

**DRAFT BUSINESS TRUSTS BILL**

**DISCLAIMER:** This version of the Bill is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

# **BUSINESS TRUSTS ACT**

## **ARRANGEMENT OF SECTIONS**

An Act relating to the registration and regulation of registered business trusts and for matters connected therewith.

### **PART I**

#### **PRELIMINARY**

##### **Short title**

1. This Act may be cited as the Business Trusts Act and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

##### **Interpretation**

Clause 2 defines certain terms used in the Bill.
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2. In this Act, unless the context otherwise requires -

“accounting records”, in relation to a trust, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the trust are made up;

“accounts” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“advocate and solicitor” has the same meaning as in section 2 of the Securities and Futures Act (Cap. 289);

“approved company auditor” a person who is approved under the Companies Act (Cap. 50) as an approved company auditor within the meaning of section 4(1) of that Act;

“audit committee”, in relation to a registered business trust, means the audit committee of the trustee-manager of a registered business trust appointed in accordance with section 12;

“book” has the same meaning as in section 2 of the Securities and Futures Act (Cap. 289);

“contributor” means a person who contributes money or money's worth as consideration to acquire, subscribe for or purchase interests in the trust;

"current liability", in relation to accounts, means a liability that would in the ordinary course of events be payable within 12 months after the end of the financial year to which the accounts relate;

“debentures” has the same meaning as in section 239 of the Securities and Futures Act (Cap. 289);

“deed” means any deed which creates a trust or provides for the governance of the affairs of the trust and the conduct of its business and includes any instrument amending or affecting the deed; [Australia Corporations Act 2001 (“Corporations Act”), s 9]

"director" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"franchise" means a written agreement or arrangement between 2 or more persons by which — [Securities and Futures Act (Cap. 289) (“SFA”), s 2]

(a) a party (referred to in this definition as the franchisor) to the agreement or arrangement (not being a trust) authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;

(b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;

(c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee’s business;

(d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and

(e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

“interest”, in relation to a trust, means a right or financial stake (however described) of a unitholder in the trust (whether the right is actual, prospective or contingent and whether it is enforceable or not); (Corporations Act s 9)

“listing rules” has the same meaning as in section 2 of the Securities and Futures Act (Cap. 289);

"non-current liability" means a liability that is not a current liability;

"officer" has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

"profit or loss", in relation to a registered business trust, means the profit or loss resulting from operations of that registered business trust.

"public company" has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

"related corporation" has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

"registered business trust" means a trust that is registered by the Authority under section 4(1); (Corporations Act s 9)

"replacement trustee-manager" means the public company limited by share capital that has consented in writing to its election by the unitholders of a registered business trust to replace the resigning trustee-manager or temporary trustee-manager, as the case may be, of the registered business trust.

"resigning trustee-manager" means the trustee-manager that in accordance with section 16, section 17 or section 18, as may be applicable, proposes to resign, is removed or has resigned from the position of trustee-manager of a registered business trust.

"securities exchange" means a corporation that is approved under the Securities and Futures Act (Cap. 289) as a securities exchange within the meaning of section 2(1) of that Act;

"temporary trustee-manager" means the public company limited by share capital that has been appointed as the trustee-manager of a registered business trust pursuant to section 18, and is subject to the duties and obligations of, and enjoys the rights and privileges of, the trustee-manager, as provided under this Act.

"trustee-manager" means the public company limited by share capital named in the record of registration of a registered business trust kept by the Authority in accordance with section 4(6), as the trustee-manager of the registered business trust; (Corporations Act s 9)

"trust property", in relation to a trust, means the following, all held in trust on behalf of the trust: (Corporations Act s 9)

- (a) contributions of money or money's worth to the trust;
- (b) money or moneys that form part of the trust under the provisions of this Act;
- (c) in the case of a registered business trust, proceeds from money borrowed or raised by the trustee-manager for the purposes of the registered business trust, and

in the case of a trust that is not a registered business trust, proceeds from money borrowed or raised by the trustee of the trust for the purposes of the trust;  
(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and  
(e) profits, income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d);

“undertaking” in relation to a trust, means the undertaking, scheme, enterprise, contract or arrangement to which the trust relates; (Corporations Act s 9)

“unitholder” means a person who holds interests in a registered business trust (whether as a contributor to the business trust or as a person who acquired such interests from another person who is or was a unitholder in the business trust ). (Corporations Act s 9)

## **Part II**

### **Registration and Recognition of Trusts**

#### **Applying for registration (Corporations Act s 601EA)**

Clause 3 provides that a person must lodge an application with the Authority to register a trust.

**3.** (1) A person applying for the registration of a trust shall lodge an application with the Authority in such form and manner as the Authority may prescribe.

(2) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(3) An application made under subsection (1) shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

#### **Registration of trust (Corporations Act s 601EB)**

Clause 4 provides that the Authority may register the trust, upon receiving an application. The Regulator may refuse registration if the proposed trustee-manager does not satisfied the stipulated requirements or the Authority is of the opinion that it is not in the public interest to do so. A person aggrieved by the refusal of the Authority to register a trust has a right of appeal.

**4.** (1) The Authority may, upon an application lodged with it in accordance with section 3, register a business trust.

(2) The Authority may register a business trust if and only if the Authority is satisfied that

- (a) the application lodged has complied with section 3;
- (b) the proposed trustee-manager is a public company limited by share capital;
- (c) the proposed trustee-manager does not carry on any business other than the business of operating the business trust for which the application has been lodged; and
- (d) the proposed trustee-manager has ensured that all requirements in Parts IV and Division 3 of Part X are complied with.

(3) The Authority may refuse to register a business trust under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(4) The Authority shall not refuse to register a trust under subsection (1) without giving the person who lodged the application in accordance with section 3 an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it would be contrary to the interests of the investing public to register the trust on the basis of any of the following circumstances:

- (a) the applicant is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(5) Any person who is aggrieved by the refusal of the Authority to register a trust under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(6) The Authority shall keep a record of the registration of the registered business trust, in such form as it thinks fit.

(7) Any person may, on the payment of the prescribed fee, inspect the record referred to in subsection (6).

(8) For the purpose of determining whether subsection (2) is satisfied in relation to the trust:

- (a) references in Parts III, IV and Division 3 of Part X to a registered business trust are taken to include a reference to the trust referred to in subsection (1); and
- (b) references in those Parts to the trustee-manager of the registered business trust are taken to include a reference to the proposed trustee-manager of the trust.

### **Unregistered trust may be wound up (Corporations Act s 601EE)**

Clause 5 provides that the Authority, the person operating the trust or a unit-holder of the trust may apply to the court to wind up the trust, if a person operates a trust that is required to be registered, without registration.

5. (1) Where a trust is connected with a contravention of section [xx] of the Securities and Futures Act (Cap. 289), the following persons may apply to the court for the trust to be wound up under an order of the court:

- (a) the Authority;
- (b) the person operating the trust;
- (c) a unitholder of the trust.

(2) The court may make any order it considers appropriate for the winding up of the trust.

### **Recognition of Foreign Trusts**

Clause 6 provides the avenue for a trust constituted outside Singapore to apply to the Authority to be recognised as a business trust in Singapore.

6. (1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), recognise a trust constituted outside Singapore, subject to such conditions or restrictions that the Authority may impose on the applicant and the trust constituted outside Singapore that the applicant operates, as it thinks fit.

(2) Without prejudice to any other factor that the Authority may take into consideration, the Authority may recognise a trust constituted outside Singapore under subsection (1) if the Authority is satisfied that —

- (a) adequate arrangements exist for co-operation between the Authority and the foreign regulatory authority (whether governmental or non-governmental) which is responsible for the regulation or supervision of the applicant and the trust that the applicant operates; and
- (b) the laws and practices of the jurisdictions under which the trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Act in the case of comparable registered business trusts.

(3) In considering whether the requirements specified in subsection (2) are satisfied, the Authority may have regard to -

- (a) the relevant law and practice of the country or territory in which the applicant is incorporated and the trust is regulated;
- (b) the rules, practices, internal controls and procedures in respect of the applicant or the trust it operates, whether imposed by the foreign regulatory authority referred to in subsection (2)(a) or otherwise;
- (c) the constitutive document or the trust deed of the trust.

(4) The Authority shall not refuse to recognise a trust under subsection (2) without giving the person who lodged the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it would be contrary to the interests of the investing public to register the trust on the basis of any of the following circumstances:

- (a) the applicant is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(5) Any person who is aggrieved by the refusal of the Regulator to recognise a trust under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(6) Apart from this section and such conditions or restrictions imposed under subsection (1), an applicant and the trust which is constituted outside Singapore and is operated by the applicant are not subject to any other provisions of this Act or any regulations made thereunder.

(7) For the purposes of this section, an applicant is a person making an application under subsection (1).



## **Part III**

### **The trustee-manager**

#### **Division 1 – Responsibilities and powers**

##### **Trustee-manager to be public company incorporated in Singapore and not to carry on any other business (Corporations Act s 601FA)**

Clause 7 provides that no person other than a public company limited by share capital shall act as the trustee-manager of a registered business trust. It also provides that the business and affairs of a registered business trust shall be managed and operated only by the trustee-manager, and that the trustee-manager shall not carry on any business other than the management and operation of the registered business trust for the benefit of the unitholders.

7. (1) No person other than a public company limited by share capital shall act as the trustee-manager of a registered business trust.
- (2) The business and affairs of a registered business trust shall be managed and operated only by the trustee-manager of the registered business trust.
- (3) The trustee-manager of a registered business trust shall not carry on any business other than the management and operation of the registered business trust for the benefit of the unitholders.
- (4) Notwithstanding a contravention by a person of any provision of this section, the Authority may, without prejudice to any other remedy available to the Authority under this Act impose such requirements on that person by notice in writing, including requiring that person to cease to act as a trustee-manager of a registered business trust other than for the purpose of giving effect to any agreement, transaction or arrangement that is permitted by or by virtue of its trusteeship, and that has been entered into prior to its contravention of the provision of this section.
- (5) The trustee-manager of a registered business trust who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

##### **Trustee-manager to operate registered business trust (Corporations Act s 601FB)**

Clause 8 provides that the trustee-manager of a registered business trust is to operate the trust. It also confers the power on a trustee-manager to appoint an agent to do anything that the trustee-manager is authorized to do in connection with the business trust.

8. (1) The trustee-manager of a registered business trust shall –  
(a) manage and operate the registered business trust in accordance with the trust deed of the registered business trust and the provisions of this Act; and

(b) perform the functions conferred on it by the trust deed and the provisions of this Act.

(2) Notwithstanding anything in the trust deed of a registered business trust, the trustee-manager of the registered business trust has power to appoint an agent to carry out or perform any matter that it is authorized to carry out or perform in connection with the management and operation of the registered business trust.

(3) An agent referred to in subsection (2) may also appoint an agent (referred to in this section as sub-agent) to carry out or perform any matter that the agent has been appointed by the trustee-manager to carry out or perform and for the avoidance of doubt, the sub-agent shall be deemed to be an agent appointed by the trustee-manager to carry out or perform that matter for the purposes of subsection (2).

(4) Where the agent or sub-agent is liable to indemnify the trustee-manager against any loss or damage that the trustee-manager suffers in acting on behalf of the business trust, any amount recovered under the indemnity forms part of trust property.

(5) Notwithstanding the appointment of an agent by the trustee-manager in accordance with subsection (2) or the appointment of a sub-agent by the agent in accordance with subsection (3), the trustee-manager–

(a) shall remain responsible for any performance of any matter (or the omission thereof) that it is authorized to perform in connection with the management and operation of the business trust by its agent or sub-agent; and

(b) may continue to perform any matter it is authorized to perform in connection with the management and operation of the business trust.

(6) The trustee-manager of a registered business trust who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

#### **Duties of trustee-manager (Corporations Act 601FC)**

Clause 9 sets out the duties of the trustee-manager. It requires, inter alia, that the trustee-manager shall act honestly, use reasonable diligence in the discharge of duties, and act in the best interests of the unitholders, and if there is a conflict between the unitholders' interests and its own interests, give priority to unitholders' interests.

9. (1) A trustee-manager of a registered business trust shall at all times act honestly and use reasonable diligence in the discharge of the duties as a trustee-manager in accordance with this Act and the trust deed .

(2) A trustee-manager of a registered business trust shall act in the best interests of all unitholders of the registered business trust as a whole and give priority to the interests of the unitholders as a whole over its own interests in the event of a conflict between the two interests.

(3) A trustee-manager of a registered business trust shall not make improper use of any information acquired by virtue of its position as trustee-manager to gain, directly or indirectly, an advantage for itself or for any other person to the detriment of the unitholders of the registered business trust.

(4) The trustee -manager of a registered business trust shall hold trust property on trust for all unitholders of the registered business trust.

(5) A duty of the trustee -manager of a registered business trust under this section overrides any conflicting duty an officer or agent of the trustee-manager has under section 157 of the Companies Act (Cap. 50).

(6) A trustee-manager of a registered business trust who commits a breach of any provision of this section shall be –

(a) liable to the all unitholders of the registered business trust as a whole for any profit or financial gain directly or indirectly made by it or any of its related corporations or for any damage suffered by the registered business trust as a result of the breach of the provision of this section;

(b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(7) The Authority may, by regulations, prescribe requirements on the scope of the duties of a trustee-manager of a registered business trust.

#### **Duties of officers, employees and agents of trustee-manager (Corporations Act s 601FD)**

Clause 10 sets out the duties of directors, officers, employees and agents of business trusts. It provides that a director shall act honestly, use reasonable diligence in the discharge of duties, and act in the best interests of the unitholders, and if there is a conflict between the unitholders' interests and its own interests, give priority to unitholders' interests.

10. (1) A director of the trustee-manager of a registered business trust shall:

- (a) act in the best interests of all unitholders of the registered business trust as a whole;
- (b) act honestly and use reasonable diligence in the discharge of the duty referred to in subsection (1)(a); and
- (c) give priority to the interests of the unitholders as a whole over the interests of the shareholders of the trustee-manager in the event of a conflict between the two interests.

(2) An officer or agent of the trustee-manager of a registered business trust shall not make improper use of any information acquired by virtue of his position as an officer or agent of the trustee-manager to gain, directly or indirectly, an advantage for himself or for any other person to the detriment of the unitholders of the registered business trust.

(3) A duty of an officer or agent of the trustee-manager of a registered business trust under this section overrides any conflicting duty an officer or agent of the trustee-manager has under section 157 of the Companies Act (Cap 50).

(4) No civil or criminal proceedings shall lie against an officer or agent of the trustee-manager of a registered business trust for a breach of section 157 of the Companies Act, any fiduciary duty or any other duty under common law in relation to any act or omission to act if the act or omission was required by this section.

(5) An officer, director, or agent of the trustee-manager of a registered business trust which commits a breach of any provision of this section shall be –

- (a) liable to all unitholders of the registered business trust as a whole for any profit or financial gain directly or indirectly made by him or the trustee-manager or for any damage suffered by the registered business trust as a result of the breach of the provision of this section;
- (b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year.

(6) In this section –

“officer” has the same meaning as in section 2 and also includes a person who at any time has been an officer of the trustee-manager;  
“agent” includes a banker, solicitor or auditor of the trustee-manager and any person who at any time has been a banker, solicitor or auditor of the trustee-manager.

(7) The Authority may, by regulations prescribe requirements on the scope of the duties of an officer or agent of the trustee-manager of a registered business trust.

### **Composition of board (New)**

Clause 11 provides that the composition of the board of directors of the trustee-manager may comply with prescribed requirements.

**11.** (1) Notwithstanding any provision in the Companies Act (Cap. 50) or in the memorandum and articles of association, or a constitutive document by whatever name called, of the trustee-manager of a registered business trust, the board of directors of the trustee-manager shall ensure that the composition of the board of directors of the trustee-manager complies with such requirements as may be prescribed by the Authority.

(2) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

### **Audit committees (CA s 201B)**

Clause 12 provides that the trustee-manager of a registered business trust must have an audit committee, and its composition, and duties and responsibilities must comply with prescribed requirements.

**12.** (1) The trustee-manager of a registered business trust shall establish an audit committee.

(2) The audit committee shall comply with such requirements, including requirements in respect of the composition, duties and functions of an audit committee, as may be prescribed by the Authority.

(3) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

### **Acquisition of interest in scheme by trustee-manager (Corporations Act 601FG)**

Clause 13 sets out the conditions under which the trustee-manager of a registered business trust may acquire and hold an interest in the trust.

**13.** (1) The trustee-manager of a registered business trust shall not acquire or hold an interest in the registered business trust unless it acquires or holds the interest:

- (a) for not less than the consideration that would be payable if the interest were acquired by another person; and
- (b) subject to terms and conditions that would not disadvantage other unitholders.

(2) No person shall aid, abet, or assist the contravention of subsection (1) by the trustee-manager of a registered business trust.

(3) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

**Liquidator of trustee-manager entitled to exercise indemnity rights (Corporations Act 601FH)**

Clause 14 provides the liquidator, judicial manager or receiver of the trustee-manager the right to be indemnified out of trust property.

**14.** If the trustee-manager of a registered business trust is being wound up, is under judicial management or receivership, or has executed a deed of company arrangement that has not terminated -

(a) a provision of the trust deed of the registered business trust, or of another instrument which purports to deny the trustee-manager a right to be indemnified out of the trust property that it would have had if it was not being wound up, under judicial management or under receivership, or if it had not executed a deed of company arrangement, as the case may be, is void against the liquidator, judicial manager or receiver of the trustee-manager, or the deed of company arrangement, as the case may be; and

(b) a right of the trustee-manager to be indemnified out of the trust property shall be exercised by the liquidator, the judicial manager or receiver of the trustee-manager or the executor of the deed of company arrangement, as the case may be.

**Division 2 – Changing the trustee-manager**

**Changes only take effect when the Authority alters record of registration (Corporations Act s 601FJ)**

Clause 15 provides that a change in the trustee-manager takes effect only when the Authority's record of registration is altered to name another company as the trustee-manager.

**15.** (1) Notwithstanding any provision in this Division, the person named in the record of registration which is maintained by the Authority in accordance with section 4(4) as the trustee-manager or temporary trustee-manager of a registered business trust shall remain the trustee-manager or temporary trustee-manager, as the case may be, until the record is altered to name another person as the trustee-manager or temporary trustee-manager, as the case may be.

(2) A purported change of the trustee-manager of the registered business trust is ineffective unless it is made in accordance with this Division.

## **Resignation of trustee-manager (Corporations Act s 601FL)**

Clause 16 provides that a trustee-manager that wants to resign shall call a meeting of unit-holders and propose a company to enable the unit-holders to vote on a special resolution choosing the company to be the new trustee-manager. The resigning trustee-manager may apply to the court for the appointment of a temporary trustee-manager if a new trustee-manager is not appointed.

**16.** (1) The trustee-manager of a registered business trust shall not resign from its position as trustee-manager unless it complies with this section prior to its resignation, and until its resignation becomes effective, the trustee-manager shall continue to observe, and shall continue to be liable for the failure to observe the duties and responsibilities assigned to it under this Act and the trust deed of the registered business trust.

(2) The trustee-manager of a registered business trust who proposes to resign from its position as trustee-manager shall give to unitholders of the registered business trust notice of its intention to resign, and call for a meeting no sooner than 28 days from the issuance of the notice.

(3) The trustee-manager shall, at a meeting referred to in subsection (2), explain its reason for resignation and nominate another person who has consented in writing to serve as the replacement trustee-manager and satisfies the requirements of section 7 for election as replacement trustee-manager to act as trustee-manager in its stead.

(4) Notwithstanding the nomination by the trustee-manager in subsection (3), unitholders holding at the date of nomination not less than 10% of the total voting rights of all unitholders of the registered business trust having at that date a right to vote may nominate another person who has consented in writing to serve as the replacement trustee-manager and satisfies the requirements of section 7, for election as replacement trustee-manager to replace the resigning trustee-manager, provided such nomination is received by the resigning trustee-manager not less than 10 days before the meeting referred to in subsection 2.

(5) Where notice of a nomination of a replacement trustee-manager by unitholders is received by the resigning trustee-manager in accordance with subsection 4, the resigning trustee-manager shall, not less than 7 days before the meeting referred to in subsection 2, give notice to each person entitled to receive notice of general meeting of unitholders of the registered business trust.

(6) The unitholders may, at the meeting referred to in subsection (2), elect by voting on a special resolution to appoint the person nominated, whether by the trustee-manager under subsection (3) or by the unitholders under subsection (4), as the replacement trustee-manager to replace the resigning trustee-manager.

(7) If the unitholders of a registered business trust do not elect to appoint any of the persons as nominated under subsection (3) or (4) to act as trustee-manager instead, the resigning trustee-manager shall apply to the court for appointment of a temporary trustee-manager in accordance with section 18.

(8) Within 2 business days after the passing of the special resolution of the unitholders referred to in subsection (1), the resigning trustee-manager shall, subject to subsection (9)

–

(a) lodge a notice with the Authority notifying it of the change and requesting for an alteration of its record which is maintained by the Authority in accordance with section 4(4) to remove the resigning trustee-manager and to name the replacement trustee-manager as the trustee-manager of the registered business trust; and

(b) provide notice of the change to all counterparties to the documents and agreements referred to in section 22(1).

(9) The resigning trustee-manager need not provide notices referred to in subsection (8) if the replacement trustee-manager agrees in writing to provide the notices referred to in subsection (8) instead of the resigning trustee-manager.

(10) The resigning trustee-manager or the temporary trustee-manager who, without reasonable excuse, contravenes this section shall be guilty of an offence.

### **Removal of trustee-manager by unitholders (Corporations Act s 601FM)**

Clause 17 provides for unitholders to remove the trustee-manager by calling a meeting of unit-holders and voting on a special resolution that the current trustee-manager be removed and a separate special resolution that a new trustee-manager be appointed. The Authority or a unitholder may apply to the court for the appointment of a temporary trustee-manager if a new trustee-manager is not appointed.

**17.** (1) The trustee-manager of a registered business trust (referred to in this section as the resigning trustee-manager) shall be removed as the trustee-manager by the unitholders of the registered business trust upon –

(a) the passing of a special resolution by the unitholders to remove the trustee-manager in accordance with Division 1 of Part IX; and

(b) the passing of a special resolution choosing another public company who has consented in writing to serve as the replacement trustee-manager and satisfies the requirements of section 7 to be the new trustee-manager.

(2) Within 2 business days after the passing of the special resolutions referred to in subsection (1), the resigning trustee-manager shall, subject to subsection (3) -



- (a) lodge a notice with the Authority notifying it of the change and requesting for an alteration of its record which is maintained by the Authority in accordance with section 4(4) to remove the resigning trustee manager and to name the replacement trustee-manager as the trustee-manager of the registered business trust; and
- (b) provide notice of the change to all counterparties to the documents and agreements referred to in section 22(1).

(3) The resigning trustee-manager need not provide notices referred to in subsection (2) if the replacement trustee-manager agrees in writing to provide the notices referred to in subsection (2) instead of the resigning trustee-manager.

(4) The resigning trustee-manager or the temporary trustee-manager who, without reasonable excuse, contravenes this section shall be guilty of an offence.

### **Appointment of temporary trustee-manager by court (Corporations Act s 601FP)**

**Clause 18 deals with the appointment of a temporary trustee-manager by the court.**

**18.** (1) On an application by the Authority or the trustee-manager, or a unitholder, of a registered business trust, the court may, by order appoint a public company who has consented in writing to serve as the temporary trustee-manager and satisfies the requirements of section 7 as the temporary trustee-manager of the registered business trust for a period of three months if the court is satisfied that the appointment is in the interest of the unitholders.

(2) The public company that is appointed by the court under subsection (1) to act as the temporary trustee-manager of a registered business trust shall, during its appointment be deemed to be the trustee-manager of the registered business trust and comply with the duties, obligations and such other requirements imposed under this Act on a trustee-manager.

(3) The court may make such further orders as it thinks necessary for the protection of the interests of the unitholders in respect of the appointment of the temporary trustee-manager pursuant to subsection (1), including making an order for the reimbursement of the costs of the application out of the trust property to the person who made the application under subsection (1).

(4) If the application was made by the resigning trustee-manager, the resigning trustee-manager shall, subject to subsection 5, within 2 business days after the making of the order by the court appointing the temporary trustee-manager --

- (a) lodge a notice with the Authority informing the Authority of the order;
- (b) provide notice to all unitholders informing the unitholders of the order; and

- (c) provide notice to all counterparties to the documents and agreements referred to in section 22(1).
- (5) The resigning trustee-manager need not provide notices referred to in subsection (4) if the replacement trustee-manager agrees in writing to provide the notices referred to in subsection (4) instead of the resigning trustee-manager.
- (6) Upon receipt of the notice referred to in subsection (4)(a), the Authority shall alter the record of the registration of the business trust which it maintains in accordance with section 4(4) by removing the resigning trustee-manager and to name the public company appointed by the court as the temporary trustee-manager of the registered business trust.
- (7) If the application was made by a unitholder, the public company appointed by the court as the temporary trustee-manager shall within 2 business days after the making of the order by the court:
- (a) inform the unitholders of the order;
  - (b) provide notice of the order to all counterparties to the documents and agreements referred to in section 22(1); and
  - (c) lodge a notice with the Authority informing the Authority of the order.
- (8) After receipt of the notice referred to in subsection (7)(c), the Authority shall alter the record of the registration of the business trust which it maintains in accordance with section 4(4) by removing the resigning trustee-manager and to name the public company appointed by the court as the temporary trustee-manager of the registered business trust.
- (9) If the application was made by the Authority:
- (a) the Authority shall, as soon as practicable after the making of the order by the court, alter the record of registration of the business trust which it maintains in accordance with section 4(4) by removing the resigning trustee-manager and to name the public company appointed by the court as the temporary trustee-manager of the registered business trust; and
  - (b) the public company appointed by the court as the temporary trustee-manager shall within 2 business days after the making of the order by the court, inform the unitholders and all counterparties to the documents and agreements referred to in section 22(1) of the order.
- (10) The resigning trustee-manager or the temporary trustee-manager who, without reasonable excuse, contravenes this section shall be guilty of an offence.

**Temporary trustee-manager to take steps for appointment of new trustee-manager (Corporations Act s 601FQ)**

Clause 19 sets out the steps to be taken by the temporary trustee-manager for the appointment of a new trustee-manager.
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19. (1) As soon as practicable and, in any event, within 3 months of becoming the temporary trustee-manager of a registered business trust, it shall –

- (a) call one or more meetings of the unitholders of the registered business trust for the purpose of having the unitholders, by special resolution, elect a public company who has consented in writing to serve as the replacement trustee-manager and which satisfies the requirements under section 7 (including the temporary trustee-manager itself) to be the replacement trustee-manager of the registered business trust; and
- (b) use its best efforts to ensure that a person is appointed as trustee-manager (not being a trustee-manager with the status of a temporary trustee-manager) of the registered business trust.

(2) In the event that the unitholders of a registered business trust are unable to elect a replacement trustee-manager of the registered business trust before the end of the 3 months, the temporary trustee-manager of the registered business trust may apply to the court for an extension of the period of its appointment referred to in section 18(1), and upon the grant of extension by the court, the temporary trustee-manager may, within the extended period, call further meetings of unitholders for the purpose of choosing a company to be the replacement trustee-manager.

(3) Within 2 business days after the election of a replacement trustee-manager by the unitholders the temporary trustee-manager shall -

- (a) lodge a notice with the Authority notifying it of the change and requesting for an alteration of its record which is maintained by the Authority in accordance with section 4(4) to remove the temporary trustee-manager and to name the replacement trustee-manager as the trustee-manager of the registered business trust; and
- (b) provide notice of the change to all counterparties to the documents and agreements referred to in section 22(1).

(4) The temporary trustee-manager of a registered business trust shall apply to the court for an order directing the temporary trustee manager to wind up the registered business trust, and the court may make the order, if the unitholders of the registered business trust have been unable to elect a replacement trustee-manager due either to an inability of the unitholders to reach a special resolution at the meeting or meetings which were convened by the temporary trustee-managing within the 3 months in accordance with subsection (1) or within such extended period referred to in subsection (2).

(5) If the temporary trustee-manager of a registered business trust fails to apply to the court for a direction under subsection (4), the Authority or a unitholder of the registered

business trust may apply to the court for an order directing the temporary trustee manager to wind up the registered business trust, and the court may make the order.

### **Division 3 – Consequences of change of trustee-manager**

#### **Resigning trustee-manager to hand over books and provide reasonable assistance (Corporations Act s 601FR)**

Clause 20 provides that the former trustee-manager must hand over to the new trustee-manager any books that are required by the Act to be kept in relation to the business trust; and to give other reasonable assistance to the new trustee-manager.

**20.** As soon as practicable after the appointment of the replacement trustee -manager of a registered business trust, the resigning trustee-manager of the registered business trust shall give the replacement trustee-manager any books which are in the possession or control of the resigning trustee-manager that this Act or the trust deed of the registered business trust requires to be kept in relation to the registered business trust and shall give reasonable assistance to the replacement trustee-manager to facilitate the change of trustee-manager.

#### **Rights, obligations and liabilities of resigning trustee-manager (Corporations Act s 601FS)**

Clause 21 provides that the rights, obligations and liabilities of the former trustee-manager in relation to the business trust become the rights, obligations and liabilities of the new trustee-manager, subject to certain exceptions stipulated.

**21.** (1) Effective as of the date the Authority alters the records that it maintains in accordance with section 4(4) to reflect the replacement trustee-manager or the temporary trustee-manager, as the case may be, of a registered business trust as the trustee-manager of the registered business trust after the lodgment of the notice under the applicable provisions under Division 2 of this Part, the legal right in, title to, and interest under, the trust property then owned, leased, held or used by the resigning trustee-manager in trust on behalf of the registered business trust, and obligations and liabilities of the resigning trustee-manager undertaken in trust on behalf of the registered business trust are transferred to and assumed by the replacement trustee-manager or the temporary trustee-manager, as the case may be, to be held in trust on behalf of the registered business trust.

(2) Notwithstanding subsection (1), the following rights and liabilities remain the rights and liabilities of the resigning trustee-manager of a registered business trust -

- (a) a right of the resigning trustee-manager to be paid fees for the performance of its functions before it ceased to be the trustee-manager of the registered business trust;
- (b) a right of the resigning trustee-manager to be indemnified for expenses it had incurred before it ceased to be the trustee-manager of the registered business trust;

- (c) a right that the resigning trustee-manager had or continues to have as a unitholder of the registered business trust; and
- (d) any liability for which the resigning trustee-manager had no claim of indemnification against the registered business trust from the trust property if it had remained the trustee-manager of the registered business trust.

**Effect of change of trustee-manager on documents etc to which the former trustee-manager is a party (Corporations Act s 601FT)**

Clause 22 provides that a document to which the former trustee-manager is a party has effect as if the new trustee-manager were a party to it.

**22.** (1) Effective as of the date the Authority alters the records that it maintains in accordance with section 4(4) to reflect the replacement trustee-manager or the temporary trustee-manager, as the case may be, of a registered business trust as trustee-manager of the registered business trust after the lodgment of the notice under the applicable provisions under Division 2 of this Part, a document or agreement entered into by the resigning trustee-manager on behalf of the registered business trust -

- (a) to which the resigning trustee-manager is a party, in which a reference is made to the resigning trustee-manager, or under which the resigning trustee-manager has acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained the trustee-manager of the registered business trust; and
- (b) that is capable of having effect after the appointment,

has effect as if the replacement trustee-manager or the temporary trustee-manager, as the case may be (and not the resigning trustee-manager) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

(2) Subsection (1) does not apply to a right, obligation or liability that remains a right, obligation or liability of the resigning trustee-manager because of section 21(2).

**Division 4 – Written directions**

**Power of Authority to issue directions to trustee-manager or temporary trustee-manager**

Clause 23 confers to the Authority the power to issue written directions to the trustee-manager or temporary trustee-manager.

**23.** (1) The Authority may, if it thinks it necessary or expedient issue directions by notice in writing either of a general or specific nature to a trustee-manager or temporary trustee-manager of a registered business trust.

(2) Without prejudice to the generality of subsection (1), any direction issued under that subsection may relate to –

- (a) the failure by the trustee-manager or temporary trustee-manager to comply with requirements under section 7;
- (b) the failure of a temporary trustee-manager to take steps for the appointment of a replacement trustee-manager under section 19;
- (c) any other matter which the Authority considers necessary for the proper administration of the Act,

and the trustee-manager or temporary trustee-manager shall comply with any such direction.

(3) The trustee-manager or temporary trustee-manager of a registered business trust which, without reasonable justification or excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(4) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

#### Division 5 – Indemnification

#### **Provisions indemnifying directors or officers of trustee-manager [Companies Act (Cap. 50) (“CA”), s 172]**

**24.**—(1) Any provision, whether in the trust deed of a registered business trust or in any contract or otherwise entered into by a trustee-manager of the registered business trust or its officer or auditor, that exempts the trustee-manager or its officer or auditor from, or indemnifying it against, any liability which by law would otherwise attach to it in respect of any negligence, default, breach of duty or breach of trust of which it may be guilty in relation to the registered business trust, shall be void.

(2) This section shall not prevent the trustee-manager of a registered business trust —

- (a) from purchasing and maintaining for itself, or any of its officers, insurance against any liability referred to in subsection (1); or
- (b) from indemnifying any officer or auditor against any liability incurred by him —
  - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted; or

(ii) in connection with any application in which relief is granted to him by the court.

## **Part IV**

### **The trust deed**

#### **Contents of the trust deed (Corporations Act s 601GA, SF (Offers of Investments) (Collective Investment Schemes) Regulations 2002, s 9)**

Clause 25 sets out the requirements for the contents of the trust deed. It also provides that certain rights of the trustee-manager and unitholders must be set out in the trust deed.
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**25.** (1) The trustee-manager of a registered business trust shall make adequate provision in the trust deed of the registered business trust:

- (a) relating to such particulars as are sufficient to define the business scope of the registered business trust and disclose the structure of, and the nature of the interests in, the registered business trust; (SF CIS Regs)
- (b) for the powers of the trustee-manager in relation to operating, making investments of, or otherwise dealing with, trust property; (Corporations Act s 601GA)
- (c) in respect of the duration, if ascertainable, of the registered business trust or, if the duration is not ascertainable, a statement of that fact; (SF CIS Regs)
- (d) where the registered business trust invests in property that tends to depreciate in value through use or passage of time, regarding particulars of the provision made or to be made for the replacement of that property and the source or sources from which the replacement is to be made or from which the cost of the replacement is to be met, or if no provision is or is to be made, a statement of that fact; (SF CIS Regs)
- (e) for the conditions governing the transfer of interests in the registered business trust; (SF CIS Regs)
- (f) for the method by which complaints made by unitholders in relation to the registered business trust are to be dealt with; and (Corporations Act s 601GA)
- (g) relating to the procedure for the winding up of the registered business trust, including the priority of claims on the trust property and the appointment of liquidators, which are not in conflict with any provisions in Part VII and in the case of any conflict, the provisions in Part VII shall prevail. (Corporations Act s 601GA)

(2) The trustee-manager of a registered business trust may not have any right to be paid fees, or to claim indemnification for debts, expenses or other liabilities incurred by the trustee-manager on behalf of registered business trust out of the trust property, and any

agreement, or arrangement or any provision in the trust deed of the registered business trust that purports to confer such a right shall be of no effect, unless -

- (a) the right of fees or indemnification has been conferred on the trustee-manager in the trust deed; and
- (b) the right of fees or indemnification is available only in relation to performance of duties by the trustee-manager required by or otherwise specified in this Act or the trust deed;

(3) No contract or arrangement purporting to restrict or remove the entitlement of the trustee-manager to be indemnified out of the assets of the registered business trust shall be of any effect. (NZ Law Commission *Some Problems in the Law of Trusts*, April 2002, para 29: proposed subsection (3))

(4) The trustee-manager of a registered business trust may not have any power to borrow or raise money or to issue debentures, or to assume (whether by way of declaration of trust, transfer, novation, vesting or otherwise) obligations or liabilities for such borrowings or issuance of debentures on behalf of the registered business trust unless the power is provided in the trust deed of the registered business trust, and any agreement or arrangement that purports to confer such power has no effect.

(5) The unitholders of a registered business trust shall not have a right to redeem their interests in return for distributions of profits, income or other payments or returns from the trust property, unless the trust deed of the registered business trust confers such right and the trust deed sets out procedures relating to the making of, and dealing with, redemption orders which are fair to all unitholders.

(6) Notwithstanding a contravention by the trustee-manager of a registered business trust of subsection (1), (2) and (4) the Authority may, without prejudice to any other remedy available to the Authority under this Act impose such requirements as may be specified in written directions, including requiring the trustee-manager to cease to act as a trustee-manager other than for the purpose of giving effect to any agreement, transaction or arrangement that is permitted by or by virtue of its trusteeship, and that has been entered into before the time of its failure to comply with subsection (1).

(7) The trustee-manager of a registered business trust who contravenes any provision of this section shall be guilty of an offence.

#### **Liability of trustee-managers (SFA s 292)**

Clause 26 renders void any provision in a trust deed which exempts a trustee-manager, or indemnifies a trustee-manager against, liability for breach of trust where the trustee-manager fails to exercise the degree of care and diligence required of a trustee-manager.
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26. — (1) Subject to subsection (2), any provision in a trust deed of a registered business trust required under section 25 or in any contract with the unitholders of a registered



business trust to which such a trust deed relates, shall be void in so far as it would have the effect of exempting the trustee-manager of the registered business trust under the trust deed from, or indemnifying the trustee-manager against, liability for breach of trust where the trustee-manager fails to exercise the degree of care and diligence required of a trustee-manager of a registered business trust.

(2) Subsection (1) shall not invalidate —

(a) any release otherwise validly given in respect of anything done or omitted to be done by the trustee-manager of a registered business trust before the giving of the release; or

(b) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three-fourths of the unitholders of a registered business trust voting in person or by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee-manager of a registered business trust ceasing to act.

### **Trust deed must be legally enforceable (Corporations Act s 601GB)**

Clause 27 provides that the trustee-manager shall ensure that the trust deed of a registered business trust must be contained in a document that is legally enforceable as between the unitholders and the trustee-manager.
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**27.** (1) The trustee-manager of a registered business trust shall ensure that the trust deed of the registered business trust is contained in a document that is legally enforceable as between the unitholders and the trustee-manager.

(2) The unenforceability of the trust deed of a registered business trust shall not operate so as to avoid or affect any agreement, transaction or arrangement entered into by the trustee-manager on behalf of the trust, whether the agreement, transaction or arrangement was entered into before or after the point in time during which the trust deed became unenforceable.

(3) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

## Changing the trust deed (Corporations Act s 601GC)

Clause 28 provides that the trust deed may be modified or replaced with a new trust deed by special resolution of the unitholders or by the trustee-manager if the modification or replacement will not adversely affect the rights of unit-holders.

**28.** (1) No person shall modify or replace the trust deed of a registered business trust unless such modification or replacement is approved -

(a) by special resolution of the unitholders of the registered business trust; or

(b) by the trustee-manager provided that any modification or replacement would not adversely affect the rights of unitholders.

(2) The modification or replacement referred to in subsection (1) shall not take effect until the trustee-manager gives notice of the modification or replacement to all unitholders of the registered business trust.

(3) The trustee-manager of a registered business trust shall lodge with the Authority a copy of the provisions in the trust deed of the registered business trust that have been modified or replaced in accordance with subsection (1) or the new trust deed (incorporating such modification or replacement) within two business days after the modification or replacement referred to in subsection (1) takes effect.

(4) The trustee-manager of a registered business trust shall, at the direction of the Authority, lodge with the Authority a copy of the trust deed of the registered business trust on an as-amended basis after incorporating all of the amendments prior to the date of lodgment.

(5) The trustee-manager of a registered business trust shall make available an up-to-date copy of the trust deed available for inspection to the public at the registered office of the trustee-manager.

(6) Any person who contravenes subsection (1) shall be guilty of an offence.

(7) The trustee-manager of a registered business trust who contravenes either subsection (3) or (4) shall be subject to a fine not exceeding \$10,000, and in the case of a continuing contravention, to a further fine not exceeding \$1,000 for every day or part thereof during which the contravention continues.

(8) The trustee-manager of a registered business trust who contravenes section (5) shall be guilty of an offence, and shall be liable upon conviction to a fine not exceeding \$10,000, and in the case of a continuing contravention, to a further fine not exceeding \$1,000 for every day or part thereof during which the contravention continues after conviction.

## Part V

### The Unitholders

#### Limitation of Liability of unitholders (Delaware Business Trusts Act s 3802(a))

Clause 29 provides that the liability of a unitholder of a registered business trust is limited to the amount of contribution made by the unitholder for his interests in the registered business trust.

**29.** (1) The liability of a unitholder of a registered business trust is limited to the amount of contribution made by the unitholder for his interests in the registered business trust.

(2) The limitation of liability of a unitholder of a registered business trust referred to in subsection (1) applies notwithstanding –

- (a) any provision to the contrary in the trust deed of the registered business trust; or
- (b) the winding up of the registered business trust.

#### Rights of unitholders in trust property (new CA s 78C, NZ Law Commission *Some Problems in the Law of Trusts*, April 2002, para 29: proposed subsection (4))

Clause 30 provides that a trustee-manager may declare a distribution to unitholders of the registered business trust from the trust property only if the board of directors of the trustee-manager are satisfied on reasonable grounds that certain conditions on the financial position of the registered business trust are met.

**30.** (1) The trustee-manager of a registered business trust shall have the right to declare a distribution of profits, income or other payments or returns to the unitholders of the registered business trust from the trust property but such distribution shall only be made if the board of directors of the trustee-manager is satisfied on reasonable grounds that, immediately after making the distribution –

- a) the trustee-manager will not be unable to pay, from the trust property of the registered business trust, the liabilities incurred by the trustee-manager in its capacity as trustee-manager for that trust as these liabilities become due in the normal course of business; and
- b) the value of the trust property of the registered business trust would exceed the liabilities (including contingent liabilities) incurred by the trustee-manager in its capacity as trustee-manager for the registered business trust.

(2) In determining for the purposes of subsection (1) whether the value of the trust property of a registered business trust exceeds the liabilities (including contingent liabilities) incurred by the trustee-manager of the registered business trust in its capacity

as trustee-manager of the registered business trust, the board of directors of the trustee-manager -

(a) shall have regard to –

- (i) the most recent financial statements of the registered business trust that comply with Part X; and
- (ii) all other circumstances that the board of directors of the trustee-manager knows or ought to know affect, or may affect, the value of the trust property and the liabilities (including contingent liabilities); and

(b) may rely on valuations of trust property or estimates of liabilities that are reasonable in the circumstances.

(3) In determining, for the purposes of subsection (2), an estimate of a contingent liability referred to in that subsection, the board of directors of the trustee-manager of a registered business trust may take into account —

(a) the likelihood of the contingency occurring; and

(b) any claim the trustee-manager is entitled to make in its capacity as trustee-manager of the registered business trust and can reasonably expect to be met to reduce or extinguish the contingent liability.

(4) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(5) Any director of the trustee-manager of a registered business trust who contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year or both.

**Creditors of unitholders to have no rights to obtain possession of trust property  
(Delaware BTA 3805(b))**

Clause 31 provides that no creditor of the unitholder shall have any right to obtain possession of the property of the registered business trust.
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**31.** No creditor of a unitholder of a registered business trust shall have any right to obtain possession of, or otherwise exercise any legal or equitable remedy with respect to, the trust property of the registered business trust.

### **Rights of unitholders to distribution (Delaware BTA 3805(e))**

Clause 32 entitles a unitholder of a registered business trust to receive a distribution, upon the declaration by the trustee-manager to make a distribution of profits, income or other payments or returns from the trust property.

**32.** (1) Upon the declaration by the trustee-manager of a registered business trust to make a distribution of profits, income or other payments or returns from the trust property of the registered business trust to a unitholder, the unitholder becomes entitled to receive the distribution, and upon such declaration, he will be deemed to be, and is entitled to all legal and equitable remedies available to, a creditor of the trustee-manager of the registered business trust in his capacity as trustee-manager with recourse to trust property with respect to the distribution.

(2) The trust deed of a registered business trust may provide for the establishment of book closure dates with respect to distributions of profits, income or other payments or returns by the trustee-manager of the registered business trust.

### **Approval of unitholders required for issue of interests by trustee-manager. (CA s 161)**

Clause 33 provides that the approval of unitholders is required for the issue of interests in the registered business trust by the trustee-manager.

**33.** (1) Notwithstanding anything in the trust deed of a registered business trust, the trustee-manager shall not, without the prior approval of a majority of the number of votes of unitholders as voted in person or where proxies are allowed, by proxy present at a general meeting which convened in accordance with the requirements under Division 1 of Part IX, exercise any power to issue interests in the registered business trust.

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until —  
(a) the conclusion of the annual general meeting of the registered business trust commencing next after the date on which the approval was given; or  
(b) the expiration of the period within which the next annual general meeting of the registered business trust after that date is required under section 47 to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the unitholders of the registered business trust in general meeting.

(4) The trustee-manager of a registered business trust may issue interests in the registered business trust notwithstanding that an approval for the purposes of this section has ceased to be in force if the interests are issued in pursuance of an offer, agreement or option

made or granted by the trustee-manager while the approval was in force and it was authorised by the approval to make or grant an offer, agreement or option which would or might require interests to be issued after the expiration of the approval.

(5) Section 60 shall apply to any resolution whereby an approval is given for the purposes of this section as if the resolution were a special resolution for purposes of section 60.

(6) Any issue of interests in a registered business trust made in contravention of this section shall be void and consideration given for the interests shall be recoverable accordingly.

(7) The trustee-manager of a registered business trust which contravenes this section with respect to any issue of interests shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(8) The trustee-manager shall have no recourse to the trust property for reimbursement of liabilities it incurred under this section, including subsection (7).

(9) If the trustee-manager of a registered business trust is found guilty of an offence under subsection (7), any director of the trustee-manager who knowingly contravenes, or permits or authorises the contravention of this section with respect to any issue of interests shall be personally liable and the trustee-manager shall be liable to compensate the person to whom the interests were issued for any loss, damages or costs which the person may have sustained or incurred thereby; but no proceedings to recover from any director of the trustee-manager or the trustee-manager for any such loss, damages or costs shall be commenced after the expiration of six years from the date of the issue.

## **Part VI**

### **Civil liability**

#### **Civil liability of trustee-managers to unitholders (Corporations Act s 601MA)**

Clause 34 provides that a unitholder of a registered business trust who suffers loss or damage because of the conduct of the trustee-manager that contravenes a provision of this Act may recover the amount of the loss or damage by action against the trustee-manager.
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**34.** (1) A unitholder of a registered business trust who suffers loss or damage because of a conduct of the trustee-manager of the registered business trust which is in contravention of a provision of this Act, may recover the amount of the loss or damage by action against the trustee-manager, whether or not the trustee-manager has been convicted of an offence in respect of the contravention.

(2) An action under subsection (1) must commence within 6 years after the cause of action arises.

(3) This section does not affect any liability that a person has under any other provision of this Act or under any other written law or rule of law.

### **Remedies in cases of oppression or injustice (CA s216)**

Clause 35 provides for any unitholder of a registered business trust to apply to the court for an order in the case of oppression or injustice.

**35.** (1) Any unitholder of a registered business trust may apply to the court for an order under this section on the ground —

(a) that the affairs of the registered business trust are being conducted, through the trustee-manager of the registered business, or the powers of the directors of the trustee-manager of the registered business trust are being exercised, in a manner oppressive to one or more of the unitholders including himself or in disregard of his or their interests as unitholders of the registered business trust; or

(b) that some act of the trustee-manager of a registered business trust in its capacity as trustee-manager for the registered business trust has been done or is threatened or that some resolution of the unitholders or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the unitholders (including himself).

(2) If on such application the court is of the opinion that either of such grounds is established the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the trustee-manager of a registered business trust on behalf of the registered business trust in future;

(c) authorise civil proceedings against the directors of the trustee-manager of a registered business trust to be brought in the name of or on behalf of the registered business trust by such unitholder or unitholders and on such terms as the court may direct;

(d) provide for the purchase of the interests in the registered business trust by other unitholders of the registered business trust; or

(e) provide that the registered business trust be wound up.

(3) Where an order that the registered business trust be wound up is made pursuant to subsection (2) (e), the provisions of this Act relating to winding up of a registered business trust shall, with such adaptations as are necessary, apply as if the order had been

made upon a petition duly presented to the court by the trustee-manager of the registered business trust.

(4) Where an order under this section makes any alteration in or addition to the trust deed of any registered business trust, then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the trustee-manager of the registered business trust concerned shall not have power, without the leave of the court, to make any further alteration in or addition to the trust deed inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by special resolution of the unitholders of the registered business trust.

(5) A copy of any order made under this section shall be lodged by the applicant with the Authority within 2 business days after the making of the order.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(7) This section shall apply to a person who is not a unitholder of a registered business trust but to whom interests in the registered business trust have been transmitted by operation of law as it applies to unitholders of a registered business trust; and references to a unitholder or unitholders shall be construed accordingly.

### **Derivative or representative actions (CA s216A)**

Clause 36 provides for derivative or representative actions to be taken by unitholders of a registered business trust.
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**36.** (1) In this section and section 37 —  
"complainant" means —

- (a) any unitholder of a registered business trust; or
- (b) any other person who, in the discretion of the court, is a proper person to make an application under this section.

(2) Subject to subsection (3), a complainant may apply to the court for leave to bring an action in the name and on behalf of the trustee-manager of a registered business trust in its capacity as trustee-manager for the registered business trust or intervene in an action to which the trustee-manager is a party on behalf of the registered business trust for the purpose of prosecuting, defending or discontinuing the action on behalf of the trustee-manager.

(3) No action may be brought and no intervention in an action may be made under subsection (2) unless the court is satisfied that —



- (a) the complainant has given 14 days' notice to the directors of the trustee-manager of a registered business trust of his intention to apply to the court under subsection (2) if the directors of the trustee-manager do not bring, diligently prosecute or defend or discontinue the action;
  - (b) the complainant is acting in good faith; and
  - (c) it appears to be prima facie in the interests of all unitholders of the registered business trust that the action be brought, prosecuted, defended or discontinued.
- (4) Where a complainant on an application can establish to the satisfaction of the court that it is not expedient to give notice as required in subsection (3) (a), the court may make such interim order as it thinks fit pending the complainant giving notice as required.
- (5) In granting leave under this section, the court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:
- (a) an order authorising the complainant or any other person to control the conduct of the action;
  - (b) an order giving directions for the conduct of the action; and
  - (c) an order requiring the trustee-manager of a registered business in its capacity as trustee-manager for the registered business trust to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action.
- (6) Where an action has been commenced or is to be brought in the subordinate courts, an application for leave under subsection (2) shall be made in a District Court.

**Evidence of shareholders' approval not decisive — court approval to discontinue action under section 36 (CA s216B)**

Clause 37 provides that an application or action under section 36 shall not be stayed or dismissed only for the reason that an alleged breach of a right or duty owed to the unitholders as a whole has been or may be approved by the unitholders of the registered business trust.

**37.** (1) An application made or an action brought or intervened in under section 36 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the unitholders as a whole has been or may be approved by the unitholders of the registered business trust, but evidence of approval by the unitholders may be taken into account by the court in making an order under section 36.

(2) An application made or an action brought or intervened in under section 36 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that

the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 36, the court may at any time order the trustee-manager of a registered business trust in its capacity as trustee-manager of the registered business trust to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

## **Part VII**

### **Winding up of Registered Business Trust**

#### **Winding up under provision of trust deed (Corporations Act s 601 NA)**

Clause 38 states that the trust deed of a registered business trust may provide that the trust is to be wound up at a specified time; or in specified circumstances.

**38.** (1) Subject to subsection (2), the trust deed of a registered business trust may provide that the registered business trust is to be wound up:

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

(2) A provision of the trust deed of a registered business trust that purports to provide that the registered business trust is to be wound up if the particular public company which is acting as the trustee-manager of the registered business trust ceases to be its trustee-manager, shall be of no effect (including for the purposes of section 41).

#### **Winding up at direction of unitholders (Corporations Act s 601NB)**

Clause 39 confers to unitholders the power to call a meeting to consider and vote on a special resolution directing the trustee-manager to wind up a registered business trust.

**39.** (1) Notwithstanding any provision in the trust deed of a registered business trust, a trustee-manager of the registered business trust shall wind up the registered business trust upon the passing of a special resolution by the unitholders of the registered business trust at a general meeting convened in accordance with Division 1 of Part IX directing the trustee-manager to wind up the registered business trust.

(2) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

#### **Winding up ordered by court (Corporations Act s 601ND)**

Clause 40 provides that the court may direct the trustee-manager of a registered business trust to wind up the registered business trust, upon the application of the trustee-manager, a director of the trustee-manager, a unitholder or the Authority.

**40.** (1) The court may on an application by the trustee-manager of a registered business trust, a director of the trustee-manager of a registered business trust, a unitholder of a registered business trust or the Authority, order the trustee-manager of the registered business trust to wind up the registered business trust, and upon such order the trustee-manager shall wind up the registered business trust if:

- (a) the court thinks it is just and equitable to make the order; or
- (b) within 3 months before the making of the application for the order, execution was issued on a judgment, decree or order obtained in court, whether in Singapore or elsewhere, in favour of a creditor of the trustee-manager against the trustee-manager in its capacity as the trustee-manager of the registered business trust and the execution has been returned unsatisfied.

(2) A creditor of the trustee-manager of a registered business trust in its capacity as the trustee-manager of the registered business trust may also make an application for an order on the basis of paragraph (b) of subsection (1).

#### **The winding up of the trust (Corporations Act s 601NE)**

Clause 41 requires that the trustee-manager ensure that the trust is wound up in accordance to its trust deed and any orders made by the court.

**41.** (1) Subject to section 42(1), the trustee-manager of a registered business trust shall ensure that the registered business trust is wound up in accordance with its trust deed or an order referred to in section 42(2) in all cases of winding-up, including but not limited to the following situations:

- (a) the trust deed provides that the trust is to be wound up at a specified time, in specified circumstances or on the happening of a specified event and that time is reached, those circumstances occur or that event occurs;
- (b) the unitholders pass a special resolution directing the trustee-manager to wind up the trust;
- (c) the court makes an order directing the trustee-manager to wind up the trust.

(2) Where a registered business trust is to be wound up, the trustee-manager of the registered business trust shall give notice in writing of the proposed winding up to the Authority at least 7 days before the winding up, and upon the completion of the winding up, whether proposed by the trustee-manager or otherwise, the trustee-manager shall give notice in writing of the completed winding up to the Authority within 2 business days of the completion.

(3) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(4) The trustee-manager of a registered business trust who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

**Court may make other orders for winding up (Corporations Act s 601NF)**

Clause 42 provides for the court to make orders on winding up of a registered business trust.
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**42.** (1) The court may, by order, appoint a person to take responsibility for winding up a registered business trust in accordance with the trust deed of the registered business trust and any order referred to in subsection (2) if the court thinks it necessary to do so, including for the reason that the trustee-manager of the registered business trust has ceased to exist or is not properly discharging its obligations in relation to the winding up, and upon such appointment by the court and notwithstanding any provision in the trust deed, the trustee-manager shall no longer have any authority or power to wind up the registered business trust.

(2) The court may, by order, give directions as to the procedures for winding up of a registered business trust if the court thinks it necessary to do so, including for the reason that the provisions in the trust deed are inadequate or impracticable.

(3) An order referred to in subsection (1) or (2) may be made on the application of -

- (a) the trustee-manager of a registered business trust;
- (b) a director of the trustee-manager of a registered business trust;
- (c) a unitholder of a registered business trust; or
- (d) the Authority.

### **Unclaimed money to be paid to Authority (Corporations Act s 601NG)**

Clause 43 provides that any unclaimed or undistributed money or property that was part of the trust property of a registered business trust should be paid or transferred to the Authority as soon as practicable.

**43.** If, on completion of the winding up of a registered business trust, the trustee-manager of the registered business trust or the person appointed by the court under section 42(1) has in its possession or under its control any unclaimed or undistributed money or other property that was part of the trust property of the registered business trust, the trustee-manager or appointed person shall, as soon as practicable, pay the money or transfer the property to the Authority, and upon such payment or transfer, the trustee-manager or appointed person, as the case may be, shall be discharged from any liability with respect to the paid money or transferred property, as the case may be.

## **Part VIII**

### **Deregistration**

#### **Voluntary deregistration by trustee-manager (Corporations Act s 601PA)**

Clause 44 allows a trustee-manager to apply to the Authority to deregister a business trust, subject to certain conditions.

**44.** (1) The trustee-manager of a registered business trust may apply to the Authority for deregistration of the registered business trust with the Authority, if the registered business trust is not making an offer of interests in the registered business trust to the public for subscription or purchase or an invitation to the public to subscribe for or purchase such interests (other than an offer or invitation to the public of such interests made to sophisticated investors within the meaning of section [XX] of Division [XX] of Part XIII of the Securities and Futures Act (Cap. 289) or persons referred to in section [XX] of that Division) and all the unitholders of the registered business trust agree in a resolution passed unanimously that the registered business trust should be deregistered.

(2) Where the Authority receives an application which is in accordance with subsection (1), it may deregister the registered business trust after the receipt of the application if the Authority is satisfied that interests in the registered business trust are no longer held by any member of the public (other than a sophisticated investor within the meaning of section [XX] of Part XIII of the Securities and Futures Act (Cap. 289) or persons referred to in section [XX] of that Division) and, upon such deregistration, the Authority shall give notice of the deregistration of the registered business trust in the *Gazette*.

(3) The Authority shall notify the trustee-manager of that registered business trust of the deregistration.

## **Deregistration upon winding up of a registered business trust (New)**

Clause 45 provides that the Authority shall deregister a registered business trust upon receipt of a notification from the trustee-manager that a registered business trust has been wound up.

**45.** Upon receipt of a notification from the trustee-manager of a registered business trust pursuant to section 41(2), the Authority shall remove the registered business trust from the record maintained by the Authority in accordance with section 4(4).

## **Part IX**

### **Management and Administration**

#### **Division 1 – Meetings and proceedings**

#### **Interpretation of this Division (CA s 173A)**

Clause 46 deals with how documents or other things should be sent or made accessible to unitholders.

**46.** (1) In this Division, something is made accessible by a trustee-manager of the registered business trust to a unitholder of the registered business trust in accordance with this section if, and only if —

- (a) it is published on a website;
- (b) the unitholder is notified, in the manner currently agreed between him and the trustee-manager, of —
  - (i) its publication;
  - (ii) the address of the website where it is published;
  - (iii) the place on the website where it may be accessed; and
  - (iv) how to access it; and
- (c) the trustee-manager and the unitholder have agreed that the unitholder will have access to the thing on a website instead of having it sent to him in any other way.

(2) Where a provision of this Division requires anything to be sent or otherwise supplied by a trustee-manager of a registered business trust to a unitholder of the registered business trust, that requirement is complied with only by the trustee-manager sending the thing to a current address of the unitholder which appears on the records of the trustee-manager.

(3) Where a provision of this Division requires anything to be notified by a trustee-manager of a registered business trust to a unitholder of the registered business trust, then, without prejudice to any other means of notifying the thing to him, that requirement

is complied with if the notification is sent by the trustee-manager to a current address of the unitholder which appears on the records of the trustee-manager.

- (4) For the purposes of this section —
- (a) an address of a person includes any number or address used for electronic communication;
  - (b) the current address of the unitholder which appears on the records of the trustee-manager is an address which —
    - (i) the unitholder has notified the trustee-manager as one at which documents may be sent to him; and
    - (ii) the trustee-manager has no reason to believe that documents sent to the unitholder at that address will not reach him;
  - (c) “electronic communication” means communication transmitted (whether from one person to another, from one device to another, from a person to a device or from a device to a person) —
    - (i) by means of a telecommunication system; or
    - (ii) by other means but while in an electronic form; and
  - (d) “telecommunication system” has the same meaning as in the Telecommunications Act (Cap. 323).

**Annual general meeting. (CA s 175)**

Clause 47 sets out the requirement for a registered business trust to hold annual general meetings of unitholders of that trust.
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**47.** (1) The trustee-manager of a registered business trust shall call a general meeting of unitholders of the registered business trust known as the “annual general meeting” once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as the unitholders holds their first annual general meeting within 18 months of its registration, the trustee-manager need not call it in the year of its registration or in the following year.

(2) Notwithstanding subsection (1), the Authority, on the application of the trustee-manager of a registered business trust, may, if for any special reason it thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all unitholders of a registered business trust entitled to receive notice of the meeting, a general meeting may be held at any time and the registered business trust may resolve that any meeting held or summoned to be held shall be the annual general meeting of unitholders of the registered business trust.

(4) If default is made in holding an annual general meeting of unitholders of a registered business trust —

- (a) the trustee-manager of the registered business trust shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in

the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction; and  
(b) the court may on the application of any unitholder of the registered business trust order a general meeting to be called.

#### **Convening of extraordinary general meeting on requisition. (CA s 176)**

Clause 48 deals with the convening on an extraordinary general meeting upon the requisition of unitholders.

**48.** (1) The trustee-manager of a registered business trust shall, notwithstanding any provision in the trust deed of the registered business trust, on the requisition of unitholders holding at the date of the deposit of the requisition not less than 10% of the total voting rights of all unitholders of the registered business trust having at that date a right to vote at general meetings, forthwith proceed duly to convene an extraordinary general meeting of unitholders of the registered business trust to be held as soon as practicable but in any case not later than two months after the receipt by the trustee-manager of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the trustee-manager of the registered business trust, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the trustee-manager of the registered business trust does not within 21 days after the date of the deposit of the requisition proceed to convene a meeting, requisitionists representing more than 50% of the total voting rights of all of the requisitionists, may themselves convene a meeting, in the same manner as nearly as possible as that in which meetings are to be convened by the trustee-manager, but any meeting shall not be held after the expiration of 3 months from that date.

(4) The trustee-manager of the registered business trust shall pay to the requisitionists any reasonable expenses incurred by the requisitionists by reason of the failure of the trustee-manager to convene a meeting and the trustee-manager shall bear personal liability of such payment to the requisitionists without any recourse to the trust property for reimbursement of that liability.

(5) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

#### **Calling of meetings. (CA s 177)**

Clause 49 sets out the powers of unitholders to call meetings of the unitholders of the registered business trust.



**49.** (1) Two or more unitholders of a registered business trust may call a meeting of unitholders of the registered business trust if they hold not less than 10% of the total voting rights of all unitholders having at the date of calling of the meeting a right to vote at general meetings of the registered business trust, or hold not less than 5% in number of the unitholders of the registered business trust or such lesser number as is provided by the trust deed.

(2) The trustee-manager of a registered business trust shall call a meeting of unitholders of a registered business trust or of a class of unitholders of the registered business trust, other than a meeting for the passing of a special resolution, by notice in writing of not less than 14 days or such longer period as is provided in the trust deed.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed —

(a) in the case of a meeting called as the annual general meeting, by all the unitholders entitled to attend and vote thereat; or

(b) in the case of any other meeting, by a majority in number of the unitholders having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the unitholders at that meeting.

(4) The trustee-manager of a registered business trust shall serve notice of every meeting on every unitholder having a right to attend and vote thereat in the manner in which notices are required to be served by the trust deed.

(5) The trustee-manager of a registered business trust who contravenes either subsection (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

**Trust deed as to right to demand a poll. (CA s 178)**

Clause 50 voids any provision in a registered business trust's trust deed which has the effect of excluding the right to demand a poll at a general meeting; of making ineffective a demand for a poll or of requiring any document necessary to show the validity of the appointment of a proxy more than 48 hours before the meeting.

**50.** (1) Any provision in the trust deed of a registered business trust shall be void in so far as it would have the effect —

(a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made —

(i) by not less than 5 unitholders of the registered business trust having the right to vote at the meeting; or

(ii) by a unitholder or unitholders of the registered business trust representing not less than 10% of the total voting rights of all the unitholders having the right to vote at the meeting; or

(c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the trustee-manager or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(2) The instrument appointing a proxy to vote at a meeting of a registered business trust shall be deemed to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a unitholder of the registered business trust shall be deemed to be the same as a demand by the unitholder.

(3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act.

**Quorum, chairman, voting, etc., at meetings. (CA s 179)**

Clause 51 deals with matters relating to quorum and voting at general meetings of registered business trusts.
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**51.** (1) So far as the trust deed of a registered business trust does not make other provision in that behalf and subject to section 52 -

(a) two unitholders of the registered business trust personally present shall form a quorum;

(b) any unitholder of the registered business trust elected by the unitholders present at a meeting may be chairman thereof;

(c) on a show of hands, each unitholder of the registered business trust who is personally present and entitled to vote shall have one vote; and

(d) on a poll, each unitholder of the registered business trust shall have one vote in respect of each interest in the registered business trust held by him.

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

**As to voting rights of interests in certain registered business trusts. (CA s 64)**

Clause 52 requires that each interest in a registered business trust shall be entitled to not more or less than one vote at a meeting of unitholders.

**52.** Notwithstanding any provision in this Act or in the trust deed of a registered business trust to which this section applies, but subject to section 53, each interest in such a registered business trust shall confer the right at a poll at any general meeting of the unitholders of the registered business trust to one vote, and to one vote only, in respect of each interest.

**As to unitholder's rights at meetings. (CA s 180)**

Clause 53 entitles every unitholder to have a right to attend any general meeting of the registered business trust and to speak and vote on any resolution.

**53.** Every unitholder of a registered business trust shall, notwithstanding any provision in the trust deed, have a right to attend any general meeting of unitholders of the registered business trust and to speak and vote on any resolution before the meeting, except that the trust deed may provide that a unitholder shall not be entitled to vote unless all calls or other sums personally payable by him in respect of interests in the registered business trust have been paid.

**Proxies. (CA s 181)**

Clause 54 deals with the appointment by unitholders of proxies to attend and vote instead of the unitholder at a meeting.

**54.** (1) A unitholder of a registered business trust entitled to attend and vote at a meeting of unitholders of the registered business trust, or at a meeting of any class of unitholders of the registered business trust, shall be entitled to appoint another person or persons, whether a unitholder or not, as his proxy to attend and vote instead of the unitholder at the meeting.

(2) A proxy appointed to attend and vote instead of a unitholder of a registered business trust shall also have the same right as the unitholder to speak at the meeting, but unless the trust deed otherwise provides —

- (a) a proxy shall not be entitled to vote except on a poll;
- (b) a unitholder shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and
- (c) where a unitholder appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(3) The trustee-manager of a registered business trust shall, in every notice calling a meeting of unitholders of the registered business trust or a meeting of any class of

unitholders of the registered business trust, provide with reasonable prominence a statement as to the rights of the unitholder to appoint proxies to attend and vote instead of the unitholder, and that a proxy need not also be a unitholder.

(4) Any trustee-manager of a registered business trust who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the expense of the registered business trust to only some of the unitholders of the registered business trust entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence.

(5) No person shall be guilty of an offence under subsection (4) by reason only of the issue to a unitholder of a registered business trust at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every unitholder entitled to vote at the meeting by proxy.

(6) Any trustee-manager of a registered business trust who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which shall entitle the unitholder of the registered business trust to direct the proxy to vote either for or against the resolution.

(7) The trustee-manager of a registered business trust who contravenes subsection (3) shall be guilty of an offence.

#### **Power of court to order meeting. (CA s 182)**

Clause 55 empowers the court to order a meeting of the registered business trust if it is impracticable to call a meeting or to conduct a meeting in the manner prescribed by the trust deed or the Act.
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**55.** If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner provided by the trust deed or under this Act, the court may, either of its own motion or on the application of any director of the trustee-manager of a registered business trust or of any unitholder of the registered business trust who would be entitled to vote at the meeting or of the personal representative of any deceased unitholder of the registered business trust, order a meeting to be called, held and conducted in such manner as the court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one unitholder present in person or by proxy shall be deemed to constitute the quorum for a meeting or that the personal representative of any deceased unitholder may exercise all or any of the powers that the deceased unitholder could have exercised if he were present at the meeting.

#### **Circulation of unitholders' resolutions, etc. (CA s 183)**

Clause 56 requires a trustee-manager to circulate resolutions moved by unitholders.

**56.** (1) Subject to this section, a trustee-manager of a registered business trust shall on the requisition of such number of unitholders of the registered business trust as is specified in subsection (2) and, unless the registered business trust otherwise resolves, at the expense of the requisitionists —

(a) give to unitholders of the registered business trust entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting; and

(b) circulate to unitholders entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of unitholders necessary for a requisition under subsection (1) shall be —

(a) any number of unitholders representing not less than 5% of the total voting rights of all the unitholders of the registered business trust having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than 100 unitholders holding interests in the registered business trust on which there has been paid up an average sum, per unitholder, of not less than \$500.

(3) The trustee-manager of a registered business trust shall give the notice of a resolution and the statement referred to in subsection (1) to unitholders of the registered business trust entitled to have notice of the meeting sent to them by serving on each unitholder, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.

(4) The trustee-manager of a registered business trust shall serve the copy of the resolution referred to in subsection (3) in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, the trustee-manager shall serve the copy of the resolution or give notice of the general effect of the resolution as soon as practicable thereafter.

(5) The trustee-manager of a registered business trust shall not be bound under this section to give notice of any resolution or to circulate any statement unless a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the trustee-manager —

(i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting.

(6) Notwithstanding subsection (5), a copy of a requisition requiring notice of a resolution deposited at the registered office of the trustee-manager shall be deemed to have been properly deposited for the purposes of this subsection even if the copy was not deposited within the time required by subsection (5) so long as the copy was deposited before an annual general meeting is called and the annual general meeting is called for a date 6 weeks or less after the copy has been deposited.

(7) The trustee-manager of a registered business trust shall not be bound under this section to circulate any statement if the court is, on the application either of the trustee-manager or of any other person who claims to be aggrieved, satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the trustee-manager's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(8) Notwithstanding anything in the trust deed of the registered business trust, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection, notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more unitholders of the registered business trust.

(9) The trustee-manager of a registered business trust who contravenes subsection (1) or (3) shall be guilty of an offence.

#### **Special resolutions. (CA s 184)**

Clause 57 sets out the requirements for special resolutions.
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**57.** (1) A resolution shall be considered a special resolution when it has been passed by a majority of not less than three-fourths of such unitholders of a registered business trust as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding subsection (1), if it is so agreed by a majority in number of the unitholders of a registered business trust having the right to attend and vote at the meeting, being a majority which together holds not less than 95% of the total voting rights that could be exercised at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under subsection (1) has been given.

(3) At any meeting at which a special resolution is submitted a declaration of the chairman that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted a poll shall be deemed to be effectively demanded if demanded —

(a) by such number of unitholders of a registered business trust for the time being entitled under the trust deed to vote at the meeting as is specified in the trust deed, but it shall not in any case be necessary for more than 5 unitholders to make the demand;

(b) if no such provision is made by the trust deed, by 3 unitholders so entitled, or by one unitholder or two unitholders so entitled, if that unitholder holds or those two unitholders together hold not less than 10% of the total voting rights of all the unitholders having a right to vote at the meeting.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each unitholder is entitled by this Act or the trust deed of the registered business trust.

#### **Resolution requiring special notice. (CA s 185)**

Clause 58 deals with requirements to notify unitholders where special notice is required of a resolution.

**58.** (1) Where by this Act special notice is required of a resolution, subject to subsection

(2), the resolution shall not be effective unless —

(a) notice of the intention to move it has been given to the trustee-manager of a registered business trust not less than 28 days before the meeting at which it is moved; and

(b) the trustee-manager of a registered business trust shall have given the unitholders of the registered business trust notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall have given them notice thereof, in any manner allowed by the trust deed, not less than 14 days before the meeting.

(2) If after notice of the intention to move such a resolution has been given to the trustee-manager of the registered business trust, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the trustee-manager within the time required by subsection (1), shall be deemed to be properly given.

#### **Electronic transmission of notices of meetings (Proposed CA s185A)**

Clause 59 provides for electronic transmission of notices of meetings.

**59.** (1) For the purposes of sections 49, 57 and 58, the cases in which notice in writing of a meeting is to be taken as given to a unitholder of a registered business trust include any case in which notice of the meeting is sent using electronic communications to such

address as may, for the time being, be furnished by that unitholder to the trustee-manager of the registered business trust for that purpose.

(2) For the purposes of this section, a notice in writing of a meeting is also to be treated as given to a unitholder of a registered business trust where —

(a) the trustee-manager of the registered business trust and that unitholder have agreed that notices of meetings required to be given to that unitholder may instead be accessed by him on a website;

(b) the meeting is a meeting to which that agreement applies;

(c) that unitholder is notified, in a manner for the time being agreed between him and the trustee-manager for the purpose, of —

(i) the publication of the notice on a website;

(ii) the address of that website; and

(iii) the place on that website where the notice may be accessed, and how it may be accessed; and

(d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting,

and, for the purposes of this section, a notice treated in accordance with this subsection as given to any unitholder of a registered business trust is to be treated as so given at the time of the notification mentioned in paragraph (c).

(3) A notification given for the purposes of subsection (2)(c) must —

(a) state that it concerns a notice of a meeting of the registered business trust served in accordance with this Act;

(b) specify the place, date and time of the meeting; and

(c) state whether the meeting is to be an annual or extraordinary general meeting.

(4) Nothing in subsection (2) shall invalidate the proceedings of a meeting where —

(a) any notice that is required to be published as specified in paragraph (d) of subsection (2) is published for a part, but not all, of the period referred to in that paragraph; and

(b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the trustee-manager to prevent or avoid.

(5) A trustee-manager of a registered business trust may, notwithstanding any provision to the contrary in the trust deed of the registered business trust, take advantage of subsection (1), (2), (3) or (4).



### **Registration and copies of certain resolutions. (CA s 186)**

Clause 60 requires the trustee-manager to lodge a copy of resolutions with the Authority and to provide a printed copy to any unitholder upon request.

**60.** (1) Except where otherwise expressly provided by this Act, the trustee-manager of a registered business trust shall lodge with the Authority a copy of —

- (a) every special resolution; and
- (b) every resolution passed by any class of unitholders of the registered business trust whether agreed to by all the unitholders of that class or not,

within one month after the passing or making thereof.

(2) The trustee-manager of a registered business trust shall, at the request of any unitholder of the registered business trust and on payment of \$1 or such less sum as the trustee-manager directs, forward a printed copy of every resolution to which this section applies to that unitholder.

(3) The trustee-manager of a registered business trust who contravenes subsection (1) shall be liable for a fine not exceeding \$10,000 and in the case of a continuing contravention, to a further fine not exceeding \$1,000 for every day or part thereof during which the contravention continues.

(4) The trustee-manager of a registered business trust who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

### **Resolutions at adjourned meetings. (CA s 187)**

Clause 61 provides that a resolution passed at an adjourned meeting shall be treated as passed on the date on which it was in fact passed.

**61.** Where a resolution is passed at an adjourned meeting of unitholders of a registered business trust or of unitholders of any class of interests in the registered business trust the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### **Minutes of proceedings. (CA s 188)**

Clause 62 requires the trustee-manager to maintain minutes of proceedings at general meetings.

**62.** (1) The trustee-manager of a registered business trust shall cause —

- (a) minutes of all proceedings of general meetings and of meetings of unitholders of the registered business trust to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and

- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.
- (2) Any minutes so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which they relate.
- (3) Where minutes have been so entered and signed, then, until the contrary is proved —
- (a) the meeting shall be deemed to have been duly held and convened; and
  - (b) all proceedings had thereat shall be deemed to have been duly had.
- (4) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

**Inspection of minute books. (CA s 189)**

Clause 63 provides for unitholders to access the minutes of proceedings of any general meeting.

- 63.** (1) The trustee-manager of a registered business trust shall keep the books containing the minutes of proceedings of any general meeting of the registered business trust at the registered office or the principal place of business in Singapore of the trustee-manager, and shall open the books for inspection by any unitholder of the registered business trust without charge.
- (2) The trustee-manager of a registered business trust shall, within 14 days after any unitholder of the registered business trust has made a request in writing for a copy of any minute specified in subsection (1), furnish that unitholder with a the copy at a charge not exceeding \$1 for every page thereof.
- (3) The trustee-manager of a registered business trust who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

**Division 2 - Registers**

**Register of unitholders (SF (OI) (CIS) Regs)**

Clause 64 requires the trustee-manager to keep a register of unitholders.

- 64.** (1) The trustee-manager of a registered business trust shall --

- (a) keep and maintain or cause to be kept and maintained a register of the unitholders; and
  - (b) make that register available for inspection, free of charge, to any unitholder during the business hours of the trustee-manager.
- (2) The register referred to in subsection (1) shall contain -
- (a) the name and address of each unitholder
  - (b) the holding by each unitholder of interests in the registered business trust;
  - (c) the date on which the name of each person was entered in the register as a unitholder; and
  - (d) the date on which any person ceased to be a unitholder.
- (3) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

### **Division 3 – Annual Return**

#### **Annual returns and information (CA 197)**

Clause 65 provides for annual returns to be lodged by the trustee-manager with the Authority.
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- 65.** (1) The trustee-manager of a registered business trust shall lodge with the Authority, within one month after the annual general meeting of unitholders of the registered business trust a return containing such statements and particulars as may be prescribed by the Authority.
- (2) The trustee-manager of a registered business trust who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

## **Part X**

### **Accounts, Audit and Disclosure**

#### **Division 1 - Accounts**

##### **Accounting records and systems of control (CA s 199)**

Clause 66 requires that proper accounting records of the trust are kept and that an adequate system of internal accounting controls is maintained.
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66. (1) The trustee-manager of a registered business trust shall cause to be kept such accounting records and other records as will sufficiently explain the transactions and financial position of the registered business trust and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(2) The trustee-manager of a registered business trust shall retain the records referred to in subsection (1) for 7 years after the completion of the transactions or operations to which they respectively relate.

(3) The trustee-manager of a registered business trust shall devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

- (a) assets that are part of the trust property of the registered business trust are safeguarded against loss from unauthorised use or disposition; and
- (b) transactions by the trustee-manager entered into on behalf of or purported to be entered into on behalf of the registered business trust are properly authorised and that they are recorded as necessary to permit the preparation of true and fair profit and loss accounts and balance sheets and to maintain accountability of assets.

(4) The records referred to in subsection (1) shall be kept at the registered office of the trustee-manager of a registered business trust or at such other place as it thinks fit and shall at all times be open to inspection by the directors of the trustee-manager.

(5) If accounting records and other records are kept by the trustee-manager of a registered business trust at a place outside Singapore, the trustee-manager shall send to and keep at a place in Singapore, and make available at all times for inspection by the directors of the trustee-manager, such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto.

(6) The court may in any particular case order that the accounting records and other records of a registered business trust be open to inspection by an approved company auditor acting for a director of the trustee-manager of the registered business trust, but

only upon an undertaking in writing given to the court that information acquired by the auditor during his inspection shall not be disclosed by him to any person other than that director.

(7) The trustee-manager of the registered business trust who contravenes any of subsections (1), (2), (3), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

#### **Accounting Standards. (New)**

Clause 67 provides that the Accounting Standards applicable to companies in Singapore shall apply to business trusts.

**67.** In this Division, other than this section, “Accounting Standards” means the Accounting Standards applicable to companies in Singapore as prescribed under section 200A(1)(a) of the Companies Act (Cap. 50), and any practice directions on the interpretation of the Accounting Standards and on matters relating to them and their use in Singapore, with the necessary modifications, as though references in those Accounting Standards to companies were instead references to registered business trusts.

#### **Accounts and directors’ report. (CA s 201)**

Clause 68 provides for the trustee-manager of the registered business trust to present the financial accounts of the registered business trust and directors’ report relating to the financial accounts to unitholders at every annual general meeting.

68. (1) The trustee-manager of a registered business trust shall, at a date not later than 18 months after the registration of the registered business trust and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the unitholders of the registered business trust at its annual general meeting the written statements referred to in section 77 appended to a profit and loss account of the registered business trust for the period since the preceding account (or in the case of the first account, since the registration of the registered business trust) made up to a date —

- (a) in the case of a registered business trust listed or quoted on a securities exchange in Singapore, not more than 4 months before the date of the meeting;
- (b) in the case of any other registered business trust, not more than 6 months before the date of the meeting.

(2) Subject to subsections (15) to (18), the trustee-manager of a registered business trust shall ensure that the profit and loss account referred to in subsection (1) complies with the requirements of the Accounting Standards, and gives a true and fair view of the profit and loss of the registered business trust for the period of accounting as shown in the accounting and other records of the registered business trust.

(3) The Authority may, by order published in the *Gazette*, specify such other period in substitution of the period referred to in subsection (1) (a) or (b).

(4) Notwithstanding subsection (1), the Authority may, on application by the trustee-manager of a registered business trust and for any special reason it thinks fit, extend the periods of 18 months and 15 months referred to in that subsection and with respect to any year extend the period referred to in subsection (1) (a) or (b), notwithstanding that that period is so extended beyond the calendar year.

(5) Subject to subsections (15) to (18), the trustee-manager of a registered business trust shall cause to be made out, and to be laid before the unitholders of the registered business trust at its annual general meeting with the profit and loss account required by subsection (1) a balance sheet of the registered business trust as at the date to which the profit and loss account is made up being a balance sheet that complies with the requirements of the Accounting Standards, and gives a true and fair view of the state of affairs of the registered business trust as at the end of the period to which it relates.

(6) The trustee-manager of the registered business trust shall (before the profit and loss account and balance sheet referred to in subsections (1) and (5) are made out) take reasonable steps —

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the registered business trust and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(c) to ascertain whether any non-current asset is shown in the books of the registered business trust at an amount which, having regard to its value to the registered business trust as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(7) The trustee-manager of a registered business trust shall cause the profit and loss account and the balance sheet of the registered business trust to be duly audited before they are laid before the unitholders of the registered business trust at its annual general meeting as required by this section and shall cause the auditor's report required by section 75 to be attached to or endorsed upon the accounts.

(8) The trustee-manager of a registered business trust shall take reasonable steps to ensure that the profit and loss account and balance sheet of the registered business trust are audited as required by this Part not less than 14 days before the annual general meeting of unitholders of the registered business trust and shall cause to be attached to the accounts, the auditor's report that is furnished to the trustee-manager of the registered business trust under section 75(2).

(9) The trustee-manager of a registered business trust shall cause to be attached to every balance sheet of the registered business trust made out under subsection (5) a report containing the information required in subsections (10), (11), (12) and (14) and made in accordance with a resolution of the directors of the trustee-manager and signed by not less than two of the directors with respect to the profit or loss of the registered business trust for the financial year and the state of the affairs of the registered business trust as at the end of the financial year.

(10) The report to which subsection (9) relates shall state with appropriate details —

- (a) the names of all directors of the trustee-manager of the registered business trust in office at the date of the report;
- (b) whether at the end of the financial year to which the report relates, there subsists any arrangement to which the registered business trust or trustee-manager is a party, being an arrangement whose object is to enable any director or all directors of the trustee-manager to acquire benefits by means of the acquisition of interests in the registered business trust, or there have, at any time in that year, subsisted such an arrangement as aforesaid to which the registered business trust or trustee-manager was a party, and if so the report shall contain a statement explaining the effect of the arrangement and giving the names of the persons who at any time in that year were directors of the trustee-manager and held, or whose nominees held, interests in the registered business trust acquired in pursuance of the arrangement; and
- (c) as respects each person who, at the end of the financial year to which the report relates, was a director of the trustee-manager, whether or not he was, at the end of that financial year, interested in interests in the registered business trust and, if he was, the number and amount of interests in the registered business trust he was then interested and whether or not he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in interests in the registered business trust and, if he was, the number and amount of interests in the registered business trust in which he was interested at the beginning of that year or, as the case may be, when he became a director.

(11) Every statement, report or other document relating to the affairs of a registered business trust attached to, or included with, a report of the directors of the trustee-manager of a registered business trust laid before the unitholders of the registered business trust at its general meeting or sent to the unitholders under section 70 (not being a statement, report or document required by this Act to be laid before the unitholders in general meeting) shall, for the purposes of section 95 be deemed to be part of that last-mentioned report.

(12) Where any option has been granted by a registered business trust, to acquire unissued interests in the registered business trust, the report required by subsection (9) shall state —

- (a) the number and class of the interests in respect of which the option has been granted;
- (b) the date of expiration of the option; and
- (c) the basis upon which the option may be exercised.

(13) Where any of the particulars required by subsection (12) has been stated in a previous report it may be stated by reference to that report.

(14) Each report required by subsection (9) shall specify —

- (a) particulars of interests issued during the period to which the report relates by virtue of the exercise of options to acquire unissued interests of the registered business trust, whether granted before or during that period;
- (b) the number and class of unissued interests of the registered business trust under option as at the end of that period, the price, or method of fixing the price, of issue of those interests, and the date of expiration of the option.

(15) The accounts need not comply with any requirement of the Accounting Standards for the purposes of subsection (2) or (5) if the registered business trust or trustee-manager has obtained the approval of the Authority to such non-compliance.

(16) Where accounts prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (2) or (5) would not give a true and fair view of any matter required by this section to be dealt with in the accounts, the accounts need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.

(17) In the event of any non-compliance with a requirement of the Accounting Standards referred to in subsection (16), there shall be included in the accounts —

- (a) a statement by the auditor of the registered business trust that he agrees that such non-compliance is necessary for the accounts to give a true and fair view of the matter concerned;
- (b) particulars of the departure, the reason therefore and its effect, if any; and
- (c) such further information and explanations as will give a true and fair view of that matter.

(18) The Minister may, by order published in the *Gazette*, in respect of registered business trusts of a specified class or description, substitute other accounting standards for the Accounting Standards, and the reference to “Accounting Standards” in the provisions of this section and section 75 shall be substituted with such other accounting standards accordingly in respect of such registered business trusts.



(19) The trustee-manager of a registered business trust shall include with every balance sheet and profit and loss account laid before the unitholders of the registered business trust in a general meeting, before the auditor reports on the accounts under this Part, with a statement made in accordance with a resolution of the directors of the trustee-manager and signed by not less than two of the directors, stating whether in their opinion —

(a) the profit and loss account is drawn up so as to give a true and fair view of the results of the business of the registered business trust for the period covered by the account;

(b) the balance sheet is drawn up so as to exhibit a true and fair view of the state of affairs of the registered business trust as at the end of that period; and

(c) at the date of the statement there are reasonable grounds to believe that the trustee-manager will be able to pay the debts on behalf of the registered business trust as and when they fall due.

(20) The Authority may, if it thinks it necessary or expedient in the public interest, issue written directions, either of a general or specific nature, to any person subject to the regulation of this section, to comply with such requirements as the Authority may specify in the written directions.

(21) For the avoidance of doubt, a direction issued under subsection (20) shall be deemed not to be a subsidiary legislation.

(22) Any person who contravenes any of the directions issued under subsection (20) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for every day or part thereof during which the offence continues after conviction.

(23) Any person who contravenes subsection 1, 2, 5, 6, 7, 8, 9, or 19 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

**Relief from requirements as to form and content of accounts and reports. (CA s 202)**

Clause 69 provides for trustee-manager to apply to the Authority to be relieved of any requirement relating to the form and content of accounts and reports.

69. —(1) The trustee-manager of a registered business trust may apply to the Authority in writing for an order relieving them from any requirement of this Act relating to the form and content of accounts (other than a requirement of the Accounting Standards) or to the form and content of the report required by section 68 (10) and the Authority may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the accounts or report as the Authority thinks fit to impose.

(2) The Authority may, where it considers it appropriate, make an order in respect of a specified class of registered business trusts relieving the directors of a trustee-manager of a registered business trust in that class from compliance with any specified requirements of this Act relating to the form and content of accounts (other than a requirement of the Accounting Standards) or to the form and content of the report required by section 68 (6) and the order may be made either unconditionally or on condition that the directors of the trustee-manager comply with such other requirements relating to the form and content of accounts or report as the Authority thinks fit to impose.

(3) The Authority shall not make an order under the subsection (1) unless it is of the opinion that compliance with the requirements of this Act would render the accounts or report, as the case may be, misleading or inappropriate to the circumstances of the registered business trust or would impose unreasonable burdens on the trustee-manager of the registered business trust or any officer of the trustee-manager.

(4) The Authority may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors of the trustee-manager of the registered business trust or without any such application (in which case the Authority shall give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

#### **Unitholders of registered business trust entitled to balance sheet, etc. (CA s 203)**

Clause 70 provides for financial accounts of the business trust to be circulated to all unitholders.
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**70.** (1) The trustee-manager of a registered business trust shall send a copy of every profit and loss account and balance sheet of the registered business trust (including every document required under this Act to be attached thereto), which is duly audited and which is to be laid before the unitholders of a registered business trust in general meeting accompanied by a copy of the auditor's report thereon not less than 14 days before the date of the meeting to all unitholders entitled to receive notice of general meetings of the registered business trust.

(2) The trustee-manager of a registered business trust shall, without charge, on a request made by any unitholder of a registered business trust (whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance sheets) to whom copies of the profit and loss account and balance sheet of the registered business trust (including every document required by this Act to be attached thereto) for the financial year immediately preceding the then current financial year have not been sent, furnish to the unitholder the copies, together with a copy of the auditor's report thereon.

(3) The trustee-manager of the registered business trust who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

### **Provision of summary financial statement to unitholders. (CA s 203A)**

Clause 71 allowed a listed registered business trust to send a summary financial statement to unitholders of a business trust.

71. (1) Notwithstanding section 70 and anything in the trust deed of a listed registered business trust, the trustee-manager of the listed registered business trust may, in such cases as may be prescribed by the Authority by regulations and provided all the conditions imposed thereunder by the Authority are complied with, send a summary financial statement complying with the requirements of subsections (4) and (5) instead of copies of the documents referred to in section 70(1) to the unitholders of the listed registered business trust.

(2) Where a trustee-manager of a listed registered business trust sends to the unitholders of the listed registered business trust a summary financial statement under subsection (1), any of the unitholders entitled to be furnished by the trustee-manager with a copy of the documents referred to in section 70 (2) may instead request for a summary financial statement and the trustee-manager shall send the statement to the requesting unitholder.

(3) The trustee-manager of a listed registered business trust need not send a summary financial statement to any unitholder of the listed registered business trust who does not wish to receive the statement.

(4) The summary financial statement referred to in subsection (1) shall be derived from the annual accounts of a listed registered business trust and the report of the directors of the trustee-manager of the registered business trust and shall be in such form and contain such information as may be specified by regulations.

(5) Every summary financial statement referred to in subsection (1) shall —  
(a) state that it is only a summary of information in the annual accounts of the registered business trust and report of the directors of the trustee-manager of the registered business trust; and  
(b) contain a statement by the auditors of the registered business trust of their opinion as to whether the summary financial statement is consistent with the accounts and the report and complies with the requirements of this section and any regulations made under subsection (8).

(6) The trustee-manager of a listed registered business trust who contravenes this section or any regulations made under subsection (8) shall be guilty of an offence.

(7) For the purpose of subsection (1), “listed” means has been admitted to the official list of a securities exchange in Singapore and has not been removed from that list.

(8) The Authority may make regulations to give effect to this section, including making provision as to the manner in which it is to be ascertained whether a unitholder of the

listed registered business trust wishes to receive copies of the documents referred to in section 70(1) or does not wish to receive the summary financial statement under this section.

**Penalty. (CA s 204)**

Clause 72 deals with the penalties of not complying with any clause in this Division.

72. (1) If any officer of a trustee-manager of a registered business trust or listed registered business trust fails to take all reasonable steps to secure compliance by the trustee-manager with the foregoing provisions of this Division or has by his own wilful act been the cause of any default by the trustee-manager thereunder, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a registered business trust by reason of an omission from the accounts, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 68 to be dealt with in the accounts.

(3) If an offence under this section is committed with intent to defraud creditors of the trustee-manager of a registered business trust acting in its capacity as trustee-manager for the registered business trust or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the court dealing with the case the offence was committed wilfully.

**Division 2 - Audit**

**Appointment and remuneration of auditors. (CA s 205)**

Clause 73 provides that the directors of a trustee-manager shall appoint the auditor or auditors of the business trust. It also provides for an auditor of a business trust to be removed from office by ordinary resolution of the business trust at a general meeting.

73. (1) The trustee-manager of a registered business trust shall, within 3 months after registration of the registered business trust by the Authority under section 4, appoint a person or persons nominated by the audit committee of the registered business trust in accordance with any regulations as may be prescribed by the Authority to be the auditor

or auditors of the registered business trust, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting of the registered business trust.

(2) The unitholders of a registered business trust shall at each annual general meeting of the registered business trust resolve by ordinary resolution to appoint a person or persons nominated by the audit committee of the registered business trust in accordance with any regulations as may be prescribed by the Authority to be the auditor or auditors of the registered business trust, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the registered business trust.

(3) Subject to subsections (7) and (8), the trustee-manager of a registered business trust may appoint an approved company auditor nominated by the audit committee of the registered business trust in accordance with any regulations as may be prescribed by the Authority to fill any casual vacancy in the office of auditor of the registered business trust, but while such a vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(4) An auditor of a registered business trust may be removed from office by ordinary resolution of the unitholders of the registered business trust at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by the trustee-manager on behalf of a registered business trust —

(a) the trustee-manager shall forthwith send a copy of the notice to the auditor concerned and to the Authority; and

(b) the auditor may, within 7 days after the receipt by him of the copy of the notice, make representations in writing to the trustee-manager and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the trustee-manager to every unitholder of the registered business trust to whom notice of the meeting is sent.

(6) Unless the Authority on the application of the trustee-manager of a registered business trust otherwise orders, the trustee-manager shall send a copy of the representations referred to in subsection (5)(b) as so requested and the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a registered business trust is removed from office in pursuance of subsection (4) at a general meeting of the registered business trust —

(a) the unitholders of a registered business trust may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such unitholders of the registered business trust as being entitled to do so vote in person or, where proxies are allowed, by proxy forthwith appoint another person nominated by the audit committee as auditor; or

(b) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the unitholders of the registered business trust may, by ordinary resolution, appoint another person as auditor, being a person who is nominated by the audit committee.

(8) A trustee-manager of a registered business trust shall, forthwith after the removal of an auditor from office in pursuance of subsection (4), give notice in writing of the removal to the Authority and, if the unitholders of the registered business trust do not appoint another auditor under subsection (7), the Authority shall appoint an auditor.

(9) An auditor appointed in pursuance of subsection (7) or (8) shall, subject to this section, hold office until the conclusion of the next annual general meeting of the registered business trust.

(10) If the trustee-manager of a registered business trust does not appoint an auditor or auditors as required by this section, the Authority may on the application in writing of any unitholder of the registered business trust make the appointment.

(11) The trustee-manager shall, not less than 14 days before the adjourned meeting or the annual general meeting, give notice to the person nominated by the audit committee, to each auditor, if any, of the registered business trust and to each person entitled to receive notice of general meetings of unitholders of the registered business trust.

(12) An auditor of a registered business trust may resign —  
(a) if he is not the sole auditor of the registered business trust; or  
(b) at a general meeting of the registered business trust,  
but not otherwise.

(13) If an auditor gives notice in writing to the trustee-manager of a registered business trust that he desires to resign, the trustee-manager shall call a general meeting of the unitholders of the registered business trust as soon as is practicable for the purpose of appointing an auditor in place of the auditor who desires to resign and on the appointment of another auditor the resignation shall take effect.

(14) The fees and expenses of an auditor of a registered business trust —  
(a) in the case of an auditor appointed by the unitholders of the registered business trust at a general meeting — shall be fixed by the unitholders in general meeting or, if so authorised by the unitholders of the registered business trust at the last preceding annual general meeting, by the trustee-manager; and  
(b) in the case of an auditor appointed by the trustee-manager of the registered business trust or by the Authority — may be fixed by the trustee-manager of the registered business trust or by the Authority, as the case may be, and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the unitholders of the registered business trust.

(15) Any person who contravenes any of subsections (1), (5), (6), (8), (9), (11), (12), (13) or (14) shall be guilty of an offence.

#### **Auditors' remuneration. (CA s 206)**

Clause 74 requires the trustee-manager to provide particulars of all emoluments paid or payable to the auditor of the business trust (or its partner, employer or employee) for services other than auditing services, upon the request of unitholders.

74. (1) If the trustee-manager of a registered business trust is served with a notice sent by or on behalf of —

- (a) at least 5% of the total number of unitholders of the registered business trust;
- or
- (b) the unitholders in aggregate of not less than 5% of the total voting rights of all unitholders,

requiring particulars of all emoluments paid to or receivable by the auditor of the registered business trust or any person who is a partner or employer or employee of the auditor, by or from the trustee-manager in respect of services other than auditing services rendered to the registered business trust, the trustee-manager shall forthwith —

- (i) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;
- (ii) forward a copy of the statement to all unitholders entitled to receive notice of general meetings of the registered business trust; and
- (iii) lay such statement before the unitholders in general meeting.

(2) The trustee-manager of the registered business trust who contravenes subsection (1) shall be guilty of an offence.

#### **Powers and duties of auditors as to reports on accounts (CA s 207)**

Clause 75 requires an auditor of a registered business trust to report to the unitholders on the accounts laid before the unitholders of that trust in general meeting, stating whether the accounts are in compliance with the requirements of the Accounting Standards and whether they give a true and fair view of the affairs of that trust. It also imposes a duty of auditors to report any serious offence involving fraud or dishonesty committed against the business trust by officers or employees of the trustee-manager to the Minister.

75. (1) An auditor of a registered business trust shall report to the unitholders of the registered business trust on the accounts required to be laid before the unitholders in general meeting and on the accounting and other records of the registered business relating to those accounts.

(2) A report by an auditor of a registered business trust under subsection (1) shall be furnished by the auditor to the trustee-manager of the registered business trust in

sufficient time to enable the trustee-manager to comply with the requirements of section 70 (1) in relation to that report but no offence shall be committed by an auditor under this subsection if the trustee-manager has not submitted the accounts for audit as required under this Part in sufficient time, having regard to the complexity of the accounts, for the auditor to make his report.

- (3) An auditor of a registered business trust shall, in a report under this section, state —
- (a) whether the accounts are in his opinion —
    - (i) in compliance with the requirements of the Accounting Standards and give a true and fair view of the matters required by section 68 to be dealt with in the accounts; and
    - (ii) in accordance with this Act so as in the case of a balance sheet to give a true and fair view of the affairs of the registered business trust and in the case of a profit and loss account to give a true and fair view of the profit or loss of the registered business trust;
  - (b) if the accounts do not comply with any requirement of the Accounting Standards and the approval of the Authority under section 68 (15) to such non-compliance has not been obtained, whether such non-compliance is, in the opinion of the auditor, necessary for the accounts to give a true and fair view of any matter required by section 68 to be dealt with in them;
  - (c) whether the accounting and other records required by this Act to be kept by the registered business trust have been, in his opinion, properly kept in accordance with this Act;
  - (d) any defect or irregularity in the accounts and any matter not set out in the accounts without regard to which a true and fair view of the matters dealt with by the accounts would not be obtained; and
  - (e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.

(4) It is the duty of an auditor of a registered business trust to form an opinion as to each of the following matters:

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether proper accounting and other records, excluding registers, have been kept by the registered business trust as required by this Act;

and he shall state in his report particulars of any deficiency, failure or short-coming in respect of any matter referred to in this subsection.

(5) The trustee-manager of a registered business trust shall provide the auditor of the registered business trust at all times with access to the accounting and other records, including registers, of the registered business trust, and the trustee-manager shall require from any officer of the trustee-manager and any auditor of a related company of the trustee-manager or the registered business trust such information and explanations as the auditor desires for the purposes of audit.



(6) The auditor's report shall be attached to or endorsed on the accounts and shall, if any unitholder so requires, be read before the unitholders of the registered business trust in general meeting and shall be open to inspection by any unitholder at any reasonable time.

(7) An auditor of a registered business trust or his agent authorised by him in writing for the purpose is entitled to attend any general meeting of the registered business trust and to receive all notices of, and other communications relating to, any general meeting which a unitholder of the registered business trust is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(8) If an auditor of a registered business trust, in the course of the performance of his duties as auditor of the registered business trust, is satisfied that —

- (a) there has been a breach or non-observance of any of the provisions of this Act; and
- (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or by bringing the matter to the notice of the board of directors of the trustee-manager of the registered business trust,

he shall forthwith report the matter in writing to the Authority.

(9) Notwithstanding subsection (8), if an auditor of a registered business trust, in the course of the performance of his duties as auditor, has reason to believe that a serious offence involving fraud or other dishonesty is being or has been committed against the registered business trust by officers or employees of the trustee-manager of the registered business trust, he shall, subject to subsection (11), immediately report the matter to the Minister.

(10) No duty to which an auditor of a registered business trust may be subject shall be regarded as having been contravened by reason of his reporting the matter referred to in subsection (9) in good faith to the Minister.

(11) In subsection (9), "a serious offence involving fraud or dishonesty" means —

- (a) an offence that is punishable by imprisonment for a term that is not less than 2 years; and
- (b) the value of the property obtained or likely to be obtained from the commission of such an offence is not less than \$50,000.

(12) An officer of the trustee-manager of a registered business trust who refuses or fails without reasonable excuse to allow an auditor of the registered business trust access, in accordance with this section, to any accounting and other records, including registers, of the registered business trust in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, shall be guilty of an offence.

**Auditors and other persons to enjoy qualified privilege in certain circumstances (CA 208).**

Clause 76 provides that an auditor, in the absence of malice on his part, shall not be liable to any action for defamation in respect of any statement he makes in the course of his duties.

76. (1) An auditor of a registered business trust shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any other person in respect of the publication of any document prepared by an auditor of a registered business trust in the course of the first-mentioned person's duties and required by this Act to be lodged with the Authority.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or any other person has as defendant in an action for defamation.

**Division 3 - Disclosure**

**Certification by board of directors of trustee-manager (Sarbanes-Oxley Act section 906, NYSE Rule 303A(12), SFA section 96(6))**

Clause 77 provides that the trustee-manager of the registered business trust shall cause the written statements, made by the Chairman of the board, on behalf of the board of directors of the trustee-manager, and the chief executive officer of the trustee-manager, to be presented to unitholders of the annual general meeting. The statements shall certify that the CEO and the board, as the case may be, are not aware of any violations of the duties of the trustee-manager and of any governance standards imposed by this Act, its regulations or by the listing rules of a securities exchange. When the board is unable to provide a certification or when there is a divergence of views amongst board members, this must be drawn to shareholders' attention in the annual report and an explanation given.

77. (1) Subject to subsection (3), the trustee-manager of a registered business trust shall –

(a) cause the written statements required by subsection (2) to be made out in accordance with that subsection; and

(b) ensure that the written statements referred to in sub-paragraph (a) are annexed to the profit and loss accounts of the registered business trust required under section 68(1).

(2) The chief executive officer of the trustee-manager of a registered business trust in his personal capacity and the chairman of the board of directors of the trustee-manager on behalf of the board of directors shall each make a written statement certifying that –

- (a) he is not aware of any violation of the duties of the trustee-manager, and is not aware of any violation of governance requirements imposed under Parts III, IV, V and Division 3 of Part X and, where the registered business trust is listed, by the listing rules of the securities exchange on which the interests of the registered business trust are listed for quotation; and
- (b) in his opinion, the trustee-manager has adopted adequate policies and practices to ensure compliance of its duties as trustee-manager of the registered business trust and of any governance requirements imposed under Parts III, IV, V and Division 3 of Part X and, where the registered business trust is listed, by the listing rules of the securities exchange on which the interests of the registered business trust are listed for quotation.

(3) Where either the chairman of the board of directors of the trustee-manager on behalf of the board of directors or the chief executive officer of the trustee-manager of a registered business trust is unable to provide the written statement in accordance with subsection (2), for reason that -

- a) the chief executive officer or the board of directors, as the case may be, is of the opinion that the assertions in subsection 2(a) or (b) are not true and accurate, or
- b) in the case of the chairman of the board of directors of the trustee-manager, as a result of a divergence of views of the directors of the trustee-manager as to the accuracy of the written statement,

the trustee-manager need not annex the written statement to the profit and loss accounts of the registered business trust required under section 68(1), except that the chief executive officer or the chairman of the board of directors, as the case may be, shall provide an explanation, including the important factors for the refusal of the chief executive officer or the chairman, and such explanation is to be annexed by the trustee-manager to the profit and loss account of the registered business trust required by section 68(1).

(Singapore Code on Take-overs and Mergers, note 3 to rule 7.1)

(4) In this section, “chief executive officer” means any person, by whatever name described, who is —

- (a) in the direct employment of, or acting for, or by arrangement with a trustee-manager of a registered business trust; and
- (b) principally responsible for the management and conduct of the trustee-manager.

(5) Any person who, without reasonable excuse, contravenes this section shall be guilty of an offence.

#### **Disclosure of policies and practices (New)**

Clause 78 requires the trustee-manager of a registered business trust to describe its policies and practices in relation to its management and governance of the trust in accordance to prescribed requirements.

**78.** (1) The trustee-manager of a registered business trust shall describe in a statement to be annexed to the profit and loss accounts of the registered business trust required under section 68(1) its policies and practices in relation to its management and governance of the trust relating to the registered business trust in accordance with such requirements as may be prescribed by the Authority.

(2) The trustee-manager of the registered business trust who contravenes subsection (1) shall be guilty of an offence.

## **PART XI**

### **APPEALS**

#### **Appeals to Minister (SFA s 310)**

Clause 79 provides that where an appeal is made to the Minister under the Bill, the Minister may confirm, vary or reverse the decision of the Authority, or may give such directions as he thinks fit, and that the Minister's decision shall be final. The Minister shall, in appeals made under the Bill constitute an Appeal Advisory Committee and refer the appeal to it. The Minister shall consider a written report submitted by the Appeal Advisory Committee before making his decision, but shall not be bound by any recommendations made by the Appeals Advisory Committee.

**79.** (1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(2) Where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

### **Appeal Advisory Committees (SFA s 311)**

Clause 80 provides for the setting up, constitution and powers of Appeal Advisory Committees. It also provides that every member of an Appeal Advisory Committee shall be deemed to be a public servant, and be accorded the protection and privileges given to a Judge in the execution of his office.

80. —(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 79, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or material containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —  
(a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and  
(b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of unitholders and persons intending to acquire interests in the registered business trust and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

#### **Disclosure of information (SFA s 312)**

Clause 81 provides a savings for information that the Minister or any public servant considers to be against the public interest to disclose.

**81.** Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the interest of the public to disclose.

#### **Regulations for purposes of this Part (SFA s 313)**

Clause 82 provides that the Minister may make regulations with respect to the Appeal Advisory Panel and Committees.

**82.** —(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act shall be made;
- (c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

## PART XII

### MISCELLANEOUS

#### **Duty of substantial unitholders to notify trustee-manager and securities exchange (SFA s 137)**

Clause 83 imposes a duty on substantial unitholders of a listed company to notify the securities exchange of their interests or change in interests in the business trust.

**83.** —(1) In the case of a registered business trust all or any of which interests are listed for quotation on the official list of a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) and section 137 of the Securities and Futures Act (Cap. 289) shall apply, with such modifications and qualifications as may be necessary, to a person who is a unitholder of the registered business trust as though references to:

(a) the company to which notification should be given were references to the trustee-manager of the registered business trust; and

(b) shares and securities of the company, as the case may be, were references to interests in the registered business trust;

and such person shall comply with those provisions accordingly.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

#### **Non-applicability of Trustees Act (New)**

Clause 84 provides that the Trustees Act does not apply to registered business trusts.

**84.** The Trustees Act (Cap. 337) does not apply to a registered business trust, notwithstanding that the trust was constituted before the commencement of this Act.

#### **Non-application of rule against perpetuities and accumulations to registered business trust (Corporations Act s 1346)**

Clause 85 provides that the rules of law relating to perpetuities and accumulations do not apply.

**85.** The rules of law relating to perpetuities, accumulations and inalienability of property do not apply to a registered business trust, notwithstanding that the trust was constituted before the commencement of this Act.

### **Opportunity to be heard (SFA s 316)**

Clause 86 provides that where any affected person is given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the affected person shall be given the hearing.

**86.** Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

### **Codes, guidelines, etc., by Authority (SFA s 321)**

Clause 87 empowers the Authority to issue such codes, guidelines and no-action letters in such manner as it considers appropriate for providing guidance to business trusts.

**87.** (1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or
- (c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline or no-action letter, and in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

- (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline or no-action letter; and
- (b) any reference in this Act or any other written law to the code, guideline or no-action letter however expressed shall, unless the context otherwise requires, be a reference to the code, guideline, or no-action letter as so amended.

(5) Any person who fails to comply with any of the provisions of a code or guideline, issued under this section that applies to him shall not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter shall not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.



- (7) Any code or guideline issued under this section —
- (a) may be of general or specific application; and
  - (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) For the avoidance of doubt, any code, guideline or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(9) In this section, a “no-action” letter means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

### **Immunity of Authority and its employees, etc. (SFA s 323)**

Clause 88 confers immunity from legal proceedings to the Authority and its staff or any person acting under the direction of the Authority for any act done in good faith or in the exercise of any power under this Bill.

**88.** No suit or other legal proceedings shall lie against the Authority or any officer or employee of the Authority or any person acting under the direction of the Authority —

- (a) for any act done in good faith —
  - (i) in the performance, or intended performance, of any function or duty; or
  - (ii) in the exercise, or intended exercise, of any power under this Act; or
- (b) for any neglect or default in the performance or exercise in good faith of such function, duty or power.

### **Right of Authority and unitholders to apply to court for order (SFA s 267A)**

Clause 89 provides the Authority and unitholders the right to apply to court for an order to compel the trustee-manager of a business trust to perform his duties as set out in the trust deed.

**89.** Without prejudice to any other right of action or remedy in any written law or rule of law, the Authority or a unitholder of a registered business trust may apply to the court for an order to compel the trustee-manager of the registered business trust to perform its duties as set out in the trust deed of the registered business trust, and the court may either make the order on such terms as it considers appropriate, or dismiss the application.

### **Power of court to make certain orders. (SFA s 325)**

Clause 90 empowers the court to make certain orders on the application of the Authority or a securities exchange in relation to contravention of the Bill or the listing rules of a securities exchange.

**90. (1) Where —**

- (a) on the application of the Authority, it appears to the court that a person has committed an offence under this Act, or has contravened any condition or restriction imposed on it under this Act, or the listing rules of a securities exchange; or
- (b) on the application of a securities exchange, it appears to the court that a person has contravened the listing rules of the securities exchange;

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (ii) any ancillary order deemed to be desirable in consequence of the making of any of these orders.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) Any person who, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Subsection (3) shall not affect the powers of the court in relation to the punishment for contempt of court.

(5) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

**Injunctions (SFA s 326)**

Clause 91 enables the court on the application of the Authority or a person whose interests are affected, to grant an injunction or an interim injunction, restraining a person from engaging in conduct that constitutes or would constitute a contravention of the Bill or to make an order or an interim order requiring a person to do an act or thing that he is required by this Bill to do.

**91. (1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act or the trust deed of a registered business trust, the court may, on the application of —**

- (a) the Authority; or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act or trust deed to do, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

(a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(10) Where any person referred to in subsection (1) or (2) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

### **Power of court to grant relief (CA s391)**

Clause 92 enables the court to grant relief from liability to a person who is or may be liable for negligence, default, breach of duty or breach of trust, but has acted honestly and reasonably and ought fairly to be excused.
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**92.** (1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) For the avoidance of doubt and without prejudice to the generality of subsection (1), “liability” includes the liability of a person to whom this section applies to account for profits made or received.

(3) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the court for relief, and the court shall have the same power to relieve him as under this section it would have had if it had been a court before

which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(4) The persons to whom this section applies are –

- (a) officers of the trustee-manager of a registered business trust;
- (b) persons employed by the trustee-manager of a registered business trust as auditors, whether they are or are not officers of the trustee-manager;
- (c) persons who are liquidators appointed or directed by the court to carry out any duty under this Act in relation to the registered business trust and all other persons so appointed or so directed.

### **Criminal jurisdiction of District Court (SFA s 327)**

Clause 93 provides that a District Court shall have jurisdiction to try any offence under the Bill and may impose the full penalty or punishment in respect of the offence, notwithstanding the Criminal Procedure Code (Cap.68).

**93.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of any offence under this Act.

### **Duty not to furnish false information to Authority (SFA s 329)**

Clause 94 prohibits any person from furnishing false information to the Authority.

**94.** (1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority shall use due care to ensure that the document is not false or misleading in any material particular.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

### **False and misleading statement (CA s 401)**

Clause 95 makes it an offence to make false or misleading statements in any return, report, certificate or other document required by or for the purposes of this Bill.

**95.** Every person who in any return, report, certificate, balance sheet or other document required by or for the purposes of this Act –

- (a) wilfully makes or authorises the making of a statement false or misleading in any material particular knowing it to be false or misleading; or
- (b) wilfully omits or authorises the accession of any matter or thing without which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Corporate offenders and unincorporated associations (SFA s 331)**

Clause 96 provides that where an offence under the Bill is committed by a corporation with the consent or connivance of an officer or is attributable to any neglect on his part, that officer shall also be guilty of the offence. The principle also applies to partners in partnerships, and officers and members of the governing body of unincorporated associations.

**96.** (1) Other than the provisions in Division 1 of Part X, where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

"partner" includes a person purporting to act as a partner;

"officer" —

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

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

### **General penalty (FAA s87)**

Clause 97 provides that where a person commits an offence under the Bill and no penalty is expressly provided, the punishment shall be a fine not exceeding \$50,000.

**97.** Any person guilty of an offence under this Act for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding \$50,000.

### **Power to compound offences (SFA s 336)**

Clause 98 empowers the Authority to compound any offence under the Bill.

**98.** The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence.

### **General exemption (FAA s100)**

Clause 99 provides for a general power of exemption exercisable by the Authority.

**99.** —(1) The Authority may, by regulations, exempt any person, registered business trust, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) The Authority, may on the application of any person, exempt the person, registered business trust, matter or transaction from all or any of the provisions of this Act or the requirements specified in any written direction, by notice in writing, if the Authority considers it appropriate to do so in the circumstances of the case.

(3) An exemption under subsection (2) –

- (a) may be granted subject to such terms or conditions as the Authority may specify by notice in writing;
- (b) need not be published in the *Gazette*; and
- (c) may be withdrawn at any time by the Authority.

(4) Any person or registered business trust who contravenes any term or condition prescribed under subsection (1) or specified by the Authority under subsection (3)(a) shall be guilty of an offence.

### **Regulations (SFA s 341)**

Clause 100 empowers the Authority to make regulations either generally or for the specific purposes mentioned in subsection (2).

**100.** (1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to —

- (a) the criteria for the registration of trusts and the constitution, operation and management of registered business trusts including but not limited to the powers and duties of the trustee-managers of registered business trusts and the rights and obligations of the unitholders of registered business trusts;
- (b) the administration and regulation of registered business trusts and in particular the governance practices of such registered business trusts;
- (c) the particulars to be recorded in the profit and loss accounts and balance-sheets of registered business trusts and the information to be contained in the auditor's reports required to be lodged under this Act on the annual accounts of registered business trusts;
- (d) the forms for the purposes of this Act;
- (e) the fees to be paid in respect of any matter or thing required for the purposes of this Act, and the refund and remission, whether in whole or in part, of such fees;
- (f) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

(3) Except as otherwise expressly provided in this Act, the regulations —

- (a) may be of general or specific application;
- (b) may provide that a contravention of any specified provision thereof shall be an offence; and



(c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.