency and ease of monitoring purposes.

Proposed Policy Statement #8	Harmonizing with the CA 2016 following the modernization of several company law concepts including the abolishment of the authorised share capital and par value concept.
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32. The Companies Act 1965 has been repealed and replaced with the CA 2016. Under the CA 2016, several law concepts have been modernised to cater the current needs of the corporate community. For the TC Bill, the concept for example, the “authorised share capital” requirement under the TCA 1949 will be replaced with the “issued capital” requirement as provided under the new paragraph 4(1)(c) and section 22 of the TC Bill.

B. Beneficial Ownership Reporting Framework

Proposed Policy Statement #9	Introducing a new beneficial ownership reporting framework of trust arrangement through the introduction of a new definition “beneficial owner”
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	with the objective to identify the individual that has control over the trust arrangement.
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33. The FATF defines “beneficial owner” of legal arrangements as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal arrangement”. On this note, for the purpose of transparency in legal arrangements in line with the FATF’s recommendations, SSM is proposing to insert a new definition of “beneficial owner” under sections 2 and 24 of the TC Bill to identify beneficial owners of a trust arrangement.

34. Further, to ensure the beneficial ownership information of a trust arrangement is up to date, accurate and can be obtained in a timely manner, mandatory reporting of beneficial ownership information of trust arrangement is crucial for trust companies to record such information in a register of beneficial owners of trust arrangement.

35. The new section 25 of the TC Bill will impose obligations on trust companies to lodge beneficial ownership information of trust arrangement including changes to the beneficial ownership information of trust arrangement as specified under the new section 26.

Proposed Policy Statement #10	Requiring submission of beneficial ownership information of trust arrangement together with the mandatory submission of annual statement as provided under the current section 21 of the TCA 1949.
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36. It is also proposed that the requirement to submit annual statement under section 21 of the TCA 1949 be retained but with more detailed information for monitoring purposes as stipulated under the new section 12 of the TC Bill.

37. This policy is in line with paragraph 68(3)(ia) of the CA 2016 where a company must submit an annual return together with the beneficial ownership information of the company so under the TC Bill, trust companies will have an obligation to submit beneficial ownership information of its trust arrangement on annual basis. This inclusion will ensure such information is updated annually even when there is no change to the information from the previous lodgement of annual statement to up to date.

38. In light with this proposed amendment, the Registrar has the power to determine and control the right to access the beneficial ownership information of trust arrangement lodged through annual statement and can only be accessed by certain persons or categories of person as provided under the new subsection 25(9) of the TC Bill.

C. Management of Trust Companies

<p>Proposed Policy Statement #11</p>	<p>Imposing new specific duties and responsibilities on directors of trust companies in ensuring the covenants in a trust arrangement are carried out and delivered and in a timely manner. Criminal sanctions will be imposed for any breaches. This is in addition to the sanctions imposed for the breaches of directors of a company under the CA 2016.</p>
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39. The current policy does not specify any duties and responsibilities as directors of a trust company. Under the new subsection 4(2) of the TC Bill, the following duties and responsibilities will be imposed on directors of a trust company:

- (a) to exercise due diligence and vigilance in ensuring the covenants in a trust arrangement are carried out and delivered; and
- (b) to exercise duties and responsibilities in respect of the covenants in a trust arrangement in a timely manner.

40. As such, criminal sanctions can be imposed on the directors for breaches of those duties and responsibilities as directors of trust companies. These are additional sanctions imposed for the breaches of directors' duties under the CA 2016.

Proposed Policy Statement #12	Empowering the Registrar to impose any terms and conditions with regard to the qualification and experience of a director of a trust company to ensure the effective management of the trust company and action can be taken against the trust company and its directors for any breaches.
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41. The policy objective of this proposal is to ensure directors of trust companies are qualified to manage the trust companies since trust companies play a key role as financial intermediaries and therefore, susceptible to threats of money laundering, terrorist financing and other illegal activities.

42. This is in line with international standards to ensure persons appointed as directors of trust companies fulfil the fit and proper requirements where the directors must have the character, experience, integrity, competence and time to effectively discharge their role as directors of a trust company.

43. Under the new subsection 4(2) of the TC Bill, the Registrar will have the power to impose certain terms and conditions before any person is appointed as a director of trust company. This will strengthen internal governance of trust companies and to reduce the risks of trust companies being misused for illegal activities.

Proposed Policy Statement #13	Maintaining the current policy on provisions relating to auditors under the CA 2016.
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44. It is proposed that the current practice relating to auditors for public company under the CA 2016 to be maintained and shall be applicable to trust companies without any specific cross-referencing in the TC Bill.

Proposed Policy Statement #14	Maintaining the current policy under subsection 8(1) of the TCA 1949 for trust companies to have specific objects in the constitution and the objects must include the power of a trust company to fix and review the remuneration, charges and fees based on the works that have been carried out. The Court will have the power to review any
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	remuneration, charges and fee charged by the trust company.
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45. As the current policy under paragraph 3(a) of the TCA 1949 relating to constitution of a trust company having specific objects is maintained as per the new section 4 of the TC Bill, it is proposed under the new section 10 that the objects in the constitution shall include the power of a trust company to fix and review the remuneration, charges and fee.

46. As trust is a private arrangement and any remuneration, charges and fees will have to be pre-agreed between parties before any commencement of the trust arrangement depending on a commercial justification and market forces. It shall also be lawful for the trust company to charge, demand and receive reasonable fee or other remuneration for work done or services rendered that arise in the course of administration or management of a trust.

47. Notwithstanding, the Court is given the power to review any remuneration, charges and fee charged by the trust company if such remuneration, charges and fee are excessive, as provided under the new section 11 of the TC Bill. Upon an application from any person who will receive any benefit from the trust, the Court shall have the power to reduce the amount of remuneration, charges or fees if in its opinion the amount is excessive.

Proposed Policy Statement	Introducing mandatory electronic filing for lodgement or filing of documents and empower
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#15	the Registrar to supply information and issue any documents electronically.
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48. It is proposed that under the new section 56 of the TC Bill that electronic filing to facilitate the lodgement or filing of documents will be adopted similar with the provisions of section 604 of the CA 2016 and section 86 of the Interest Scheme Act 2016 [Act 778].

D. Restructuring and Cessation of Trust Companies

Proposed Policy Statement #16	Retaining the current policy under section 23 of the TCA 1949 relating to Court’s power to order for the winding up of a trust company upon application by the Minister in accordance with the CA 2016 and in a case of voluntary winding up, a trust company is allowed to cease business if assets of the trust business are properly distributed before cessation.
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49. The current policy under section 23 of the TCA 1949 which allows a trust company to be wound up by the Court upon application by the Minister in accordance with the winding up provisions under the CA 2016 will be maintained with some modifications as per the new section 37 of the TC Bill. The Minister may apply to the Court to wind up the trust company based on the following grounds:

- (a) That the trust company has defaulted in complying with any provisions of the TC Bill for a period of 2 months continuously after a notice of default has been issued to the trust company;

- (b) That the trust company has been found to be insolvent or has committed a breach of trust; or
- (c) That the trust company is being used for unlawful purposes or any purpose prejudicial to national security or public interest or incompatible with peace, welfare, public order security good order or morality in Malaysia.

50. Section 33 of the TCA 1949 further states that a trust company is allowed to apply for voluntary winding up if the trust company as trustee which still has trust assets either in whole or in part unadministered obtained sanction from the Court will be maintained under the new section 44 of the TC Bill.

51. To support the intended policy under the new section 44, the new sections 35 and 36 of the TC Bill will also allow trust companies as trustees to voluntarily transfer their trust business by way of application to the Court. The trust companies will have the option to:

- (a) distribute the remaining assets in the trust; or
- (b) transfer the trust assets either wholly or partially unadministered assets of trust to other trust company as trustee before they cease to carry on their trust business; and
- (c) seek sanction from the Court by way of application to cease its trust business while still acting as trustee if there is still remaining assets of the trust or yet to be transferred to other trustee or to AmanahRaya Berhad (ARB) and the Court shall by order transfer the remaining undistributable trust assets to other trustee or ARB.

52. Under this policy, trust companies are also allowed to seek sanction from the Court by way of application to cease its trust business while still acting as trustee if there are still remaining trust assets or yet to be transferred to other trustee or to AmanahRaya Berhad (ARB) and the Court shall by order transfer the remaining undistributed trust assets to the appointed trustee.

53. On the appointment of ARB as trustee pursuant to section 12 of the Public Trust Corporation Act 1955 (PTCA 1955) [Act 532], the following conditions shall apply:

- (a) The appointment shall be by way of Court order;
- (b) ARB is allowed to refer to the Court for any consequential order for the purpose of the administration of the trust assets;
- (c) ARB is entitled to exercise any rights, power, capacities or authorities in respect of or arising from the appointment;
- (d) ARB shall be allowed to administer the trust assets according to the PTCA 1955, any other Acts and legislations concerning a trustee or trust administration;
- (e) ARB is excluded or relieved from any liability for breach of trust or otherwise of the previous trustee (indemnity);
- (f) ARB is given a complete and full account of the status of all the trust assets that will be transferred or vested with ARB;

- (g) Upon the appointment of ARB, all of the trust company's rights, title and interest in the trust assets shall vest absolutely in the name of ARB;
- (h) The outgoing trust company will be responsible to ensure the settlement of any outstanding fees, charges and expenditure during their administration of the trust assets prior to the appointment of ARB; and
- (i) ARB will be entitled for fees upon its appointment as a new trustee and shall rank in priority.

Proposed Policy Statement #17	Trust companies are allowed to benefit from the provisions relating to striking off, scheme of arrangement and corporate rescue mechanism under the CA 2016.
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54. More often than not, the appointment of trust companies as trustees are backed by specific requirement under a written law. Hence, it is critical that the trust companies' industry remains competitive and resilient.

55. The purpose of scheme of arrangement and corporate rescue mechanism under the CA 2016 is to rehabilitate companies in financial difficulties and these frameworks are also suitable for trust companies should they face any financial difficulties. As for striking off, trust companies should be given an option to cease its business not only by way of winding up but also striking off process provided under the CA 2016.

56. It is proposed that the relevant provisions under the CA 2016 shall be applicable to trust companies under this policy without any specific cross-referencing.

PART III: THE TRUST COMPANIES BILL

ANNEXURE

TRUST COMPANIES BILL

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TRUST COMPANIES BILL

An Act to provide for registration and regulation of trust companies in Malaysia.

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ENACTED by the Parliament of Malaysia as follows:

PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Trust Companies Act 20XX.

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

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“beneficial owner” a person as provided for in section 23;

“books” has the same meaning assigned to it in the Companies Act 2016 [Act 777];

“Commission” means the Companies Commission of Malaysia established under the Companies Commission of Malaysia Act 2001 [Act 614];

"company" has the same meaning assigned to it in the Companies Act 2016;

"corporation" has the same meaning assigned to it in the Companies Act 2016;

"director" has the same meaning assigned to it in the Companies Act 2016;

"Court" means -

- (a) the High Court or any Judge thereof in all cases where proceedings are taken in the High Courts; and
- (b) a Sessions Court in all cases where proceedings are taken in such a Court;

"document" has the same meaning assigned to it in the Evidence Act 1950 [Act 56];

"financial year" has the same meaning assigned to it in the Companies Act 2016;

"Minister" means the Minister charged with responsibility for companies;

"officer" has the same meaning assigned to it in the Companies Act 2016;

"protected party", in relation to a trust company, means a trust for which the trust company provides trust business services and includes the settlor and beneficiary under the trust;

"Registrar" means the Registrar designated under subsection 20A(1) of the Companies Commission of Malaysia Act 2001 [Act 614];

“substantial shareholder” has the meaning assigned to it in the Companies Act 2016;

“trust arrangement” means any arrangement made pursuant to an express trust;

“trust business” means any business or activity specified in the First Schedule; and

“trust company” means a company registered as a trust company under this Act.

PART II

REGISTRATION OF TRUST COMPANIES

Restriction on carrying on trust business

3. (1) No person shall carry on any trust business or hold himself out as carrying on any trust business in Malaysia unless that person is registered as a trust company under this Act.

(2) Subsection (1) shall not apply to any person specified in the Second Schedule.

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

Registration of a trust company

4. (1) An application for the registration of a trust company may be made by a company provided that the company—

- (a) is a public company limited by shares incorporated under the Companies Act 2016;
- (b) specifies in its constitution one or more objects specified in the Third Schedule; and
- (c) meets the minimum issued capital as determined by the Commission.

(2) The Registrar shall have the power to impose any other conditions as he thinks fit for the purpose of registration of a trust company.

Application to register a trust company

5. (1) A company may apply to the Registrar in the manner as determined by the Registrar for the registration of a trust company referred to in section 4.

(2) An application to register a trust company shall be made to the Registrar by providing the following information:

- (a) the name of the trust company;
- (b) the names, addresses of the shareholders, directors and secretary of the trust company; and
- (c) any other information that the Registrar thinks fit.

(3) An application for the registration as a trust company shall be refused if—

- (a) the applicant has not provided the Registrar with such information or document as the Registrar may require in relation to—

- (i) the applicant or any person employed by or associated with the applicant for the purposes of its trust business;
 - (ii) any circumstances likely to affect the manner in which the applicant conducts its trust business;
- (b) any information or document that is furnished by the applicant to the Registrar is false or misleading;
- (c) the applicant or its substantial shareholder is in the course of being struck off the register, wound up or otherwise dissolved, whether in Malaysia or otherwise;
- (d) execution against the applicant or its substantial shareholder in respect of a judgement debt has been returned unsatisfied in whole or in part;
- (e) a receiver, receiver and manager, a judicial manager, a nominee or an equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the applicant or its substantial shareholder;
- (f) the applicant or its substantial shareholder has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) the applicant or its substantial shareholder, or any officer of the applicant—

- (i) has been convicted, whether in Malaysia or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that it or he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under the Companies Act 2016.
- (h) the Registrar is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform if the applicant was allowed to be registered as a trust company;
- (i) the applicant fails to satisfy the Registrar that it is a fit and proper person to be registered or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Registrar has reason to believe that the applicant may not be able to act in the best interests of any protected party having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;
- (k) the Registrar is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's trust business is to be conducted;
- (l) the Registrar is not satisfied as to the record of past performance or expertise of the applicant, having regard to the nature of the trust business which the applicant may carry on if the registration of trust company is approved;

- (m)* there are other circumstances which are likely—
- (i)* to lead to improper conduct of the applicant's trust business by the applicant or any of its officers, employees or substantial shareholders; or
 - (ii)* to reflect discredit on the manner in which the applicant or its substantial shareholders conducts its trust business;
- (n)* the Registrar has reason to believe that the applicant, or any of its officers or employees, will not efficiently, honestly or fairly perform any of the activities or provide any of the services for which the applicant seeks to be registered;
- (o)* the Registrar has reason to believe that the trust company is likely to be used for unlawful purposes or for purposes prejudicial to public peace, national security or interest, welfare or good order in Malaysia; or
- (p)* the Registrar is of the opinion that it would be contrary to the interests of the public to approve the registration of a trust company to the applicant.
- (4) The Registrar shall not refuse an application for the registration of a trust company without giving the applicant an opportunity to be heard, except in the following circumstances:
- (a)* the applicant is in the course of being wound up or otherwise dissolved, whether in Malaysia or elsewhere;

- (b) a receiver, receiver and manager, a judicial manager, a nominee or an equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Malaysia or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- (d) the trust company is likely to be used for unlawful purposes or for purposes prejudicial to public peace, national security or interest, welfare or good order in Malaysia; or
- (e) it would be contrary to the interests of the public to approve the registration of a trust company to the applicant.

(5) A company may appeal against the refusal of the registration as trust company by the Registrar to the Minister.

[6] In this section, “nominee” has the same meaning assigned to it in the Companies Act 2016.

Issue of certificate of registration

6. (1) If the Registrar is satisfied that all the requirements relating to the registration of a trust company have been complied with and upon the payment of a prescribed fee, the Registrar shall register the company and issue to the company a certificate that it is registered as a trust company.

(2) The certificate of registration issued under this section shall be conclusive evidence that requirements of this Act relating to the registration have been complied with and the trust company is registered under this Act.

Deposit to be held as security

7. (1) From the time of the issue to any company of a certificate under section 6, there shall be deposited securities, as security for the depositors and creditors of the company and for the faithful execution of all trusts which may be accepted by or imposed upon the company and for its obligations generally, a sum of which is to be determined by the Registrar.

(2) If at any time, by reason of the decline in value of any securities or of the increase of the gross liabilities of any trust company, the Registrar is of opinion that additional security ought to be furnished by the trust company, he may order the company to make, within a period to be stated in the order, a further deposit of a specified value.

(3) The Registrar shall determine the form and manner the securities to be deposited by a company under subsection (1) and a trust company under subsection (2).

Trust company shall have a constitution

8. (1) A trust company shall have a constitution.

(2) The constitution shall state—

(a) that the company is a trust company;

(b) the objects of the company;

(c) the capacity, rights, powers and privileges of the company;

- (d) power of a trust company to fix and review the remuneration, charges and fee pursuant to section 10;
- (e) the number of members with which the company proposed to be incorporated;
- (f) matters contemplated by this Act to be included in the constitution; and
- (g) any other matters as the trust company wishes to include in its constitution.

(3) The constitution shall bind the trust company and the members to the same extent as if the constitution had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.

Objects of a trust company

9. (1) A trust company shall state in its constitution one or more of the objects specified in the Third Schedule.

(2) No company other than a trust company shall be formed with the objects specified in the Third Schedule.

(3) Nothing in this section shall be construed to authorize any trust company to engage in the business of banking, or insurance business, or the business of a deposit, provident or benefit society.

PART III
MANAGEMENT OF TRUST COMPANIES

Remuneration, charges, fees etc.

10. (1) It shall be lawful for a trust company to charge, demand and receive for work done and services rendered by it such remuneration, charges or fee by way of commission or otherwise as may from time to time be fixed by the trust company.

(2) In addition to the remuneration, charges, fee etc. authorized by subsection (1), it shall be lawful for a trust company to charge, demand and receive a reasonable remuneration, charges or fee for work done or services rendered by it in respect of any of the following matters that arise in the course of administration or management of an estate or trust:

- (a) the preparation and lodging of returns for the purpose of, or in connection with, the assessment of any duties and taxes;
- (b) the management of property, including the arranging of tenancies and leases and renewals and assignments thereof, and the arranging and supervising of repairs, maintenance, renovations or extensions of or to the property;
- (c) the tracing of missing beneficiaries;
- (d) the attempted realisation of assets that are ultimately transferred or delivered in kind to the beneficiaries;
- (e) the carrying on of a trust business pending realisation;
- (f) any other matter of an unusual or special nature.

(3) Any remuneration, charges or fee charged pursuant to subsection (2) shall be clearly identified in the account rendered in respect of the estate or trust.

Review of remuneration, charges, fee etc.

11. (1) Notwithstanding anything to the contrary in this Act or any other law, if the Court is of the opinion that any remuneration, charges, fee etc. charged by a trust company is excessive, that Court may reduce the amount of the remuneration, charges or fee.

(2) Application for any such reduction of any commission, fee or remuneration of a trust company may be made by or on behalf of any person who would receive a greater benefit from the capital or income of the estate out of which the remuneration, charges or fee is payable in the event the remuneration, charges or fee being reduced.

(3) No application to the Court under the foregoing provisions of this section may be made by or on behalf of any person after the expiration of six months from the date of delivery to that person of accounts in which are shown the remuneration, charges or fee to which the application relates.

(4) When any trust company, at or after the commencement of this Act, in connection with any estate under its administration or management, lawfully carries on or manages, whether alone or in partnership or through an agent, any business or undertaking, or through a representative or otherwise takes any active part in the management or direction of any company, or when any other circumstances have arisen which justify additional remuneration, charges or fee, the company may apply to the Court to fix, in addition to any remuneration, charges or fee to which it is otherwise entitled, either an additional fee or an additional commission by way of percentage; and that Court may allow to the company such additional remuneration, charges or fee by way of percentage as it thinks fit, having

regard to the work, care, skill and responsibility involved in administering the estate or carrying on or managing or directing the business, undertaking, or company, and the extent of the interest of the estate in the business, undertaking or company, and the amount of its share in the profits or income therefrom.

Annual Statement

12. (1) Every trust company shall lodge annually to the Registrar together with the financial statements required under section 259 of the Companies Act 2016, the following:

- (a) a statement of liabilities of the company in its capacity as trustees, and of the investments and holdings of the company on trust account;
- (b) consolidated statements or information relating to the trusts that are administered by the company or for which it provides trust administration services;
- (c) beneficial ownership information of trust arrangement; and
- (d) such other information as the Registrar may require.

(2) The statement of liabilities shall be verified by the affidavit of the chairman or vice-chairman and of the manager or secretary of the company.

(3) In addition to subsection (1), the Registrar may require a trust company to submit a segmental reporting from time to time in a form and manner .

(4) Any trust company and every officer of the trust company which contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty 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.

[5] For the purposes of this section, “segmental reporting” means any report to the Registrar in order for the Registrar to form an opinion on the risks faced by the trust company.

Trust funds to be kept separate

13. (1) All moneys, property and securities received or held by any trust company in a fiduciary capacity shall always be kept distinct from those of the company, and in separate accounts, and shall be so marked in the books of the company relating to each particular trust as always to be distinguished from any other in the registers and other books of account kept by the company, so that at no time shall trust moneys form part of or be mixed with the general assets of the company.

(2) Every trust company shall ensure that all investments made by it as trustee shall be designated so that the trusts to which the investments belong may be readily identified at any time.

(3) Any trust company which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for every day or part thereof during which the offence continues after conviction.

Investment of trust funds

14. (1) A trust company may invest trust moneys in its hands in or upon any securities in which private trustees may by law invest trust moneys,

and may from time to time vary any such investment for others of the same nature:

Provided that the company shall not in any case invest the moneys of any trust in or upon securities prohibited by the instrument creating the trust, and whenever any special directions are given in any order, judgment, decree, or will, or in any other instrument creating the trust, as to the particular class or kind of securities or property in or upon which any investment shall be made, the company shall follow those directions.

(2) The company may also, in its discretion, retain and continue any investment and securities coming into its possession in any fiduciary capacity.

(3) No trust company shall directly or indirectly invest any trust moneys otherwise than in accordance with subsection (1).

Investment of company's funds

15. (1) A trust company may invest moneys forming part of its own capital or reserve or accumulated profits—

(a) in or upon any securities in or upon which private trustees may by law invest trust moneys; and

(b) in or upon such other securities as the Minister may from time to time approve.

(2) A trust company may acquire and hold immovable property for the actual use and occupation of itself or of any of its officers or employees, and may sell and dispose of the same.

(3) A trust company may, for the protection of its investments, acquire land which has been mortgaged to it, but shall sell any land so acquired within three years after the acquisition thereof, unless the time is extended by the Minister.

(4) No trust company shall directly or indirectly invest any of its moneys otherwise than in accordance with subsections (1), (2) and (3):

Provided that nothing in this section shall be deemed to prevent the acceptance by a trust company of any securities whatsoever to secure the payment of a debt previously contracted in good faith; but any security so acquired by the company which it would otherwise be prohibited from taking or holding shall, within two years from the time of its acquisition, or within such further time as may be allowed by the Registrar, be sold or disposed of.

Loans to company's officers prohibited

16. No loans shall be made by any trust company to any director or other officer or employee thereof, or to any company or firm in the management of which any such director or other officer or employee is actively engaged.

Borrowing

17. (1) For the purpose of conducting trust business as defined under this Act and for no other purpose, a trust company may from time to time borrow money.

(2) The aggregate of the sums of money borrowed for the purpose of subsection (1) shall not at any time exceed the amount of the company's capital for the time being paid up.

(3) Moneys borrowed by a trust company shall not be secured, by debenture or otherwise, on its capital or general undertaking, but may be secured on any of the company's property, not being property held by it on any trust, other than the securities deposited by it with the Registrar under this Act.

Loan to director, etc.

18. If any loan is made by a trust company to any director or other officers in contravention of section 16, all directors and officers of the company who made the loan or assented to the loan shall be jointly and severally liable to the company for the amount of the loan with interest.

Keeping of books and furnishing of returns

19. (1) Where a trust company acts as a trustee of any express trust, the company shall keep, or cause to be kept, such books as will sufficiently explain the transactions entered into by the company on behalf of the trust and the financial position of such trust.

(2) A trust company shall keep, or cause to be kept, the books relating to the company as will —

(a) sufficiently explain the transactions and financial position of its business; and

(b) enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time,

and its books shall be kept in such a manner as will enable them to be conveniently and properly audited.

(3) An entry in the books of a trust company required to be kept in accordance with this section shall be deemed to have been made by, or with the authority of, the company.

(4) A trust company shall retain such books as may be required to be kept under this Act for a period of not less than seven years.

(5) A trust company shall —

(a) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Registrar in writing; and

(b) provide such information relating to its business as the Registrar may require.

(6) Any trust company which, without reasonable excuse, contravenes subsection (1), (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand ringgit.

(7) Any trust company which, without reasonable excuse, contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for every day or part thereof during which the offence continues after conviction.

(8) Any director or officer of a trust company who willfully and with intent to defraud neglects to make any entry in the books of the company which it is his duty to make shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

False statements in accounts

20. Any director, officer or employee of a trust company who willfully and with intent to defraud makes or abets the making of any false entry in the books of the company or subscribes or exhibits any false document with intent to deceive any person appointed under this Act to investigate the affairs and management of the company shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

Documents to be kept at the registered office

21. (1) In addition to the requirements under section 47 of the Companies Act 2016, every trust company shall keep at its registered office:

- (a) certificate of registration issued pursuant to section 6;
- (b) its constitution;
- (c) all registers, books records and documents required under this Act;
- (d) statement of liabilities required pursuant to section 12.

(2) A trust company and every officer who contravene this section commit an offence and shall, on conviction, be liable to be fine not exceeding ten thousand ringgit and in the case of continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after the conviction.

Restriction on holding of shares

22. No member of a trust company shall at any time hold or have any interest in shares in the capital of the company to an amount exceeding twenty percent of the issued capital of the company for the time being.

PART IV BENEFICIAL OWNERSHIP

Obligation of trust company to keep beneficial ownership information of trust arrangement

23. (1) A trust company shall keep beneficial ownership information for every trust arrangement.

(2) The trust company and every officer who contravene this section commit an offence.

Beneficial owner of trust arrangement

24. (1) A person is a beneficial owner of a trust arrangement if he is a natural person who ultimately owns or controls over a trust arrangement and includes a person who has effective control over the trust arrangement.

(2) The Registrar may issue guidelines for the purpose of identifying a beneficial owner of a trust arrangement.

Register of beneficial owners, etc

25. (1) Every trust company shall keep a register of beneficial owners of trust arrangement and record in the register—

(a) the full name, addresses, nationality, identification and usual place of residence of a person who is a beneficial owner of the trust arrangement;

(b) the date the person becomes a beneficial owner of the trust arrangement;

(c) the date the person ceases to be a beneficial owner of the trust arrangement; and

(d) such other information as the Registrar may require.

(2) The register of beneficial owners of the trust arrangement shall be kept at the registered office of the trust company or any other place in Malaysia as notified to the Registrar.

(3) The trust company shall lodge with the Registrar a notice of change to the particulars in the register of beneficial owners of the trust arrangement.

(4) Any notice required under subsection (3) shall be lodged within fourteen days from the date on which the change is recorded in the register of beneficial owners of the trust arrangement.

(5) The trust company shall retain the information of a person who has been recorded in the register of beneficial owners of the trust arrangement as a beneficial owner but subsequently ceases to be a beneficial owner of the trust arrangement for seven years from the date the person ceases to be a beneficial owner.

(6) The trust company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty 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 the conviction.

(7) The Registrar shall determine the form, manner and extent of the information to be kept under subsection (1) and lodged under subsection (3).

(8) The register of beneficial owners of the trust arrangement shall be *prima facie* evidence of any matters inserted in the register under this Act.

(9) The Minister may, in relation to access to the register of beneficial owners of the trust arrangement or beneficial ownership information lodged with the Registrar, prescribe—

(a) any person or class of persons who may access the register of beneficial owners of the trust arrangement or the beneficial ownership information;

(b) the manner and terms and conditions for accessing the register of beneficial owners of the trust arrangement or the beneficial ownership information;

(c) the fee for the supply of the beneficial ownership information.

(10) In this section, “identification” means, in the case of any person issued with an identity card issued under the National Registration Act 1959, the number of the identity card, and in the case of a person not issued with an identity card, particulars of passport or such other similar evidence of identification as is available.

Duty to notify particulars and changes in the register of beneficial owners of the trust arrangement

26. (1) A trust company is required to notify the Registrar of the changes in the particulars of the register of beneficial owners within fourteen days from the date:

(a) of the change of any beneficial owner contained in the register;
and

(b) after the person ceases to be, or becomes, a beneficial owner
of a trust arrangement.

(2) The Registrar shall determine the form, manner and extent of the information to be lodged under this section.

(3) The information lodged pursuant to this section will only be made available to any law enforcement agency for the purposes of investigation pursuant to any written law.

(4) The trust company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty 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 the conviction.

PART V

PROBATE AND ADMINISTRATION, TRUSTEESHIP AND AGENCY

Trust company may act as executor

27. If at any time a trust company is appointed executor of the will of any testator, it shall be lawful for the company to apply to the Court for probate of the will and, if probate be granted, to exercise and discharge all the powers and duties of an executor.

Trust company may be authorized to apply for probate or administration

28. (1) If and whenever any person is entitled to apply for probate of the will of any testator without leave being reserved to any other person to apply for probate, it shall be lawful for the person, whether absent from Malaysia or not, and notwithstanding any other written law, instead of himself applying for the probate, to authorize a trust company to apply to the Court for a grant of administration with the will annexed of the estate of the testator, and a grant may be made to the company upon its own application, when so authorized, but this section shall not apply to any case in which a will provides that the company shall not act as executor, or in the trusts thereof.

(2) If and whenever any person is entitled to apply for letters of administrations with the will of any testator annexed of the estate of the testator, it shall be lawful for the person, whether absent from Malaysia or not, and notwithstanding any other written law, to authorize a trust company to, either alone or jointly with any other person, to apply to the Court for a grant of administration with the will annexed of the estate of the testator, and a grant may be made to the company upon its own application, when so authorized, but this section shall not apply to any case in which a will provides that the company shall not act as executor, or in the trusts thereof.

(3) It shall be lawful for any person or persons entitled to apply for letters of administration of the estate of any interstate whether the person or persons be absent from Malaysia or not, and notwithstanding any other written law, to authorize a trust company to apply to the Court for the letters of administration, either alone or jointly with any other person, and administration of the estate of any such interstate may be granted to the company, either alone or jointly as aforesaid, upon its own application, when so authorized.

(4) For the purposes of any application to the Court for letters of administration to the estate of any deceased person, the Court shall consider a trust company, when

authorised as aforesaid, to be in law entitled equally with any other person or class of persons to apply for and obtain a grant, but a trust company, being so entitled, shall not on that account alone be preferred to the widower, widow, or next-of-kin of any estate.

(5) No grant of probate or of letters of administration shall be granted to an agent or nominee on behalf of a trust company.

Trust company not to furnish security

29. (a) Notwithstanding the provisions of the Probate and Administration Act 1959, a trust company to which a grant of letters of administration has been made shall not be required to furnish security for the due administration of the estate.

(b) A trust company appointed by the Court to perform the duties of receiver, guardian, committee, or any other office or trust shall not be required to furnish security for the due performance of those duties.

Procedure as to petition, etc.

30. (1) In all cases in which a trust company is empowered under this Act to apply for probate or for letters of administration, any petition, declaration, account or affidavit or other necessary document may be made or sworn by any officer of the company duly authorized by the company in that behalf.

(2) Any officer of the trust company appointed by the company for that purpose may, on behalf of the company, sign any petition, account or statement, take any oath, swear any affidavit, make any declaration, verify any act, give personal attendance at any Court or place, and to do any act or thing whatsoever, which may be required to be signed, taken, sworn, made, verified, given, or done on behalf of the company.

Appointment of trust company to be trustee

31. (1) Subject to subsection (2), in all cases in which the Court or any person or persons has or have power to appoint a trustee, whether as an original or new or additional trustee, to perform any legal trust or duty, a trust company may be appointed in the same manner as if the company were a private individual.

(2) No trust company shall be appointed in any case in which the instrument creating the trust, or the power authorizing the appointment, forbids the appointment of a company as trustee.

Joint tenancy

32. A trust company, acting in a fiduciary capacity, shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were a private individual.

Trust company may act as an agent

33. (1) Subject to subsection (2), a trust company may act under any deed or instrument by which the trust company is appointed agent or attorney for any person, and all the powers conferred upon the trust company by any such deed or instrument may be exercised by such officer of the trust company as the trust company may appoint for that purpose.

(2) Nothing in this section shall be deemed to authorize any person to confer upon a trust company any power which may not lawfully be delegated by him.

PART VI VOLUNTARY TRANSFER OF BUSINESS

Interpretation of this Part

34. In this Part, unless the context otherwise requires—

“business” includes affairs, property, right, obligation and liability;

“debenture” has the same meaning in section 2 of the Companies Act 2016;

“property” includes property, right and power of every description;

“transferee” means a registered trust company under this Act is to be or is proposed to be transferred under this Part; and

“transferor” means a registered trust company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Part.

Voluntary transfer of business

35. (1) A transferor may transfer the whole or any part of its trust business to a transferee, if—

(a) the Registrar has consented to the transfer; and

(b) the transfer involves the whole or any part of the trust business of the transferor; and

(c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of a trust company to transfer the whole or any part of its trust business under any law.

(3) The Registrar may consent to a transfer under subsection 1(a) if the Registrar is satisfied that—

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

(b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Registrar may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's trust business, or any part thereof, under this Part.

(5) The remuneration, charges, fee and expenses of any person appointed under subsection (4) shall be paid by the transferor and the transferee jointly and severally.

(6) The Registrar shall serve a copy of any report furnished under subsection (4) on the transferor and the transferee.

(7) The Registrar may require a person to furnish, within the period and in the manner specified by the Registrar, any information or document that the Registrar may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Part.

(8) Any person who—

(a) without reasonable excuse, fails to comply with any requirement under subsection (7); or

- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Approval of transfer

36. (1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the trust business of the transferor to the transferee under this Part.

(2) Before making an application under subsection (1)—

- (a) the transferor shall lodge with the Registrar a report setting out such details of the transfer and furnish such supporting documents as the Registrar may specify;
- (b) the transferor shall obtain the consent of the Registrar under section 33(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective protected parties a summary of the transfer, obtain the Registrar's approval of the summary;
- (d) the transferor shall, at least fifteen days before the application is made but not earlier than one month after the report referred to in

paragraph (a) is lodged with the Registrar, publish in the *Gazette* and in such newspaper or newspapers as the Registrar may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(e) the transferor and the transferee shall keep at their respective offices in Malaysia, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of fifteen days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and

(f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective protected parties affected by the transfer, at least fifteen days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Registrar under paragraph (c).

(3) The Registrar and any person who, in the opinion of the Court, is likely to be affected by the transfer—

(a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(b) may make any application to the Court in relation to the transfer.

(4) The Court shall not approve the transfer if the Registrar has not consented under section 33(1)(a) to the transfer.

(5) The Court may, after taking into consideration the views, if any, of the Registrar on the transfer—

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
- (b) refuse to approve the transfer.

(6) The Court may by order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the provisions to be made for persons who are affected by the transfer;
- (e) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

(7) Any order under subsection (6) may—

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(b) make provision in relation to any property which is held by the transferor as trustee; and

(c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

(8) Subject to subsection (9), where an order made under subsection (6) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

(9) No order under subsection (6) shall have any effect or operation in transferring or otherwise vesting land in Malaysia until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

(10) If any business specified in the order under subsection (6) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

(11) Where an order is made under this section, the transferor and the transferee shall each lodge within seven days after the order is made—

(a) a copy of the order with the Registrar; and

- (b) where the order relates to land in Malaysia, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(12) A transferor or transferee which contravenes subsection (11), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding two hundred ringgit for every day or part thereof during which the offence continues after conviction.

PART VII WINDING UP

Special provision as to winding up

37. (1) The Court may order the winding up of a trust company in accordance with the Companies Act 2016, and the provisions of that Act shall apply accordingly.

(2) For the purposes of subsection (1), a trust company may be ordered to be wound up by the Court on application made by or on behalf of the Minister on the following grounds—

- (a) that the trust company has made default in complying with a requirement of this Act and that default has continued for a period of two months after notice of default has been served upon the trust company by the Registrar;

- (b) that from the consideration of an inspection conducted under this Act it appears to the Registrar that the trust company is insolvent or has committed a breach of trust; or
- (c) the trust company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia.

(3) For the purpose of winding up actions commenced by the Minister under paragraph (2)(c), the finding of the Registrar that a trust company is being used for unlawful purposes or any purpose prejudicial to national security or public interest or incompatible with peace, welfare, public order, security, good order or morality in Malaysia shall in all Courts and by all persons having power to take evidence for the purposes of the Act, be received as *prima facie* evidence until proven otherwise.

Liability on winding up

38. Upon the winding up of a trust company, every person who has been a director of the trust company at any time within the period of two years immediately preceding the commencement of the winding up shall become liable for the balance unpaid on every share which he may have transferred during those two years.

PART VIII GENERAL OFFENCES

Offences by officers

39. (1) Any director, officer or employee of a trust company who wilfully and with intent to defraud neglects to make any entry in the books of the trust company which it is his duty to make commits an offence.

(2) Any director, officer or employee of a trust company, who wilfully and with intent to defraud makes or abets the making of false entry in the books of the trust company or subscribes or exhibits any false document with intent to deceive any person commits an offence.

(3) Any director, officer or employee of a trust company who refuses to produce for examination to the Registrar all books and documents in his custody or control commits an offence.

(4) Any person being an officer of a trust company who fails to take all reasonable steps to secure—

(a) compliance with any provision of this Act; or

(b) the accuracy and correctness of any statement submitted under this Act,

commits an offence.

(5) Any officer who commits an offence under this section shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or both.

(6) An officer shall not be sentenced to imprisonment for any offence under subsection (4) unless in the opinion of the Court he committed the offence wilfully.

General Penalty

40. (1) A person commits an offence under this Act if he—
- (a) does that which by or under this Act he is prohibited 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.
- (2) A person who is guilty of an offence under this Act shall, on conviction, be liable 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 mentioned—
- (a) in the case of a person who is an individual, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both;
 - (b) in the case of a person other than an individual, to a fine not exceeding fifty thousand ringgit.
- (3) For the purposes of this section, “individual” means a natural person.

False and misleading statements

41. (1) Every trust company which advertises, circulates or publishes any return, report, certificate, financial statements or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or

intentionally omits or authorizes the omission or accession of any matter or thing which makes the document misleading in a material respect and every officer for the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication commits an offence, and shall, on conviction—

(a) in the case of a trust company, be liable to a fine not exceeding three million ringgit; and

(b) in the case of officer of the trust company, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million or to both.

(2) Every person who in any return, report, certificate, financial statement or other document required by or for the purposes of this Act—

(a) makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false; or

(b) misleads or intentionally omits or authorizes the omission or accession of any matter or thing making the document misleading in a material respect,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(3) If a person at a meeting votes in favour of the making of a statement referred to in this section knowing it to be false, he shall be deemed to have authorized the making of that statement.

False report or statement to the Registrar

42. (1) A person who makes or furnishes, or knowingly authorizes or permits the making or furnishing of, any false or misleading statement, information or report to the Registrar relating to—

(a) the affairs of a trust company;

(b) any matter or thing required by the Registrar for the implementation of the Act; or

(c) the enforcement of this Act,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

Guardianship of person prohibited

43. (1) No trust company shall be appointed to be guardian of the person of an infant or committee of the person of a mentally disordered person.

(2) Any trust company which accepts any appointment in contravention of subsection (1) commits an offence.

Voluntary winding up or disposal of shares may be restrained

44. So long as any estate in respect of which a trust company is trustee shall remain in whole or in part unadministered, it shall not be lawful to proceed to wind up the trust company voluntarily, unless with the sanction of the Court, and it shall be lawful for any person interested in the estate, or who may have any claim in respect thereof, to apply to the Court in a summary way by motion to restrain any director or any shareholder from disposing of any shares which the director or shareholder may hold in the trust company or to restrain the voluntary winding up

of the trust company, and the Court shall have power to make such order as it deems just.

PART IX GENERAL PROVISIONS

Assets of the trust

45. (1) When a trust company intends to cease its business and there remains in whole or in part unadministered trust assets, the trust company will either—

(a) transfer the trust business together with either in whole or in part of the unadministered trust assets to other trust company before it cease to carry on trust business; or

(b) apply to Court to transfer the remaining unadministered trust assets to AmanahRaya Berhad established under the Public Trust Corporation Act 1955.

(2) In an application under paragraph (1)(c), the applicant shall—

(a) gives AmanahRaya Berhad a notice of not less than fourteen days of the applicant's intention to do so; and

(b) made AmanahRaya Berhad a party to the proceedings.

Liability and powers of trust company

46. Subject to this Act, the liability of every trust company to the person interested in any estate held by the trust company as executor, administrator,

trustee, receiver, liquidator, assignee, guardian, or committee, or in any other official or business capacity shall be the same as if the estate had been held by a private person in the like capacity and the powers of the trust company shall be the same as those of a private person in the like capacity.

Registration of trust company as shareholder, etc., not notice of trust

47. (1) Neither the application by a trust company for registration as a member or shareholder in the books of any company or corporation nor the entry of the name of a trust company in the books of any company or corporation shall constitute a notice of trust.

(2) No company or corporation shall be entitled to object to the entering of the name of a trust company in its books by reason only that the trust company may be or is a trustee.

(3) In dealings with property, the fact that the person or one of the persons dealt with is a trust company shall not of itself constitute a notice of trust.

Unclaimed money to be paid to the Registrar of Unclaimed Moneys

48. All moneys and assets which remain in the hands of a trust company, as trustee of a trust constituted in Malaysia, and unclaimed by the person entitled to them for a period of six years after the time when they became payable to that person, except where payment has been restrained by order of a Court of competent jurisdiction, together with such interest, if any, as has been received by the trust company in respect thereof, less any commission or other charges properly chargeable by the trust company, shall be paid by the trust company to the Registrar of the Unclaimed Money pursuant to the Unclaimed Moneys Act 1965 [Act 370].

Exemption

49. (1) The Minister may, upon the recommendation of the Commission, by order exempt any person, corporation or class of corporations from all or any of the provisions of this Act.

(2) In exercising his power under this section, the Minister may—

- (a) form a committee to assist him in reaching the decision;
- (b) request information or documentation or personal representation from any person, the corporation or class of corporations in order for him to be satisfied with the recommendation; and
- (c) impose any terms and conditions as he thinks fit.

Register of trust companies to be kept

50. (1) Subject to this Act, the Registrar shall keep registers as the Registrar consider necessary in such forms as the Registrar deems fit.

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

- (a) inspect any documents filed or lodged with the Registrar not being a document relating to beneficial ownership lodged under sections 12 and 20;
- (b) require a notification of any certificate issued under this Act; or
- (c) require a copy or extract from any document that he is entitled to inspect under paragraph (a) or any certificate referred to in paragraph (b) to be given and certified by the Registrar.

Evidentiary value of copies certified by Registrar

51. (1) A copy of or an extract from any document lodged or filed with 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 of that document has been incorporated with a register kept by the Registrar, a reference to the reproduction of the document.

Evidence of statutory requirements

52. In any legal proceedings, if the Registrar certifies that—

(a) a certificate signed and sealed by the Registrar that at a date or during a period specified in the certification, no trust company was registered under this Act or corresponding previous written law by a name specified in the certification shall be admissible as *prima facie* evidence that at the date or during that period, as the case may be, no trust company was registered by that name under this Act or corresponding previous written law; and

(b) a certificate signed and sealed by the Registrar that a requirement of this Act specified in the certification—

(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 certification but not before that date,

the certification shall be admissible *as prima facie* evidence of matters specified in the certification.

Registers and inspection of register

53. (1) Subject to this Act, the Registrar shall keep registers as the Registrar considers necessary in such forms as the Registrar thinks fit.

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

- (a) inspect any document filed or lodged with the Registrar not being a document that has been destroyed or otherwise disposed of under section 603;
- (b) require a notification of the incorporation of any company or any other certificate issued under this Act; or
- (c) require a copy or extract from any document that he is entitled to inspect under paragraph (a) or any notification or certificate referred to in paragraph (b) to be given and certified by the Registrar.

(3) If a reproduction or transparency of a document, notification or certificate is produced for inspection, a person is not entitled to require the reproduction of the original of that document or certificate under paragraph (2)(a).

(4) The reference in paragraph (2)(c) to a document or certificate includes, if a reproduction or transparency of that document or certificate has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency and if such a reproduction or transparency has been incorporated, a person is not entitled under that paragraph to a copy or extract from the original of that document or certificate.

Rectification of registers

54. (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 the matter 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), in order for the Registrar to decide whether to approve or refuse the application, 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 trust business.

(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) Any person aggrieved with the decision of the Registrar in this section may appeal to the Court.

(5) Any order made by the Court shall be lodged with the Registrar and the Registrar shall rectify the register accordingly on receipt of the order.

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

Disposal of old records

55. The Registrar may, if in his opinion it is no longer necessary or desirable to retain the old records, destroy or give to the National Archives—

(a) in the case of a corporation—

- (i) any return of allotment of shares for cash which has been lodged or filed for not less than seven years;
- (ii) any annual return or financial statement that has been lodged or filed for not less than seven years or any document creating or evidencing a charge or the complete or partial satisfaction of a

charge where a memorandum of satisfaction of a charge has been registered for not less than seven years; or

(iii) any other document, other than the constitution or any other document affecting the corporation, which has been lodged, filed or registered for not less than seven years;

(b) in the case of a corporation that has been dissolved or has ceased to be registered for not less than seven years, any document lodged, filed or registered; or

(c) any document which has been incorporated in a register kept by the Registrar in whatever form.

Electronic lodgement of documents

56. (1) The Registrar may provide a service for the electronic lodgement of documents required by this Act to be lodged with the Registrar.

(2) A document electronically lodged under this section shall be deemed to have satisfied the requirement for lodgement if the document is communicated or transmitted to the Registrar in such manner as may be determined by the Registrar.

(3) A document that is required to be stamped, signed or sealed shall, if the document is to be electronically lodged, be certified to be true copy or authenticated in such manner as may be determined by the Registrar.

(4) Where a document is electronically lodged with the Registrar, the Registrar shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however arising appearing in any document obtained by any person under the service referred to in subsection (1) if

such error or omission occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service or without the knowledge of the Registrar.

Issuing document electronically

57. The Registrar may, by electronic means, issue a document which is to be issued by the Registrar under this Act.

Electronic information, etc. certified by Registrar admissible in evidence

58. Any information, document or any copy of or any extract from any document electronically lodged with the Registrar under this Act, issued by the Registrar shall be true copy or extract from any documents lodged with or submitted to the Registrar under section 55 or issued by the Registrar under section 56 shall, in any proceedings, be admissible as *prima facie* evidence of matters specified in that information, document, copy or extract.

Enforcement of duty to make returns

59. (1) If a corporation or person, having made default in complying with—
- (a) any provision of this Act or any other law which requires the lodging or filing in any manner with the Registrar or Official Receiver of any return, account or other document or the giving of notice to the Registrar or Official Receiver of any matter; or
 - (b) any request of the Registrar or the Official Receiver to amend or complete and re-submit any document or to submit a fresh document,

fails to make good the default within fourteen days from the service on the corporation or person of a notice requiring it to make good the default to be done, the Court or any Sessions Court may, on an application by any member or creditor of the corporation or by the Registrar or Official Receiver, make an order directing the corporation and any officer of the corporation or that person to make good the default within such time as is specified in the order.

(2) The order may provide that all costs incidental to the application shall be borne by the corporation or by any officers of the corporation or the person responsible for the default.

(3) Nothing in this section shall limit the operation of any written law imposing penalties on a corporation or its officers or that person in respect of any such default.

Relodging of lost or destroyed documents

60. (1) If the Registrar has reasonable cause to believe that a document in relation to a corporation which originally is lodged under this Act has been lost or destroyed, the Registrar may by notice in writing direct the corporation to relodge a copy of the document in the manner and form as may be determined by the Registrar.

(2) The corporation or any officer of the corporation shall comply with the direction of the Registrar within fourteen days from the service of the notice under subsection (1) or such longer period as the Registrar may allow.

(3) Upon the relodgement under subsection (1), the copy of the document shall, for all purposes, have the same force and effect as the originally lodged document.

(4) No fee shall be payable upon the relodging of a document under this section.

(5) The corporation and any officer of the corporation who fails to comply with the direction of the Registrar under subsection (1) commit 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.

Time for lodging documents and extension of time

61. (1) If a document is required to be lodged under this Act and the period of time for the document to be lodged is not prescribed, the document shall be lodged within thirty days, within such further period as the Registrar in special circumstances allows, after the happening of the event to which the document relates.

(2) The Registrar shall have the power and upon payment of the prescribed fee, to extend any period of time relating to the lodgement of any document required to be lodged under this Act to such further period as the Registrar deems just and expedient, and the Registrar may require additional information and impose any terms and conditions as the Registrar deems fit.

Particulars and manner of information required to be lodged under this Act

62. (1) In addition to the requirements under this Act, if a document is required to be lodged under this Act, the Registrar shall have the power to determine the particulars, form and manner of information contained in such document.

(2) In determining whether a document is to be accepted for lodgement under this Act, the Registrar may require a person who submits the document to—

(a) comply with the particulars, form or manner of lodgement; or

- (b) produce other document or information as the Registrar thinks necessary.

Time for compliance with the requirements under this Act

63. If any action or document is required to be in compliance with this Act and the period for compliance is not prescribed, the time to comply shall be within thirty days from the action or document is required to be complied with.

Methods of communication between trust company and members

64. (1) The communication between a trust company and its members on matters relating to meetings and resolutions, supply of information or documents or otherwise for the purpose of complying with this Act, may be—

(a) in hard copy;

(b) in electronic form; or

(c) by other methods agreed between the trust company and the members.

(2) A communication in hard copy for matters specified in subsection (1) shall be valid if—

(a) addressed to the trust company at the registered office; or

(b) addressed to the members at the last known address.

(3) A communication in electronic form for matters specified in subsection (1) shall be valid if—

(a) addressed to the trust company at an address provided for that purpose;
or

(b) addressed to the members at the last known address provided for that purpose.

(4) Notwithstanding subsections (2) and (3) and subject to the constitution, the trust company may use any method of communication specified in subsection (1) and determine the manner and procedures to be adopted.

Power to make regulations

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

(a) the fees and charges under this Act, which include exempt payment of any fees and charges on such terms and conditions as the Minister thinks fit;

(b) any matters relating to any practicing certificate issued under section 241 including but not limited to renewal, revocation and suspension;

(c) the manner in which the Registrar may deal with the property vested in him under section 557; and

(d) all matters and things required or authorized by this Act to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

(2) Any subsidiary legislation made under this Act may provide for any act or omission in contravention of the subsidiary legislation and may provide for

penalties of a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Power to impose terms and conditions

66. In exercising his powers to approve any application or any issuance of licence under this Act, the Minister may impose any terms and conditions as he thinks fit.

Exemption

67. (1) The Minister may, upon the recommendation of the Commission, by order exempt any person, corporation or class of corporations from all or any of the provisions of this Act.

(2) In exercising his power under this section, the Minister may—

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

(b) request information or documentation or personal representation from any person, the corporation or class of corporations in order for him to be satisfied with the recommendation; and

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

Rules

68. The Rules Committee constituted under the Courts of Judicature Act 1964 [Act 91] may, subject to and in accordance with the provisions of that Act relating to the making of rules, make rules—

- (a) with respect to the proceedings and the practice and procedure of the Court under this Act;
- (b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules;
- (c) without limiting the generality of the provisions of this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court;
- (d) generally with respect to the winding up of companies.

Power to amend Schedules

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

PART X

SAVING AND TRANSITIONAL

Saving and transitional

70. (1) On the commencement of this Act, any recognised trust company shall be deemed to have been registered as a trust company under this Act.

(2) Any condition or restriction imposed by the Registrar or the Minister, as the case may be, on any recognized scheme and in force immediately before the commencement of this Act shall be deemed to be a condition or restriction to which the approval for registration under this Act is subject to.

(3) Any approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called, given, made or done under, in accordance with or by virtue of the corresponding provisions of this Act shall continue to remain in effect in relation to the persons to whom the approvals, directions, decisions, notifications, exemptions and executive acts applied until amended, repealed, rescinded, revoked, replaced or varied under, in accordance with or by virtue of the corresponding provisions of this Act.

(4) Nothing shall affect any person's liability to be prosecuted or punished for offences or breaches committed under the Trust Companies Act 1949 [Act 100] before the commencement of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(5) Any rights, privileges, obligations or liabilities acquired, accrued or incurred before the commencement of this Act or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act has not been enacted.

(6) Within six months from the commencement of this Act, a trust company is required to lodge a statement of beneficial owners with the Registrar.

FIRST SCHEDULE

[Section 2]

TRUST BUSINESS

The following activities constitute trust business for the purposes of this Act:

- (a)* the provision of services with respect to the creation of an express trust;
- (b)* acting as trustee in respect of an express trust;
- (c)* arranging for any person to act as trustee in respect of an express trust;
- (d)* the provision of trust administration services in respect of an express trust; and
- (e)* acting as nominee shareholder for another person in respect of an express trust;
- (f)* arranging for another person to act as nominee shareholder in respect of an express trust;
- (g)* activities invoked on trust companies pursuant to section 3 and First Schedule of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001,

but does not include any trust business or trust arrangement which is regulated under the Trustees Act 1949, Trustees (Incorporation) Act 1952, Capital Market and Services Act 2007, Financial Services Act 2013, Islamic Financial Services Act 2013, Development Financial Institutions Act 2002 and any other specified written laws.

SECOND SCHEDULE

[Section 3]

SPECIFIED PERSONS

1. The following persons are specified persons for the purpose of section 3(2):
 - (a) a bare trustee;
 - (b) a person acting as a trustee or an administrator of a business trust;
 - (c) the trustee-manager of a registered business trust;
 - (d) a person preparing or advising on a will;
 - (e) a person acting as the executor or as the administrator of the estate of a deceased person (including his acting in any manner that arises in consequence of the execution of the will or the administration of the estate of the deceased person, as the case may be).

2. In this Schedule—

“bare trustee” means a trustee who has a nominal interest in the subject matter of the trust;

“business trust” has the same meaning as in section 2 of the Capital Market Services Act 2007 [Act 671];

“trustee-manager” has the same meaning as in section 256H of the Capital Market Services Act 2007.

THIRD SCHEDULE

[Sections 4 and 19]

OBJECTS OF A TRUST COMPANY

A trust company may have one or more, but shall not exceed the following objects:

- (a) To accept and execute the office of executor, administrator, trustee, receiver, receiver and manager, assignee, liquidator, guardian of the property of an infant, committee of the estate of a mentally disordered person or other like office of a fiduciary nature;
- (b) To act as attorney or agent for the collection, receipt and payment of money, and for winding up estates, and for the sale or purchase of any movable or immovable property;
- (c) To act as an agent for the management or control of movable or immovable property for and on behalf of the owners thereof, or for or on behalf of executors, administrators or trustees;
- (d) To act as investing and financial agent for and on behalf of executors, administrators and trustees or any other person whatsoever, and to receive money in trust for investment and to allow interest thereon until invested; and to undertake for and on behalf of executor, administrators and trustees and any other persons whatsoever the negotiation of loans of all descriptions and the procuring and lending of money on the security of any description of property, immovable or movable, or without taking any security on such terms as may be arranged, and to advance and lends moneys to protect any estate,

trust or property entrusted to the company as aforesaid and to charge interest upon any of such advances:

Provided that nothing herein contained shall be held either to restrict or extend the powers of the company as trustee or agent under the terms of any trust or agency that may be conferred upon it;

- (e) To take securities of such nature as are deemed expedient for any moneys owing to the company;
- (f) To be the custodian on such terms as are agreed upon of any moneys, securities, jewelry, plate or other valuable property and of papers, documents, deeds, wills, debentures and other evidence of title or indebtedness;
- (g) To receive and manage any sinking, redemption, guarantee or any other special fund or deposit and to act as agent for countersigning, registering or otherwise ascertaining and certifying the genuineness of any issue of shares, stocks, bonds, debentures or other securities for money of any government, municipal or other corporate body or of any association, whether incorporated or not, duly authorised to issue and make such issue and to hold any such securities as agent or trustee, and to act generally as agent for any such government, municipal or corporate body or associations;
- (h) To acquire and hold immovable property for the actual use and occupation of the company or of any of its officers or employees; and to erect, construct, enlarge, alter and maintain any buildings necessary or convenient for the said purpose; and to sell and otherwise dispose of any such immovable property if not required for the said purposes;

- (i)* To hold land which, having been mortgaged or charged to the company, is acquired by it for the protection of its investments; and, from time to time, sell, mortgage, charge, lease or otherwise dispose thereof;
- (j)* To deposit the moneys of the company not immediately required with any bank or banks at interest until the moneys can be more permanently invested, and to invest the moneys of the company in accordance with section 15;
- (k)* To borrow moneys, and secure the repayment thereof with interest, in accordance with section 17;
- (l)* To receive and collect such remuneration, charges, fee etc. for its services as is agreed upon or as fixed or allowed from time to time by law, and all usual and customary charges, costs and expenses;
- (m)* To support and subscribe to any charitable or public object and to any institutions, society or club which may be for the benefit of the company or its employees or may be connected with any town or place where the companies carries on business; to give pensions, gratuities or charitable aid to any person or persons who may serve or have served the company or to the wives, children or other relatives of those persons; to make payments towards insurance and to form and contribute to provident and benefit funds for the benefit of any persons employed by the company:

Provided that no such subscription, gift, payment or contribution shall be given or made, except out of profits of the company available for distribution as dividend;

- (n) To acquire and undertake the whole or any part of the business of any person or company of a like nature to any business which a trust company is authorized to carry on, and in consideration for the acquisition to undertake all or any of the liabilities of the person or company and to issue shares to the person or company;
- (o) To fix and review the remuneration, charges and fees based on the works done; and
- (p) To do all such other things as are incidental or conducive to the attainment of the aforesaid objects or any of them.

DRAFT FOR CONSULTATION

PART IV: CONSULTATION QUESTIONS ON THE TRUST COMPANIES BILL

We seek view and feedback on the draft Trust Companies Bill based on the policy statements under Part II of this Consultative Document. In particular, we seek views with regards to the following area:

1. Do you agree with the definition of 'trust business' as provided under section 2 & First Schedule of the Trust Companies Bill?
2. Do you agree that the definition of 'trust business' does not include any trust business or trust arrangement which is regulated under the Trustees Act 1949, Trustees (Incorporation) Act 1952, Capital Market and Services Act 2007, Financial Services Act 2013, Islamic Financial Services Act 2013, Development Financial Institutions Act 2002 and any other specified written laws?
3. Section 10 of the Trust Companies Bill provides trust company with the right to determine remuneration, fee, charges etc. Do you agree that such remuneration, fee, charges etc. should be reflected in the accounts in respect of the particular estate or trust?
4. Do you agree with the process of reviewing the remuneration, fee, charges etc. as provided under section 11 of the Trust Companies Bill?
5. Do you agree that the application to review be restricted by any person who would receive a greater benefit from the capital or income of the estate out in which the remuneration, charges, fee etc. is payable in the event the remuneration, charges or fee being reduced as provided under subsection 11(2) of the Trust Companies Bill?

6. Do you agree that the application to review must be made within 6 months from the receipt of the accounts in which the remuneration, charges, fee etc. is shown?
7. Do you agree with the definition of 'trust arrangement' under section 2 of the Trust Companies Bill?
8. Do you have any comments on the reporting requirements relating to beneficial ownership under Part IV of the Trust Companies Bill?
9. Do you agree with the process relating to the transfer of trust business by a trust company as provided under section 35 of the Trust Companies Bill?
10. Do you have any other comments on the drafting of the Trust Companies Bill?