

DRAFT TRUST COMPANIES REGULATIONS 2005

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No. S 000 –

**TRUST COMPANIES ACT 2005
(ACT 11 OF 2005)
TRUST COMPANIES REGULATIONS 2005**

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In exercise of the powers conferred by sections 4(1)(b), 5(2), 6(1), 9(1), 10(1)(b), 13(3), 14(2), 28(5) and (6), 69, 71 and 82 of the Trust Companies Act 2005, the Monetary Authority of Singapore hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Trust Companies Regulations 2005 and shall come into operation on .

Definitions

2. In these Regulations, unless the context otherwise requires —
- “advertisement” means a dissemination or conveyance of information, or an invitation or solicitation, by any means or in any form, including —
- (a) publication in a newspaper, magazine, journal or other periodical;
 - (b) display of posters or notices;
 - (c) circulars, handbills, brochures, pamphlets, books or other documents;
 - (d) letters addressed to individuals or bodies;
 - (e) photographs or cinematograph films; or
 - (f) sound broadcasting, television, the Internet or other media;
- “licence” means a trust business licence granted under the Act;
- “net asset value” in relation to a corporation, means the excess of the value of the assets owned by the corporation over its liabilities;
- “qualifying revenue” means the revenue of a corporation that is derived from or that is related to its trust business.

Forms

3.—(1) The forms to be used for the purposes of these Regulations are those set out at <http://www.mas.gov.sg> (under “Trust Companies”), and any reference in these Regulations to a numbered form shall be construed as a reference to the current version of the form bearing the corresponding number in that website.

(2) Where any provision of these Regulations provides for the lodgment of any document with the Authority, that document shall be lodged with the Authority in the relevant form and in the manner specified in the website referred to in paragraph (1), or in such other manner as the Authority may specify from time to time.

(3) All forms used for the purposes of these Regulations shall be completed in the English language and in accordance with such directions as may be specified in the forms or by the Authority.

(4) The Authority may refuse to accept any form that is not completed in accordance with this regulation.

(5) Where strict compliance with any form is not possible, the Authority may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in such other manner as the Authority thinks fit.

(6) Where the period of time within which a document required under the Act or these Regulations to be lodged with the Authority is not specified, the document shall be lodged within 14 days after the occurrence of the event to which the document relates.

Fees

4.—(1) The application fee payable to the Authority under section 4(1) of the Act in respect of an application for a trust business licence shall be \$1,000.

(2) The licence fee for a period of one year or part thereof payable to the Authority under section 6 of the Act by a licensed trust company shall be \$4,000.

(3) The Authority may, as it thinks fit, waive the whole or any part of the licence fee payable by the licensed trust company.

(4) Where the licensed trust company fails to pay the licence fee by the day on which the fee is due as determined in accordance with guidelines issued by the Authority, the Authority may impose a late payment fee not exceeding \$100 for every day or part thereof that the payment is late, subject to a maximum of \$3,000.

(5) Payment of fees may be made through such electronic funds transfer system as the Authority may designate from time to time, whereby payment may be effected by directing the transfer of funds electronically from the bank account of the payer to a bank account designated by the Authority.

PART II

REGULATION OF LICENSED TRUST COMPANIES

Change of particulars of licensed trust company

5.—(1) For the purposes of section 9(1)(f) of the Act, whenever —

- (a) there is a change in the registered address in Singapore of a licensed trust company;
- (b) there is a change in the email address or contact number in Singapore of a licensed trust company; or
- (c) a director of a licensed trust company ceases to hold office or to be in the employment of the licensed trust company,

the licensed trust company shall, not later than 14 days after the occurrence of such event, furnish particulars thereof to the Authority.

(2) Paragraph (1)(c) shall not apply where a director of a licensed trust company has been removed from office or employment pursuant to section 14 of the Act.

(3) Where any change occurs to any of the particulars (including any particulars referred to in paragraph (1)) that have been furnished to the Authority by a licensed trust company under section 9 of the Act, the licensed trust company shall notify the Authority of such change in Form 2 within 14 days after the change takes place.

Lapsing of licence

6. For the purposes of section 10(1)(b) of the Act, where the Authority has not revoked a licence under section 10(2)(b) of the Act, the licence shall lapse where —

- (a) the licensed trust company has not commenced trust business within 6 months (or such longer period as the Authority may allow) from the date of the grant of the licence; or
- (b) the licensed trust company —
 - (i) has ceased to carry on its trust business;
 - (ii) has not resumed any trust business for a continuous period of 14 days from the date of cessation of its trust business; and

- (iii) has not notified the Authority of such cessation of its trust business at any time during the period of 14 days from the date of the cessation.

Return of licence

7.—(1) Where a licensed trust company ceases to carry on trust business, the licensed trust company shall lodge with the Authority a notice in Form 2 and, together with the Form, return its licence to the Authority within 14 days from the date of cessation of its trust business.

(2) Where a licensed trust company has not commenced trust business within 6 months (or such longer period as the Authority may allow) of being granted a licence, the licensed trust company shall immediately return its licence to the Authority for cancellation.

(3) Where the Authority varies any condition or restriction imposed on a licence granted to a licensed trust company or imposes further conditions or restrictions on such licence, the licensed trust company shall immediately return the licence to the Authority for cancellation and the Authority shall issue a new licence to the licensed trust company.

Number of resident managers

8. A licensed trust company shall appoint at least 2 resident managers.

Application and criteria for appointment of resident manager and director

9.—(1) For the purposes of section 13(1) of the Act, a licensed trust company shall submit to the Authority an application in Form 4 for approval of the appointment of a person (referred to in this regulation as the appointee) as its resident manager or director.

(2) For the purposes of section 13(3) of the Act, the criteria to which the Authority may have regard in determining whether to grant its approval in respect of an application made under paragraph (1) are —

- (a) whether the licensed trust company has provided the Authority with such information relating to the appointee as the Authority may require;
- (b) whether the appointee is an undischarged bankrupt in Singapore or elsewhere;

- (c) whether execution against the appointee in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) whether the appointee has, in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) whether the appointee —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence whether in Singapore or elsewhere;
- (f) the educational or other qualification, experience or expertise of the appointee, having regard to the nature of the duties he is to perform as a resident manager or director, as the case may be, of the licensed trust company;
- (g) whether the appointee is a fit and proper person, in the opinion of the Authority, to be a resident manager or director, as the case may be, of the licensed trust company;
- (h) the financial standing of the appointee;
- (i) the past performance of the appointee, having regard to the nature of the duties the appointee is to perform as a resident manager or director, as the case may be, of the licensed trust company; and
- (j) whether there is reason to believe that the appointee will not conduct himself professionally or act in an ethical manner in discharging the duties he is to perform as a resident manager or director, as the case may be, of the licensed trust company.

Duties of resident manager and director

10. For the purposes of section 14 of the Act and without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether a resident manager or a director of a licensed trust company has failed to discharge the duties or functions of his office, have regard to whether the resident manager or director has —

- (a) implemented, and ensured compliance with, effective written policies on all operational areas of the licensed

trust company, including the licensed trust company's financial policies, accounting and internal controls, trust accounting, internal auditing, trust administration, trusteeship and compliance with all laws and rules governing the licensed trust company's operations;

- (b) identified, addressed and monitored the risks associated with the business activities of the licensed trust company;
- (c) set out in writing the limits of the discretionary powers of each officer, committee, sub-committee or other group of persons of the licensed trust company empowered to commit the licensed trust company to any financial undertaking or to expose the licensed trust company to a risk of any nature; and
- (d) ensured —
 - (i) that the licensed trust company keeps a written record of the steps taken by it to monitor compliance with its policies, the limits on discretionary powers and its accounting and operating procedures;
 - (ii) that the business activities of the licensed trust company are subject to adequate internal audit, and that the internal audit of the licensed trust company includes inquiring into the licensed trust company's compliance with all relevant laws; and
 - (iii) the accuracy, correctness and completeness of any report, book or statement submitted by the licensed trust company to its head office (if any) or to the Authority.

PART III

FINANCIAL REQUIREMENTS

Minimum financial requirements for trust companies

11.—(1) For the purposes of section 5(2) of the Act, the Authority shall not grant a trust business licence to a corporation unless the corporation satisfies the following requirement at the time of the grant:

- (a) where the corporation is incorporated in Singapore, its paid-up capital is not less than \$250,000;
- (b) where the corporation is a foreign company, its qualifying assets are not less than \$250,000.

(2) For the purposes of paragraph (1)(b), the Authority may, from time to time and by notice in writing, specify the requirements relating to the qualifying assets referred to in that paragraph.

Maintenance of net asset value and qualifying assets

12.—(1) A licensed trust company incorporated in Singapore shall at all times maintain a net asset value of not less than —

- (a) where it does not have a financial year immediately preceding the current financial year, three-quarters of the minimum paid-up capital required under regulation 11; or
- (b) in any other case —
 - (i) one-quarter of its relevant annual expenditure of the financial year immediately preceding the current financial year; or
 - (ii) three-quarters of the minimum paid-up capital required under regulation 11,
 whichever is the higher amount.

(2) A licensed trust company incorporated outside Singapore shall at all times maintain qualifying assets in the branch, of not less than —

- (a) where it does not have a financial year immediately preceding the current financial year, the minimum qualifying assets required under regulation 11; or
- (b) in any other case —
 - (i) one-quarter of its relevant annual expenditure of the financial year immediately preceding the current financial year; or
 - (ii) the minimum qualifying assets required under regulation 11,
 whichever is the higher amount.

(3) For the purposes of paragraphs (1)(b)(i) and (2)(b)(i), the relevant annual expenditure of a licensed trust company for the financial year immediately preceding the current financial year means the total expenditure of the trust company for that year less the following :

- (a) staff bonuses (except to the extent that they are guaranteed); and
- (b) employees' and directors' shares in profits (except to the extent that they are guaranteed).

(4) Any licensed trust company which contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Where the net asset value or qualifying assets falls below required amount

13.—(1) If a licensed trust company fails, or becomes aware that it will fail, to comply with regulation 12(1) or (2), as the case may be, the licensed trust company shall immediately notify the Authority in Form 2.

(2) If the Authority is notified by a licensed trust company under paragraph (1) or becomes aware that the licensed trust company has failed to comply with regulation 12(1) or (2), as the case may be, the Authority may —

(a) direct the licensed trust company to immediately do one or more of the following:

(i) submit such statements or reports on a weekly basis or at such other intervals as the Authority may require until the licensed trust company meets the requirements in regulation 12(1) or (2), as the case may be; or

(ii) operate its business in such manner and on such conditions as the Authority may impose; or

(b) revoke or suspend the licence of the licensed trust company under section 10(2)(d) of the Act.

(3) The Authority may revoke or suspend the licence of a licensed trust company under section 10(2)(d) of the Act if the licensed trust company fails to comply with a direction issued to it by the Authority under paragraph (2)(a).

Professional Indemnity Insurance

14.—(1) A licensed trust company shall maintain, at all times, a professional indemnity insurance policy.

(2) The resident manager and one of the directors of a licensed trust company (referred to in this regulation as the certifying director) shall together certify that the professional indemnity insurance policy —

(a) covers all liabilities arising out of negligent discharge of the duties of the licensed trust company; and

(b) is commensurate with the levels of risk of the licensed trust company's business.

(3) The resident manager and the certifying director of a licensed trust company shall submit the certification in Form 6 to the Authority within one month from the grant of a licence to the licensed trust company and thereafter, annually, within one month from the date of renewal of the professional indemnity insurance policy of the licensed trust company.

(4) The resident manager and the certifying director of a licensed trust company shall use due care to ensure that the certification referred to in paragraph (3) is not false or misleading in any material particular.

(5) A licensed trust company shall maintain such amount of cover under its professional indemnity insurance policy sufficient to satisfy all its liabilities, as certified in the last certification submitted under paragraph (3), for the period between the last certification and the next certification under that paragraph.

(6) Any resident manager or director of a licensed trust company who contravenes paragraph (4) shall be guilty of an offence.

(7) Any licensed trust company which contravenes paragraph (5) shall be guilty of an offence.

PART VI

CONDUCT OF BUSINESS

Limits for unsecured credit and credit facilities

15.—(1) No licensed trust company shall grant any unsecured advance, unsecured loan or unsecured credit facility —

- (a) to a director of the licensed trust company, other than a director who is its employee; or
- (b) to any other officer or an employee of the licensed trust company (including a director who is its employee) which in the aggregate, and on which the outstanding at any one time, exceeds \$3,000 or such other amount as may be prescribed.

(2) In this regulation —

“director”, in relation to a licensed trust company, means a director of the licensed trust company and includes the spouse, father, step-father, mother, step-mother, son, step-son, daughter, step-daughter, brother or sister, of a director;

“unsecured credit facility” includes —

- (a) any advance, loan or credit facility made by the licensed trust company to its officer or employee, as the case may be, without security, whether it has been drawn down or not;
 - (b) in respect of any advance, loan or credit facility made by the licensed trust company to its officer or employee, as the case may be, with security, any part thereof which at any time exceeds the market value of the assets constituting that security or, where the Authority is satisfied that there is no established market value for those assets, the value of those assets based on a valuation approved by the Authority; and
 - (c) any guarantee or performance bond entered into by the licensed trust company, or the provision of any security by the licensed trust company, in connection with any loan, advance or credit facility made by another party to its officer or employee, as the case may be.
- (3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Advertisement

16. A licensed trust company shall not, directly or indirectly, publish, circulate or distribute any advertisement which contains any inaccurate or misleading statement or presentation, or any exaggerated statement or presentation that is calculated to exploit a person’s lack of experience and knowledge.

Prohibition of certain trades

17. A licensed trust company shall not, as trustee, enter into any transaction on behalf of a trust and shall not, as a provider of trust administration services, cause the trustee to enter into any transaction, being a transaction to which any of the following is a party:

- (a) the licensed trust company;
- (b) where the transaction is a personal transaction of a resident manager of the licensed trust company, such resident manager of the licensed trust company; and
- (c) where the transaction is a personal transaction of a director of the licensed trust company, such director of the licensed trust company.

Unclaimed monies to be paid into court

18. For the purposes of section 60(1) of the Act, a licensed trust company shall make payment of unclaimed moneys and assets into court in accordance with that section and not later than 3 months after the end of the calendar year in which the period of 6 years, from the time such moneys and assets became payable to the person entitled to them, expires.

PART IV

ACCOUNTS AND AUDIT

Preparation and lodgment of accounts

19.—(1) For the purposes of section 28(5) of the Act, a licensed trust company shall prepare statements in Form 7 in respect of each calendar year or such other period as the Authority may allow and lodge the statements so prepared with the Authority within one month from the end of each calendar year or such other period as the Authority may specify.

(2) For the purposes of section 28(5) of the Act, a licensed trust company shall —

- (a) prepare a statement showing the maintenance of its net asset value and qualifying assets in Form 5 and lodge the statement so prepared with the Authority within 14 days from the grant of its licence and thereafter, within 5 months from the end of each of its financial year; and
- (b) lodge with the Authority, within 5 months from the end of each of its financial year, the auditor's report on the licensed trust company in Form 8.

(3) The statements referred to in paragraph (1) shall be signed by the resident manager and a member of the board of directors of the licensed trust company.

Books of licensed trust company

20.—(1) For the purposes of section 28(6) of the Act, a licensed trust company shall keep books in the English language which contain, where applicable, the following:

- (a) particulars (including the name and address) of —
 - (i) every settlor of a trust in respect of which the licensed trust company acts as a trustee, provides trust administration services or acts in any other capacity; and

- (ii) to the extent known, every beneficiary of the trust, including particulars that satisfy such notices and guidelines as may be issued by the Authority under the Act;
- (b) particulars (including the name and address) of every person related to a trust, including every potential beneficiary or beneficiary of the trust, in respect of which the licensed trust company provides services in connection with the creation of that trust or arranges for any person to act as trustee of that trust, including particulars that satisfy such notices and guidelines as may be issued by the Authority under the Act;
- (c) every written agreement, or copy thereof, with respect to a protected party, trustee, co-trustee, trust administrator, trust co-administrator, manager of trust assets or any person who has some degree of discretion with regards to the management of the assets of a trust, insofar as the agreement is prepared or received in the course of the business of the licensed trust company;
- (d) particulars of every proprietary transaction of the licensed trust company including, where applicable —
 - (i) the description and quantity of the assets and liabilities that are the subject of the transaction;
 - (ii) the price and fee arising from the transaction;
 - (iii) the transaction date and settlement or delivery date;
 - (iv) the name of the counterparty to the transaction; and
 - (v) the realised or unrealised gain or loss;
- (e) particulars of all income and expenses of the licensed trust company;
- (f) particulars of all assets and liabilities (including contingent liabilities) of the licensed trust company and, in the case of assets, particulars indicating —
 - (i) by whom these assets or the documents of title to these assets are held; and
 - (ii) where these assets are held by some other person, whether or not they are held as security against any loan or advance;
- (g) reports, letters, circulars, memoranda, data or other documents or records prepared or received in the course of business of the licensed trust company, whether the document or record relates to the company itself, a trust

for which the company acts as trustee, or a trust to which the company provides trust administration services;

- (h) records of its internal organisation of employee and officer groupings and functions, showing all directors and key officers and their reporting lines; and
- (i) records of internal control and risk management systems, including the structure of such systems and records of how the systems are applied.

(2) A licensed trust company shall keep books in the English language which contain, where applicable, the following:

(a) where the licensed trust company acts as a trustee or provides trust administration service —

(i) the trust deed and any other document describing the intent of the settlor of the relevant trust, if any;

(ii) a separate record maintained for each relevant trust stating, where applicable —

(A) the amount and description of each asset settled into, distributed from, or otherwise paid into or removed from the trust;

(B) the date of such settlement, distribution, payment or removal; and

(C) the purpose of the distribution, payment or removal of assets from the trust;

(iii) a separate record maintained for each relevant trust stating the particulars of every transaction carried out on behalf of the trust, including —

(A) a description of the quantity of the assets and liabilities that are the subject of the transaction;

(B) the price and fee arising from the transaction;

(C) the transaction date and settlement or delivery date;

(D) the name of the counterparty to the transaction; and

(E) the purpose of the transaction;

(b) where the licensed trust company acts as a trustee of a trust, in addition to the documents and records referred to in sub-paragraph (a) —

(i) the name of —

- (A) any person who manages the assets of the trust; and
 - (B) any person who has some degree of discretion with regards to the management of the assets of the trust,
- unless such person is an employee of the licensed trust company; and
- (ii) the minutes for decisions taken as trustee; and
- (c) where the licensed trust company provides trust administration services to a trust, in addition to the documents and records referred to in sub-paragraph (a), the name of the trustee.

PART V

MISCELLANEOUS

Opportunity to be heard

21.—(1) Where the Act provides for a person to be given an opportunity to be heard by the Authority, the Authority shall post or deliver to that person a notice—

- (a) stating the decision it intends to make that affects him and the grounds for the decision; and
- (b) inviting him to give the Authority, within such period as may be specified in the notice (not being less than 10 days from the date of the receipt of the notice), any written statement, accompanied by relevant supporting documents, as to why the Authority should reconsider the decision it intends to make.

(2) Any written statement referred to in paragraph (1)(b) shall be signed by the person to whom the opportunity to be heard is given, a duly authorised employee of that person, or an advocate and solicitor acting for that person.

(3) The Authority shall consider any written statement and supporting documents referred to in paragraph (1)(b) in making its final decision.

(4) In this regulation, “decision” includes any action of, direction by or order issued by the Authority under the Act.

Compoundable offences

22. The following offences may be compounded by the Authority in accordance with section 69 of the Act:

- (a) any offence under the Act which is punishable by a fine only;
- (b) any offence under section 3(4) of the Act;
- (c) any offence under section 65(1)(a) of the Act, where the non-compliance referred to in that section constitutes an offence which is compoundable under paragraph (a).

Acceptance of composition of offence

23.—(1) The Authority may compound an offence under section 69 of the Act only if the person reasonably suspected of having committed the offence—

- (a) accepts the offer of composition made by the Authority in writing in the form set out in the Schedule; and
- (b) pays the composition sum to the Authority,

within 14 days after the offer of composition is made or such longer period as the Authority may specify.

(2) Where the person referred to in paragraph (1) is not an individual, the acceptance of composition shall be made —

- (a) in the case of a body corporate, by an officer of that body corporate;
- (b) in the case of a partnership, by a partner of that partnership; or
- (c) in the case of an unincorporated association (other than a partnership), by an officer of that association or a member of its governing body.

(3) In paragraph (2) —

“body corporate” includes a limited liability partnership;

“officer” —

- (a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate; and
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, any member of the committee of the association or any person holding a position analogous to that of president, secretary or member of a committee.

THE SCHEDULE

Regulation 23

ACCEPTANCE OF OFFER OF COMPOSITION MADE BY THE MONETARY AUTHORITY OF SINGAPORE

1. I, _____ [Name and NRIC/Passport Number] [If made by an officer of a body corporate, partner of partnership, or officer or member of governing body of unincorporated association, to state his position], acknowledge that the Monetary Authority of Singapore has by way of a letter dated _____ made an offer of composition under section 69 of the Trust Companies Act 2005 (Act 11 of 2005) (the Act) in respect of an offence [or offences] under the Act or any subsidiary legislation made thereunder, committed by _____ [myself/my business trading as Business Name/Name of body corporate, partnership or unincorporated association, of which I am a representative authorised by the body corporate/partnership/unincorporated association.].

2. The offer made by the Monetary Authority of Singapore is as follows:

<i>No.</i>	<i>Offence and date of offence</i>	<i>Composition sum offered</i>
1.	(Brief description of the offence, the provision of the Act breached and the date of the breach)	(State composition sum)

3. I agree to the offer of composition as stated above and enclose, with this form, payment of the composition sum.

Signature of person accepting
the offer of composition or
authorised person accepting the
offer of composition on behalf
of a body corporate, a
partnership, or an
unincorporated association

Date: _____

4. If the person to whom the offer of composition is made and who accepts the composition is not literate in English, the person interpreting it shall attest as follows:

I, _____ [Name and NRIC/Passport Number], have interpreted this form to the person accepting the offer of composition in _____ [state language] and have ascertained that he understands the contents of the form and agrees to the composition.

Signature of interpreter

Date: _____

Made this day of 2005.

HENG SWEE KEAT
*Managing Director,
Monetary Authority of
Singapore.*

[; AG/LEG/SL/336/2005/1 Vol. 1]

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