

DRAFT TRUST COMPANIES BILL

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Trust Companies Bill

Bill No. /2004.

Read the first time on 2004.

THE TRUST COMPANIES ACT 2004

(No. of 2004)

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A BILL

i n t i t u l e d

An Act to repeal and re-enact with amendments the Trust Companies Act (Chapter 336 of the 1985 Revised Edition) so as to provide for the licensing and regulation of trust companies and for matters connected therewith.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Trust Companies Act 2004 and shall
5 come into operation on such date as the Minister may, by notification in
the *Gazette*, appoint.

Interpretation

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

10 “accounting corporation” means a company approved as an
accounting corporation under the Accountants Act 2004 (Act 4 of
2004);

“Authority” means the Monetary Authority of Singapore established
under the Monetary Authority of Singapore Act (Cap. 186);

15 “book” includes any record, register, account, deed, writing and
information, however compiled, recorded or stored, whether in
written or printed form or on microfilm or in any other electronic
form or otherwise;

20 “capital markets services licence” means a capital markets services
licence granted under section 86 of the Securities and Futures Act
(Cap. 289);

“connected person” —

(a) in relation to an individual, means —

25 (i) the individual’s spouse, son, adopted son, step-son,
daughter, adopted daughter, step-daughter, father, step-
father, mother, step-mother, brother, step-brother,
sister or step-sister; or

30 (ii) a firm or a corporation in which the individual or any
of the persons mentioned in sub-paragraph (i) has
control of not less than 20% of the voting power in the
firm or corporation, whether such control is exercised
individually or jointly;

(b) in relation to a firm, means another firm in which the first-mentioned firm has control of not less than 20% of the voting power in that other firm; and

(c) in relation to a corporation, means —

- 5 (i) an employee or a former employee of the corporation;
- (ii) a director or former director of the corporation; or
- 10 (iii) another corporation in which the first-mentioned corporation or any of the persons mentioned in sub-paragraph (i) or (ii) has control of not less than 20% of the voting power in that other corporation,

and a reference in this Act to a person connected to another person shall be construed accordingly;

15 “controller”, in relation to a licensed trust company, means a 20% controller, a 50% controller or an indirect controller, as defined in section 16(3);

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

“director” has the same meaning as in section 4(1) of the Companies Act;

20 “exempt person” means a person who is exempt under section 15 from holding a licence for the carrying on of any trust business;

“futures contract” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

25 “foreign lawyer” means a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161) who is registered with the Attorney-General under section 130I of the Legal Profession Act;

“law corporation” means a company approved as a law corporation under the Legal Profession Act (Cap. 161);

30 “licensed trust company” means a corporation holding a trust business licence;

“officer” has the same meaning as in section 4(1) of the Companies Act;

“overseas person” means a person —

(a) who is not resident, established or incorporated in Singapore;
and

(b) who has no place of business in Singapore from which that
person carries on trust business in or from Singapore;

“parent supervisory authority”, in relation to a licensed trust company
incorporated outside Singapore, means the supervisory authority
which is responsible, under the laws of the country or territory
where the licensed trust company is incorporated, formed or
established, for supervising the licensed trust company;

“private trust company” means a corporation —

(a) the purpose of which is solely to provide trust business
services to connected persons;

(b) that does not solicit trust business from, or provide trust
business services to, the public; and

(c) in respect of which the trust administration services in relation
to any express trust for which the corporation is a trustee are
carried out by a licensed trust company;

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

“public accountant” has the same meaning as in the Accountants Act
2004 (Act 4 of 2004);

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

“resident manager” means an individual resident in Singapore who,
under the immediate authority of the directors of a licensed trust
company, is responsible for the conduct of the trust business of the
licensed trust company;

“securities” has the same meaning as in section 2(1) of the Securities
and Futures Act (Cap. 289);

“substantial shareholder” has the same meaning as in Division 4 of
Part IV of the Companies Act;

“trust business” means any business specified in paragraph 1 of the First Schedule;

“trust business licence” means a licence granted by the Authority under section 5 that authorises the holder thereof to carry on trust business;

“trust business service” means any service in respect of any business specified in the First Schedule;

“written directions” means written directions issued by the Authority under section 77.

PART II

LICENSING OF TRUST COMPANIES

Restriction on carrying on trust business

3.—(1) Subject to subsection (3), no person shall carry on any trust business or hold himself out as carrying on any trust business in or from within Singapore unless that person is a licensed trust company.

(2) No licensed trust company shall, without the prior approval of the Authority, establish a place of business outside Singapore to carry on any business which, if carried on in Singapore, would constitute trust business.

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

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

Application for trust business licence

4.—(1) An application for a trust business licence shall —

(a) be made to the Authority in such form and manner as the Authority may require; and

(b) be accompanied by the prescribed application fee, which shall be non-refundable and which shall be paid in the manner specified by the Authority.

5 (2) The Authority may require an applicant to furnish it with such information or documents as it considers necessary in relation to the application.

Grant of trust business licence

5.—(1) The Authority shall not grant a trust business licence to an applicant therefor unless the applicant is —

- 10 (a) a company incorporated under the Companies Act (Cap. 50); or
(b) a foreign company registered under Division 2 of Part XI of the Companies Act.

15 (2) A trust business licence shall only be granted if the applicant meets such minimum financial and other requirements as the Authority may prescribe.

(3) Subject to regulations made under this Act, where an application is made for the grant of a trust business licence, the Authority may refuse the application if —

- 20 (a) the applicant has not provided the Authority with such information as the Authority may require in relation to —
(i) the applicant or any person employed by or associated with the applicant for the purposes of its trust business; or
(ii) any circumstances likely to affect the applicant's manner of conducting trust business;
- 25 (b) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- 30 (c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;

- (d) a receiver, a receiver and manager, a judicial 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 or its substantial shareholder;
- 5 (e) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) the applicant or its substantial shareholder, or any officer of the applicant —
- 10 (i) has been convicted, whether in Singapore or elsewhere, of any offence, in particular, any offence involving fraud or dishonesty or the conviction for which involved a finding that it or he had acted fraudulently or dishonestly; or
- 15 (ii) has been convicted of an offence under this Act;
- (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform if the applicant were granted the trust business licence;
- 20 (h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (i) the Authority has reason to believe that the applicant may not be able to act in the best interests of any protected party having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;
- 25 (j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's trust business is to be conducted;
- 30 (k) the Authority is not satisfied as to the record of past performance or expertise of the applicant, having regard to the nature of the trust business which the applicant may carry on if granted the trust business licence;

(*l*) there are other circumstances which are likely —

(i) to lead to the improper conduct of the applicant's trust business by the applicant or any of its officers, employees or substantial shareholders; or

5 (ii) to reflect discredit on the manner in which the applicant or its substantial shareholders conducts its trust business;

(*m*) the Authority has reason to believe that the applicant, or any of its officers, will not efficiently, honestly or fairly perform any of the activities or provide any of the services for which the applicant seeks to be licensed; or

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(*n*) the Authority is of the opinion that it would be contrary to the interests of the public to grant the trust business licence to the applicant.

(4) Subject to subsection (5), the Authority shall not refuse an application for a trust business licence without giving the applicant an opportunity to be heard.

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(5) The Authority may refuse an application for a trust business licence on any of the following grounds without giving the applicant an opportunity to be heard:

20 (*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;

25 (*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.

Licence fee

30 **6.—**(1) Every licensed trust company shall pay to the Authority such licence fee as may be prescribed.

(2) Any licence fee paid to the Authority under this Act shall not be refunded or remitted if —

- (a) the licence is revoked or suspended or lapses during the period to which the licence fee relates; or
 - (b) the licensed trust company ceases to carry on trust business during the period to which the licence fee relates.
- 5 (3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any licence fee paid to it.

Power of Authority to impose conditions or restrictions

- 7.—(1) The Authority may grant a trust business licence subject to such conditions or restrictions as it thinks fit.
- 10 (2) The Authority may, at any time, by notice in writing to a licensed trust company, vary or revoke any condition or restriction or attach such further condition or restriction as it may think fit.
- (3) Any person who contravenes any condition or restriction attached to the trust business licence held by him 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.

False statements in relation to application for grant of licence

- 20 **8.** Any person who, in connection with an application for a trust business licence and without reasonable excuse —
- (a) makes any statement which is false or misleading in a material particular; or
 - (b) omits to state any matter or thing without which the application is misleading in a material respect,
- 25 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 12 months or to both.

Notification of change of particulars

- 30 **9.**—(1) Where —
- (a) a licensed trust company ceases to carry on any trust business;

- (b) any person has ceased to be a resident manager or a controller of a licensed trust company;
- (c) any civil or criminal proceedings have been instituted against a licensed trust company or any officer thereof;
- 5 (d) any change occurs in the name of a licensed trust company or the address of the principal place of business at which the licensed trust company carries on its trust business;
- (e) a licensed trust company has ceased to fulfil the minimum financial or other capital requirements prescribed by the Authority; or
- 10 (f) any change occurs in relation to such other matters as may be prescribed,

the licensed trust company shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.

(2) Where a licensed trust company ceases to carry on any trust business, it shall surrender to the Authority within 14 days of the date of the cessation of its trust business the trust business licence that has been granted to it.

20 (3) Any licensed trust company which contravenes this section shall be guilty of an offence.

Lapsing, revocation and suspension of licence

10.—(1) The trust business licence of a licensed trust company shall lapse —

- 25 (a) if the licensed trust company is wound up or otherwise dissolved, whether in Singapore or elsewhere; or
- (b) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke the trust business licence of a licensed trust company or suspend the trust business licence of the licensed trust company in respect to any or all of the trust business services that are provided by the licensed trust company if —

- (a) there exists a ground on which the Authority may refuse an application under section 5(3);
 - (b) the licensed trust company fails or ceases to carry on any trust business;
 - 5 (c) the Authority has reason to believe that the licensed trust company, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;
 - (d) the licensed trust company has contravened or is contravening —
 - 10 (i) any condition or restriction attached to its trust business licence;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision of this Act; or
 - (e) the interests of the public or of the protected parties of the licensed trust company are in any way prejudiced.
- 15 (3) The Authority shall not revoke or suspend the trust business licence of a licensed trust company under subsection (2) without giving the licensed trust company an opportunity to be heard, except in the following circumstances:
- 20 (a) the licensed trust company 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 licensed trust company; or
 - 25 (c) the licensed trust company 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.

Restriction on cessation of business or surrender of licence

- 30 **11.—**(1) No licensed trust company shall, without the sanction of the court and so long as any trust in respect of which the licensed trust company is a trustee remains in whole or in part unadministered —
- (a) cease to carry on its trust business; or

(b) surrender its trust business licence to the Authority.

(2) Any person 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.

General provisions as to winding up

12.—(1) The persons who may petition under the Companies Act (Cap. 50) for the winding up of the affairs of a licensed trust company, or for the continuance of the winding up of the affairs of a licensed trust company subject to the supervision of the court, shall include the Authority.

(2) The Authority may, in accordance with the provisions of the Companies Act, present a petition for the winding up of a licensed trust company if the licensed trust company has contravened any of the provisions of this Act.

(3) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of a licensed trust company.

(4) The liquidator in any winding up referred to in subsection (3) shall give to the Authority such information as it may, from time to time, require about the affairs of the licensed trust company.

(5) Any liquidator who contravenes subsection (4) shall be guilty of an offence.

Approval of resident managers and directors of licensed trust company

13.—(1) No licensed trust company shall appoint a person as —

(a) its resident manager; or

(b) its director where, upon appointment, the person —

(i) resides or is to reside in Singapore, whether or not he is directly responsible for its business in Singapore or any part thereof; or

(ii) is directly responsible for its business in Singapore or any part thereof, whether he resides in Singapore or elsewhere, unless it has obtained the approval of the Authority.

5 (2) Where a licensed trust company has obtained the approval of the Authority to appoint a person as its resident manager or director under subsection (1), the person may be re-appointed as resident manager or director, as the case may be, of the licensed trust company immediately upon the expiry of the earlier term without the approval of the Authority.

10 (3) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such requirements as may be prescribed under section 5(2) or as may be specified in written directions.

15 (4) The Authority shall not refuse an application for approval under subsection (1) without giving the licensed trust company an opportunity to be heard, except where the person proposed to be appointed —

(a) is an undischarged bankrupt, whether in Singapore or elsewhere; or

(b) has been convicted, whether in Singapore or elsewhere, of an offence —

20 (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

25 (5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(6) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

30 **Removal of officer of licensed trust company**

14.—(1) Where the Authority is satisfied that an officer of a licensed trust company —

- (a) has wilfully contravened or wilfully caused the licensed trust company to contravene this Act;
- (b) has, without reasonable excuse, failed to enforce compliance with this Act;
- 5 (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a
10 compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
or
- (g) has been convicted, whether in Singapore or elsewhere, of an
15 offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public or of the protected parties of the licensed trust company, by notice in writing direct that licensed trust company to remove the officer from office or employment, and that licensed trust company shall comply with such
20 notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a licensed trust company has failed to discharge the duties or functions of
25 his office for the purposes of subsection (1)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) The Authority shall not direct a licensed trust company to remove an officer from office or employment under this section without giving that licensed trust company an opportunity to be heard, except in the following
30 circumstances:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(4) Where the Authority directs a licensed trust company to remove an officer from office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

(5) No criminal or civil liability shall be incurred by —

(a) a licensed trust company; or

(b) any person acting on behalf of the licensed trust company,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(6) Any licensed trust company which fails to comply with a notice issued by the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Exempt persons

15.—(1) Subject to subsection (11), the following persons shall be exempt from the requirement to hold a trust business licence in respect of the carrying on of trust business:

(a) any private trust company;

(b) any —

(i) advocate and solicitor, foreign lawyer or law corporation; or

(ii) public accountant or accounting corporation,

in respect of the carrying on of any trust business that is solely incidental to the practice of law or accounting, as the case may be;

(c) any bank licensed under the Banking Act (Cap. 19) in respect of —

(i) the provision of services in relation to the creation of an express trust; or

- (ii) the arrangement for any person to act as trustee in relation to an express trust;
- (d) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of —
- 5 (i) the provision of services in relation to the creation of an express trust; or
- (ii) the arrangement for any person to act as trustee in relation to an express trust;
- (e) any holder of a capital markets services licence, or any person
- 10 who is exempt from holding a capital markets services licence, for providing fund management or custodial services for securities under the Securities and Futures Act (Cap. 289), in respect of the provision of fund management or custodial services for securities;
- (f) any overseas person, in respect of —
- 15 (i) the provision of services in relation to the creation of an express trust; or
- (ii) the arrangement for any other person to act as a trustee in respect of an express trust, where the carrying on of such
- 20 activity is effected through —
- (A) a licensed trust company; or
- (B) a person who is an exempt person under paragraph (a), (b), (c), (d) or (e); and
- (g) such other person or class of persons as may be prescribed.
- 25 (2) A private trust company shall —
- (a) within 3 months from the date of commencement of this Act; or
- (b) within one month from the date of commencement of its trust business,
- 30 whichever is the later, certify to the Authority that it qualifies for an exemption by virtue of its status as a private trust company and furnish the Authority with particulars of the nature and scope of its trust business.
- (3) A private trust company shall, as soon as practicable, notify the Authority of any change in the nature and scope of its trust business after

the change, but in any case no later than 14 days from the date of such change.

(4) Any bank providing any trust business service referred to in subsection (1)(c)(i) or (ii) shall —

5 (a) within 3 months from the date of commencement of this Act or one month from the date of commencement of its trust business, whichever is the later, notify the Authority in writing that it is providing such service; and

10 (b) as soon as practicable, notify the Authority if it ceases to provide such service, but in any case no later than 14 days from the date of cessation.

(5) Any merchant bank providing any trust business service referred to in subsection (1)(d)(i) or (ii) shall —

15 (a) within 3 months from the date of commencement of this Act or one month from the date of commencement of its trust business, whichever is the later, notify the Authority in writing that it is providing such service; and

20 (b) as soon as practicable, notify the Authority if it ceases to provide such service, but in any case no later than 14 days from the date of cessation.

(6) The Authority may prescribe the provisions of this Act that apply to persons referred to in subsection (1) (other than subsection (1)(g)).

(7) The Authority may prescribe or specify in written directions the provisions of this Act that apply to persons referred to in subsection (1)(g).

25 (8) The Authority may prescribe or specify in written directions such conditions or restrictions on an exempt person in relation to the conduct of trust business or any related matter as the Authority thinks fit and the exempt person shall comply with such conditions or restrictions.

30 (9) The Authority may at any time vary, rescind or revoke any written direction issued under subsection (7) or (8).

(10) Any exempt person who contravenes any applicable provision of this Act or any condition or restriction imposed under subsection (8) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of a contravention of any applicable provision of this Act, to the same penalties as are prescribed under this Act for any such contravention; and

5 (b) in the case of a contravention of any condition or restriction imposed under subsection (8), 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.

10 (11) The Authority may revoke an exemption conferred on any person by this section if —

(a) the person contravenes any applicable provision of this Act or any condition or restriction imposed on that person under subsection (8);

15 (b) the person contravenes any written direction issued to it by the Authority; or

(c) the Authority considers that the person is carrying on trust business in a manner that is, in the opinion of the Authority, contrary to the public interest.

20 (12) Where the Authority revokes an exemption conferred on any person by this section, the Authority need not give the person an opportunity to be heard.

(13) A revocation under subsection (11) of an exemption granted to any person shall not operate so as to —

25 (a) avoid or affect any agreement, transaction or arrangement relating to any trust business entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the revocation of the exemption; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

30 (14) Any person who is aggrieved by a decision of the Authority made under subsection (11) may, within 30 days after being notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

PART III

CONTROL OF VOTING POWERS AND SHAREHOLDINGS

Control of shareholdings and voting power in licensed trust company

16.—(1) No person shall become —

- 5 (a) a 20% controller;
 (b) a 50% controller; or
 (c) an indirect controller,

of a licensed trust company incorporated in Singapore without obtaining the prior approval of the Authority in accordance with section 17.

- 10 (2) Where any person becomes a controller of a licensed trust company that is incorporated outside Singapore, the licensed trust company shall notify the Authority in writing as soon as practicable after the acquisition of the control.

(3) In this section —

- 15 “20% controller” means a person who, alone or together with his associates —

- (a) holds not less than 20% of the issued shares in the licensed trust company; or
 (b) is in a position to control voting power of not less than 20%
20 in the licensed trust company.

“50% controller” means a person who, alone or together with his associates —

- (a) holds not less than 50% of the issued shares in the licensed trust company; or
25 (b) is in a position to control voting power of not less than 50% in the licensed trust company;

“indirect controller” means any person, whether acting alone or together with any other person and whether with or without holding shares or controlling voting power in a licensed trust company —

- (a) in accordance with whose directions, instructions or wishes the directors of the licensed trust company are accustomed or under an obligation, whether formal or informal, to act; or
- (b) who is in a position to determine the policy of the licensed trust company,

but does not include any person —

- (i) who is a director or other officer of the licensed trust company whose appointment has been approved by the Authority; or
- (ii) in accordance with whose directions, instructions or wishes the directors of the licensed trust company are accustomed to act by reason only that they act on advice given by him in his professional capacity.

(4) For the purposes of subsection (3) —

- (a) a person holds a share if —
- (i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or
- (ii) he otherwise has a legal or an equitable interest in that share except for such interest as is to be disregarded under section 7(6) to (10) of the Companies Act;
- (b) a reference to the control of a percentage of the voting power in a licensed trust company is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the licensed trust company; and
- (c) a person, A, is an associate of another person, B, if —
- (i) A is the spouse or a parent, remoter lineal ancestor or step-parent or a son, daughter, remoter issue, step-son or step-daughter or a brother or sister, of B;
- (ii) A is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B, or where B is a corporation, of the directors of B;

- (iii) B is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A, or where A is a corporation, of the directors of A;
- 5 (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
- 10 (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the voting power in A;
- 15 (viii) B is a corporation in which A, alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the voting power in B; or
- 20 (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their voting power in relation to,
- 25 the licensed trust company.

Application for Authority's approval to become controller of licensed trust company

17.—(1) An application for the approval of the Authority as required under section 16(1) shall be made to the Authority in such form or manner as the Authority may require and the Authority may, in its discretion, grant such approval to the applicant therefor if the Authority is satisfied that —

- (a) the applicant is a fit and proper person; and
- (b) having regard to the applicant's likely influence, the licensed trust company is likely to continue to conduct its business

prudently and comply with the provisions of this Act and directions made thereunder.

(2) Any approval under this section may be granted to any person subject to such conditions as the Authority may determine, including but not limited to any condition —

(a) restricting the person's disposal or further acquisition of shares or voting power in the licensed trust company; or

(b) restricting the person's exercise of voting power in the licensed trust company.

(3) Any condition imposed under subsection (2) shall have effect notwithstanding any of the provisions of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the licensed trust company.

Objection to existing control

18.—(1) The Authority may serve a written notice of objection on any person referred to in section 16 if the Authority is satisfied that —

(a) any condition of approval imposed on the person under section 17(2) has not been complied with;

(b) the person is not or ceases to be a fit and proper person;

(c) having regard to the likely influence of the person, the licensed trust company is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act and directions made thereunder;

(d) the person has furnished false or misleading information or documents in connection with an application under section 17; or

(e) the Authority would not have granted its approval under section 17 had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved, or in the case of a natural person, in the course of bankruptcy proceedings, whether in Singapore or elsewhere;
- 5 (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 person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted
10 fraudulently or dishonestly.

(3) Any person served with a notice of objection under this section shall comply with the requirements of the notice.

Licensed trust company to furnish to Authority information relating to controllers, etc.

- 15 **19.** A licensed trust company shall furnish to the Authority in such form or manner as the Authority may prescribe, information relating to its controllers and the quantity of their control in the licensed trust company.

Offences, penalties and defences

- 20 **20.—**(1) Any person who contravenes section 16(1), 18(3) or 19 or fails to comply with any condition imposed under section 17(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Where a person is charged with an offence in respect of a contravention of section 16(1), it shall be a defence for the person to prove
25 that —

- (a) he was not aware that he had contravened section 16(1); and
- (b) he has, within 14 days of becoming aware that he had contravened section 16(1), notified the Authority of the contravention and, within such time as determined by the
30 Authority, taken such actions in relation to his shareholding or control of the voting power in the licensed trust company as the Authority may direct.

(3) Where a person is charged with an offence in respect of a contravention of section 16(1), it shall also be a defence for the person to prove that, even though he was aware of the contravention —

- 5 (a) the contravention occurred as a result of an increase in the shareholding as described in section 16(4)(a) or in the voting power controlled by any of his associates described in section 16(4)(c)(i);
- 10 (b) he has no agreement or arrangement, whether oral or in writing and whether express or implied, with that associate with respect to the acquisition, holding or disposal of shares or other interests in, or under which they act together in exercising their voting power in relation to, the licensed trust company; and
- 15 (c) he has, within 14 days of the date of the contravention, notified the Authority of the contravention and, within such time as may be determined by the Authority, taken such action in relation to his shareholding or control of the voting power in the licensed trust company as the Authority may direct.

20 (4) Except as provided in subsections (2) and (3), it shall not be a defence for a person charged with an offence in respect of a contravention of section 16(1) to prove that he did not intend to or did not knowingly contravene section 16(1).

Shareholding or control in other corporations

21.—(1) No licensed trust company shall acquire or hold more than —

- 25 (a) 20% of the issued shares; or
- (b) 20% of the voting power,

in a corporation, without obtaining the prior approval of the Authority.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

PART IV

PROBATE AND ADMINISTRATION

Licensed trust company may act as executor

5 **22.** Where a licensed trust company is appointed executor of the will of any testator, the licensed trust company may apply to the court for probate of the will and, if probate is granted, to exercise and discharge all the powers and duties of an executor.

Licensed trust company may be authorised to apply for probate or administration

10 **23.—**(1) Subject to subsection (3), where any person is entitled to apply for probate of the will of any testator without leave being reserved to any other person to apply for probate, it shall be lawful for the person, whether absent from Singapore or not, and notwithstanding the provisions of any other Act, instead of himself applying for probate, to authorise a licensed
15 trust company to apply to the court for a grant of administration with the will annexed of the estate of the testator, and such a grant may be made to the licensed trust company upon its own application, when so authorised.

(2) Subject to subsection (3), where any person is entitled to apply for letters of administration with the will of any testator annexed of the estate
20 of the testator, it shall be lawful for the person, whether absent from Singapore or not, and notwithstanding the provisions of any other Act, to authorise a licensed trust company, either alone or jointly with any other person, to apply to the court for a grant of letters of administration with the will annexed of the estate of the testator, and such a grant may be
25 made to the licensed trust company upon its own application, when so authorised.

(3) Subsections (1) and (2) shall not apply to a case in which a will provides that the licensed trust company shall not act as executor or in the trusts thereof.

30 (4) Notwithstanding the provisions of any other Act, any person or persons entitled to apply for letters of administration of the estate of any intestate, whether the person or persons are absent from Singapore or not, may authorise a licensed trust company to apply to the court for such

letters of administration, either alone or jointly with any other person, and administration of the estate of the intestate may be granted to the licensed trust company, either alone or jointly, upon its own application, when so authorised.

5 (5) For the purposes of any application to the court for letters of administration to the estate of any deceased person, the court shall consider a licensed trust company, when authorised under subsection (4), to be in law entitled equally with any other person or class of persons to apply for and obtain a grant, but a licensed trust company, being so
10 entitled, shall not on that account alone be preferred to the widower, widow or next of kin of any intestate.

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

Procedure as to petitions

15 **24.**—(1) In all cases in which a licensed trust company is empowered under this Act to apply for probate or for letters of administration, any petition, declaration, account or affidavit or other necessary document may be made or sworn by any officer of the company duly authorised by the licensed trust company in that behalf.

20 (2) Subject to subsection (3), any officer of a licensed trust company appointed by the licensed trust company for that purpose may, on behalf of the licensed trust company, sign any petition, account or statement, take any oath, swear any affidavit, make any declaration, verify any act, give personal attendance at any court or place, and do any act or thing
25 whatsoever, which may be required to be signed, taken, sworn, made, verified, given or done on behalf of the licensed trust company.

(3) Nothing in this Act shall confer upon any person, not otherwise entitled thereto, any right to appear or be heard before or in any court on behalf of a licensed trust company or to do any act whatsoever on behalf
30 of a licensed trust company which could otherwise be lawfully done only by an advocate and solicitor of the Supreme Court.

Licensed trust company not to furnish security

25.—(1) Notwithstanding the provisions of the Probate and Administration Act (Cap. 251), no licensed trust company to which a grant

of letters of administration has been made shall be required to furnish security for the due administration of the estate.

(2) Notwithstanding the provisions of the Probate and Administration Act (Cap. 251) or any other Act, no licensed trust company appointed by the court to perform the duties of receiver, guardian, committee or any other office or trust shall be required to furnish security for the due performance of such duties.

Guardianship of person prohibited

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

(2) Any licensed trust company which accepts any appointment in contravention of subsection (1) shall be guilty of an offence.

PART V

CONDUCT OF BUSINESS

Limits for unsecured credit and credit facilities

27.—(1) A licensed trust company shall not grant, whether directly or indirectly, any unsecured credit facility to any of its directors other than a director who is its employee.

(2) Subject to section 162 of the Companies Act (Cap. 50), a licensed trust company shall not grant, whether directly or indirectly, any unsecured credit facility to any of its officers or employees, other than a director who is not its employee, which in the aggregate and outstanding at any one time exceeds one year's emoluments of such officer or employee.

(3) In this section —

“director”, in relation to a licensed trust company, means a director of the licensed trust company and includes a person associated with or connected to such director;

“market value” in relation to assets which are securities listed for quotation or quoted on a securities exchange or an overseas securities exchange, means —

- 5 (a) the last transacted price of the securities traded on the exchange on the preceding business day;
- (b) if there was no trading in the securities on the exchange on the preceding business day, then, subject to paragraph (c), the lower of the last transacted price and the last bid price of the securities on the exchange; or
- 10 (c) if there was no trading in the securities on the exchange in the preceding 30 days, the value of the securities as estimated by the exchange or the holder and approved by the Authority;

“unsecured credit facility” includes —

- 15 (a) any advance, loan or credit facility made by the licensed trust company to its officer or employee, as the case may be, without security, whether it has been drawn down or not;
- (b) in respect of any advance, loan or credit facility made by the licensed trust company to its officer or employee, as the case may be, with security, any part thereof which at any time exceeds the market value of the assets constituting that security or, where the Authority is satisfied that there is no established market value for those assets, on the basis of a valuation approved by the Authority; and
- 20 (c) any guarantee or performance bond entered into by the licensed trust company, or the provision of any security by the licensed trust company, in connection with any loan, advance or credit facility made by another party to its officer or employee, as the case may be.

- 30 (4) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 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.

Priority to orders of protected parties

28.—(1) A licensed trust company or any of its employees involved in the management of the assets of an express trust shall not enter into any transaction for the purchase or sale of securities or futures contracts for its or his own account unless all instructions to purchase or sell securities or futures contracts of the same class for the account of the trust have been fulfilled.

(2) Any person who contravenes 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 3 years or to both.

PART VI

BOOKS, ACCOUNTS AND AUDIT

Division 1 — Books and Accounts

Keeping of books and furnishing of returns

29.—(1) A licensed trust company shall keep, or cause to be kept, such books as will —

(a) sufficiently explain —

(i) the transactions and financial position of its business; and

(ii) where the licensed trust company acts as a trustee of any express trust, the transactions entered into by the licensed trust company on behalf of the trust and the financial position of such trust; and

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

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

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

(3) A licensed trust company shall retain such books as may be required to be kept under this Act for a period of not less than 6 years.

(4) A licensed trust company shall —

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

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

10 (5) The Authority may, without prejudice to section 83, make regulations in respect of all or any of the matters in this section, including the keeping of such books, by a licensed trust company, in such form and manner as the Authority may prescribe.

15 (6) Any licensed trust company which, without reasonable excuse, contravenes subsection (1) or (3) or any regulations made under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

20 (7) Any licensed trust company which, without reasonable excuse, contravenes subsection (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.

Division 2 — Audit

Appointment of auditors

25 **30.**—(1) A licensed trust company shall appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such licensed trust company, the licensed trust company shall, as soon as practicable thereafter, appoint another auditor.

30 (2) Notwithstanding any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a licensed trust company —

(a) at any time direct the licensed trust company to remove the auditor; and

(b) direct the licensed trust company, as soon as practicable thereafter, to appoint another auditor,

and the licensed trust company shall comply with such direction.

(3) Any licensed trust company which contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Lodgment of annual accounts, etc.

31.—(1) A licensed trust company shall, in respect of each financial year —

(a) prepare a true and fair profit and loss account and a balance-sheet in relation to its business made up to the last day of the financial year; and

(b) lodge that profit and loss account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the profit and loss account and balance-sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a licensed trust company to the Authority and the Authority is satisfied that there is a special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority may think fit to impose.

(3) A licensed trust company shall submit to the Authority at such intervals and in such manner as the Authority may specify, consolidated statements or information relating to trusts that are administered by the licensed trust company or for which it provides trust administration services.

(4) Any licensed trust company which contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum fine of \$50,000.

(5) Any licensed trust company which contravenes any condition or restriction imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Reports by auditor to Authority in certain cases

5 **32.**—(1) Where, in the performance of his duties as an auditor for a licensed trust company, an auditor becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the licensed trust company to a material extent;
- 10 (b) any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise
15 the moneys or other assets of any protected party of the licensed trust company,

the auditor shall immediately thereafter send a report in writing of the matter or irregularity to the Authority.

20 (2) Any auditor who contravenes subsection (1) shall be guilty of an offence.

Power of Authority to appoint auditor

33.—(1) Where —

- (a) a licensed trust company fails to lodge an auditor's report under section 31; or
- 25 (b) the Authority receives a report under section 32,

the Authority may, without prejudice to its powers under section 37, if it is satisfied that it is in the interests of the licensed trust company, any protected party of the licensed trust company or the general public, appoint in writing an auditor to examine and audit, either generally or in
30 relation to any particular matter, the books of the licensed trust company.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the licensed trust company, the

Authority may by notice in writing, direct the licensed trust company to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

5 (3) Where a licensed trust company fails to comply with a direction under subsection (2), the amount specified in the direction may be recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) shall, on the conclusion of the examination and audit, submit a report to the Authority.

10 (5) Any auditor who contravenes subsection (4) shall be guilty of an offence.

Offence to destroy, conceal, alter, etc., books

34.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any audit under this Part —

15 (a) destroys, conceals or alters any book relating to the business of a licensed trust company or any trust that is administered by the licensed trust company; or

(b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of a licensed trust company,

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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.

25 (2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

(a) destroyed, concealed or altered any book referred to in subsection (1)(a); or

(b) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1)(b),

30

the onus of proving that, in so doing, he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

Safeguarding of books

35.—(1) A licensed trust company shall take reasonable precautions —

(a) to prevent falsification of the books required to be kept by it under this Act; and

5 (b) to facilitate the discovery of any falsification of any such book.

(2) Any licensed trust company which contravenes this section shall be guilty of an offence.

Restriction on auditor's and employee's right to communicate certain matters

10 36.—(1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 33 or carrying out any duty imposed under section 37, and any employee of such an auditor, shall not disclose any information which may
15 come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

(a) the Authority; and

(b) in the case of an employee of such auditor, the auditor.

20 (2) Any auditor who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any employee of an auditor who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Additional powers of Authority in respect of auditors

25 37.—(1) The Authority may impose all or any of the following duties on an auditor of a licensed trust company:

(a) a duty to submit to the Authority such additional information in relation to his audit as the Authority considers necessary;

30 (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the licensed trust company;

(c) a duty to carry out any other examination or establish any procedure in any particular case;

(d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

5 and the auditor shall carry out such additional duty or duties.

(2) A licensed trust company shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

10 (3) Any auditor who contravenes subsection (1) shall be guilty of an offence.

(4) Any licensed trust company which contravenes subsection (2) shall be guilty of an offence.

Defamation

15 **38.**—(1) No auditor of a licensed trust company or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of—

(a) any statement made orally or in writing in the discharge of his duties under this Part; or

20 (b) the submission of any report to the Authority under section 32(1), 33(4) or 37(1)(d).

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

PART VII

SUPERVISION AND INVESTIGATION

Division 1 — General

Self-incrimination

39.—(1) A person is not excused from disclosing any information to the Authority, pursuant to a requirement made of him under this Part, on the

ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing any information that he is required to disclose by a requirement made of him under this Part, that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings under this Act.

Savings for advocates and solicitors and foreign lawyers

40.—(1) Nothing in this Part shall —

(a) compel an advocate and solicitor or a foreign lawyer to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or

(b) authorise the taking of any such document or other material which is in his possession.

(2) An advocate and solicitor or a foreign lawyer who refuses to disclose the information or produce the document or other material referred to in subsection (1) 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, that privileged communication was made.

(3) Any advocate and solicitor or foreign lawyer who contravenes subsection (2) shall be guilty of an offence.

Division 2 — Inspection Powers of Authority

Inspection by Authority

41.—(1) The Authority may from time to time inspect, under conditions of secrecy, the books in the possession, custody or control of a licensed trust company and of any branch, agency or office outside Singapore opened by a licensed trust company that is incorporated in Singapore.

(2) For the purposes of an inspection under this section —

(a) the licensed trust company, or any person who is in possession of the books of the licensed trust company, shall produce such

books to the Authority and give such information or facilities as may be required by the Authority;

(b) the licensed trust company shall procure that any person who is in possession of its books shall produce the books to the Authority and give such information or facilities as may be required by the Authority; and

(c) the Authority may —

(i) make copies of, or take possession of, any of such books;

(ii) use, or permit the use of, any of such books for the purposes of any proceedings under this Act; and

(iii) retain possession of any of such books for so long as is necessary —

(A) for the purposes of exercising a power conferred by this section (other than subsection (4));

(B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or

(C) for such proceedings to be commenced and carried on.

(3) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) Subject to Part VIII, while the books of a licensed trust company are in the possession of the Authority, the Authority —

(a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled (whether under any written law, rule of law or contract) to inspect if they were not in the possession of the Authority; and

(b) may permit another person to inspect any of the books.

(5) The Authority may require a person who produced any book to the Authority to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (5) 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 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.

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Division 3 — Investigative Powers of Authority

Investigation by Authority

42.—(1) The Authority may conduct such investigation, under conditions of secrecy, as it considers necessary or expedient for any of the following purposes:

- 10 (a) to perform any of the Authority’s functions under this Act;
- (b) to ensure compliance with this Act or any written direction issued under this Act; or
- (c) to investigate any alleged or suspected contravention of any provision of this Act.

15 (2) The Authority may exercise any of its powers for the purposes of conducting an investigation under this Division notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

20 (3) A requirement imposed by the Authority in the exercise of its powers under this Division shall have effect notwithstanding any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

25 (4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

30 (5) No civil or criminal action, other than proceedings for an offence under section 47, shall lie against any person for —

- (a) providing information or producing books to the Authority if he had provided the information or produced the books in good faith

in compliance with a requirement imposed by the Authority under this Division; or

- (b) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

Power to order production of books

43. For the purpose of an investigation under this Division, the Authority may by notice in writing, require any person to provide information or produce any book relating to any matter under investigation at a specified time and place, and such person shall immediately comply with that requirement.

Application for warrant to seize books not produced

44.—(1) Where the Authority has reasonable grounds to suspect that there is, on any particular premises, any book the production of which has been required under section 43, and —

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,

the Authority may apply to a Magistrate for the issue of a warrant to search the premises for such book.

(2) Whenever it appears to a Magistrate, upon an application made under subsection (1) and after such enquiry as he may think necessary, that there are reasonable grounds for suspecting that there is, on any particular premises, any book the production of which has been required under section 43, and —

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,

the Magistrate may issue a warrant authorising the Authority or any person named therein, with or without assistance —

- (i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and
- (ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.

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(3) The powers conferred under subsections (1) and (2) are in addition to, and are not in derogation of, any other power conferred by any other written law or rule of law.

(4) In this section, “premises” includes any structure, building, aircraft, vehicle, vessel or place.

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Powers where books are produced or seized

45.—(1) This section shall apply where —

- (a) books are produced to the Authority under a requirement imposed under section 41;
- (b) under a warrant issued under section 44, the Authority or a person named therein —
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
- (c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

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(2) If subsection (1)(a) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —

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- (a) inspect, and make copies of, or take extracts from, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings; and
- (c) retain possession of any of the books for so long as is necessary —

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(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such book; or

(iii) for such proceedings to be commenced and carried on.

(4) No person shall be entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b), to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) Subject to Part VIII, while the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(b), the Authority or the person —

(a) may permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person would be entitled (whether under any written law, rule of law or contract) to inspect if they were not in the possession of the Authority or the first-mentioned person; and

(b) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, a person referred to in subsection (1)(b) may deliver any of the books into the possession of the Authority or of a person authorised by it to receive them.

(7) If subsection (1)(a) or (b) applies, the Authority, a person referred to in subsection (1)(b) or a person into whose possession the books are delivered under subsection (6) may require —

(a) if subsection (1)(a) applies, a person who so produced any of the books; or

(b) in any other case, a person who was a party to the compilation of any of the books,

to explain, to the best of his knowledge and belief, any matter about the compilation of any of the books or to which any of the books relate.

Powers where books not produced

46. Where a person fails to comply with a requirement imposed by the Authority under section 43 to produce any book, the Authority may require the person to state, to the best of his knowledge and belief —

- 5 (a) the place where such book may be found; or
- (b) the person who last had possession, custody or control of such book and the place where that person may be found.

Offences under this Division

10 47.—(1) Any person who, without reasonable excuse, refuses or fails to comply with a requirement imposed under section 43, 45(7) or 46 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.

15 (2) Any person who, in purported compliance with a requirement imposed under section 43, 45(7) or 46, furnishes information or makes a statement that is false or misleading in a material particular 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.

20 (3) It shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

25 (4) Any person who conceals, destroys, mutilates or alters any book relating to a matter that the Authority is investigating or about to investigate under this Division or, where such a book is within the territory of Singapore, takes or sends the book out of Singapore 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.

30 (5) Any person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under section 43, 45 or 46, or obstructs or hinders a person who is executing a warrant issued under section 44 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.

(6) Any occupier or person in charge of the premises that a person enters under a warrant issued under section 44 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

PART VIII

DISCLOSURE OF INFORMATION

Inspection in Singapore by parent supervisory authority

48.—(1) In relation to a licensed trust company that is incorporated outside Singapore, the parent supervisory authority may, with the prior written approval of the Authority and under conditions of secrecy, conduct an inspection in Singapore of the books, accounts and transactions of any branch or office of that licensed trust company in Singapore in accordance with this section if the following conditions are satisfied:

(a) the inspection is required by the parent supervisory authority for the sole purpose of carrying out its supervisory functions;

(b) the parent supervisory authority —

(i) is prohibited by the laws applicable to the parent supervisory authority from disclosing information obtained by it in the course of the inspection to any other person; or

(ii) has given to the Authority such written undertaking, as to the confidentiality of the information obtained, as the Authority may determine; and

(c) the parent supervisory authority has given a written undertaking to the Authority to comply with the provisions of this Act and such conditions as the Authority may impose under subsection (2).

(2) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, require the parent supervisory authority to comply with conditions relating to —

- (a) the classes of information to which the parent supervisory authority shall or shall not have access in the course of the inspection;
- (b) the conduct of the inspection;
- 5 (c) the use or disclosure of any information obtained in the course of the inspection; and
- (d) such other matters as the Authority may determine.

10 (3) Subject to compliance by a parent supervisory authority with such conditions as the Authority may impose under subsection (2), a licensed trust company under inspection —

- 15 (a) shall afford the parent supervisory authority access to such books, accounts and documents of the branch or office of the licensed trust company under inspection, and provide such information (including information relating to the licensed trust company's internal control systems) and facilities as may be required to conduct the inspection; and
- 20 (b) shall not be required to afford the parent supervisory authority access to its books, accounts and documents or to provide information or facilities at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the licensed trust company.

25 (4) A parent supervisory authority may, with the prior written approval of the Authority, appoint another body to conduct the inspection under subsection (1), and in such event the provisions of this section shall apply to the appointed body as they apply to the parent supervisory authority.

30 (5) For the purposes of ensuring the confidentiality of any information obtained in the course of an inspection by a parent supervisory authority under this section, section 50(1) shall, with the necessary modifications, apply to any official of the parent supervisory authority as if the official is an officer of a licensed trust company.

35 (6) Any licensed trust company which refuses or neglects, without reasonable excuse, to afford access to any book, account or document or provide any information or facility as may be required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 and, in the case of a continuing offence, to a further

fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

Confidentiality of inspection and investigation reports

5 **49.**—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced in respect of any licensed trust company in Singapore —

(a) by the Authority upon an inspection under section 41 or an investigation under section 42; or

10 (b) by a parent supervisory authority upon an inspection under section 48,

the report shall not be disclosed by the licensed trust company, or any officer or auditor of the licensed trust company, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

15 (a) by the licensed trust company in Singapore to any officer or auditor of that licensed trust company solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that licensed trust company;

20 (b) by any officer or auditor of the licensed trust company in Singapore to any other officer or auditor of that licensed trust company, solely in connection with the performance of their duties in that licensed trust company;

(c) to the Authority if requested by the Authority, where the report has been produced by a parent supervisory authority; or

25 (d) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions as it considers appropriate.

30 (4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the licensed trust company.

(5) Any person who contravenes subsection (1) or fails to comply with any condition imposed by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction —

- 5 (a) in the case of an individual, to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$150,000.

(6) Any person who solicits or procures the disclosure to himself or to any other person of any written report or any part thereof in contravention of subsection (1) shall be guilty of an offence.

- 10 (7) If any person to whom any written report referred to in subsection (1) or any part thereof is disclosed knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of that subsection, it shall be his duty to report the disclosure to the Authority and take any one or more of the following
- 15 actions, as appropriate, as soon as is practicable:

- (a) where the disclosure was made in any written form, to surrender or take all reasonable steps to surrender the report and all copies thereof to the Authority;
- 20 (b) where the disclosure was made in an electronic form, to take all reasonable steps to ensure that all electronic copies of the report received by him are deleted;
- (c) to take such other action as the Authority may direct.

(8) Any person who contravenes subsection (7) shall be guilty of an offence.

25 **Confidentiality**

30 **50.**—(1) Information regarding a protected party or the business or other affairs of the protected party (referred to in this section as protected information) shall not, in any way, be disclosed by a licensed trust company in Singapore or any of its officers to any other person except as expressly provided in this Act.

(2) A licensed trust company in Singapore or any of its officers may, for such purpose as may be specified in the first column of the Third Schedule, disclose protected information to such persons or class of persons as may be specified in the second column of that Schedule, and in

compliance with such conditions as may be specified in the third column of that Schedule.

(3) Where protected information is likely to be disclosed in any proceedings referred to in item 3 or 4 of Part I of the Third Schedule, the court may, either of its own motion, or on the application of any party to the proceedings or the protected party to which the information relates —

(a) direct that the proceedings be held in camera; and

(b) make such further orders as it may consider necessary to ensure the confidentiality of the information.

(4) Where an order has been made by a court under subsection (3), any person who, contrary to such an order, publishes any information that is likely to lead to the identification of any party to the proceedings shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000.

(5) Any person (including, where the person is a body corporate, an officer of the body corporate) who receives protected information referred to in Part II of the Third Schedule shall not, at any time, disclose the information or any part thereof to any other person, except as authorised under that Schedule or if required to do so by an order of court.

(6) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$150,000.

(7) In this section and in the Third Schedule, unless the context otherwise requires —

(a) where disclosure of protected information is authorised under the Third Schedule to be made to any person which is a body corporate, such information may be disclosed to such officers of the body corporate as may be necessary for the purpose for which the disclosure is authorised under that Schedule; and

(b) the obligation of any officer or other person who receives protected information referred to in Part II of the Third Schedule shall continue after the termination or cessation of his

appointment, employment, engagement or other capacity or office in which he had received such information.

(8) For the avoidance of doubt, nothing in this section shall be construed to prevent a licensed trust company from entering into an express agreement with a protected party of that licensed trust company for a higher degree of confidentiality than that prescribed in this section and in the Third Schedule.

(9) Where, in the course of an inspection under section 41 or an investigation under section 42 or the carrying out of the Authority's function of supervising or regulating a licensed trust company, the Authority incidentally obtains protected information and such protected information is not necessary for the supervision or regulation of the licensed trust company by the Authority, then, such information shall be treated as secret by the Authority.

(10) Nothing in subsection (9) shall prevent the Authority from disclosing or publishing consolidated statements aggregating any information obtained by the Authority under section 31(3).

PART IX

APPEALS

Appeals

51. Subject to subsection (2), any applicant or licensed trust company which is aggrieved by —

- (a) the refusal of the Authority to grant a trust business licence;
- (b) the revocation or suspension of a trust business licence by the Authority;
- (c) the refusal of the Authority to grant an approval to a licensed trust company to appoint a person as its director or resident manager; or
- (d) the direction of the Authority to a licensed trust company to remove an officer from office or employment,

may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

Appeals to Minister

52.—(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
5 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.

10 (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
15 recommendations in the report.

Appeal Advisory Committees

53.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 52, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from
20 the financial services industry, and 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.

25 (3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to any trust business or any licensed trust company 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.

30 (4) 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.

(5) Every Appeal Advisory Committee shall have regard to —

- 5 (a) the interest of the public;
- (b) the interest of the protected parties of licensed trust companies; and
- (c) the safeguarding of sources of information.

10 (6) 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

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

Regulations for purposes of this Part

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

20 (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;
- 25 (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
- 30 (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 X

MISCELLANEOUS

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

5 **56.**—(1) Neither the application by a licensed trust company for registration as a member or shareholder in the books of any company or corporation nor the entry of the name of a licensed trust company in the books of any company or corporation constitutes a notice of trust.

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

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

Trusteeship

15 **57.**—(1) Subject to subsection (2), in all cases in which the court or any person or persons has or have power to appoint a trustee, whether as an original or a new or an additional trustee, to perform any legal trust or duty, a licensed trust company may be appointed in the same manner as if
20 the licensed trust company were a private individual.

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

Joint tenancy

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

Licensed trust company may act as agent

30 **59.**—(1) Subject to subsection (2), a licensed trust company may act under any deed or instrument by which the licensed trust company is appointed agent or attorney for any person, and all the powers conferred

upon the licensed trust company by any such deed or instrument may be exercised by such officer of the licensed trust company as the licensed trust company may appoint for that purpose.

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

Trust funds to be kept separate

10 **60.**—(1) All moneys, property and securities received or held by any licensed trust company in a fiduciary capacity shall always be kept distinct and in separate accounts from those of the licensed trust company and marked in the books of the licensed trust company for each particular trust, so that they may be distinguished from any other assets shown in the registers and other books of account kept by the licensed trust company and so that the trust moneys do not form part of, or are not mixed with, the
15 general assets of the licensed trust company.

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

20 (3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 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.

Unclaimed money to be paid into court

25 **61.**—(1) All money and assets which remain in the hands of a licensed trust company, as trustee of a trust constituted in Singapore, unclaimed by the person entitled to them for a period of 6 years after the time when they became payable to that person (except where payment has been restrained by order of a court of competent jurisdiction), together with such interest,
30 if any, as has been received by the licensed trust company in respect thereof, less any commission or other charges properly chargeable by the licensed trust company, shall be paid by the licensed trust company into court —

35 (a) under and in accordance with section 62 of the Trustees Act (Cap. 337); and

(b) within such time or at such intervals as may be prescribed.

(2) It shall not be necessary for a licensed trust company to obtain the concurrence or consent of any person to make payment into court in accordance with subsection (1).

5 **Falsification of records by officer, auditor, employee or agent of licensed trust company**

62. Any officer, auditor, employee or agent of any licensed trust company who —

- 10 (a) wilfully makes, or causes to be made, a false entry in any book of the licensed trust company;
- (b) wilfully omits to make, or causes to be omitted, an entry in any such book; or
- 15 (c) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any such book,

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.

Duty not to furnish false information to Authority

20 **63.—**(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
25 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.

30 (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 \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

Jurisdiction of court

5 **64.** 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 the offence.

Offences by bodies corporate

10 **65.**—(1) 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.

15 (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.

20 (3) In this section, “officer”, 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.

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

Offences by officers

25 **66.**—(1) Any person, being an officer of a licensed trust company, who fails to take all reasonable steps to secure —

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

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

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.

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the officer to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

General penalty

67. Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$12,500.

Penalty for corporations

68.—(1) Subject to subsections (2) and (3), where a corporation or body corporate is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that the court could, but for this subsection, impose as a fine for that offence.

(2) Subsection (1) shall not apply to —

(a) offences under sections 7(3), 11(2), 13(6), 14(6), 21(2), 29, 30(3), 31(4) or (5), 48(6), 49(5)(b) or 51(6)(b); or

(b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

(3) Where an individual is convicted of an offence under this Act by virtue of section 65, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall not apply.

Proceedings with consent of Attorney-General

69. Proceedings for an offence under this Act may be taken only with the consent of the Attorney-General.

Composition of offences

70. 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 one half of the maximum fine prescribed for that offence.

Power to make regulations giving effect to treaty, etc., relating to trust business

71.—(1) Without prejudice to the generality of section 83, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to trust business, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

- (a) exemptions from the requirements relating to —
 - (i) the licensing, approval or registration of any person; or
 - (ii) the lodgment or registration of any document,
 under this Act;
- (b) exemptions from any requirement in this Act;
- (c) the application of this Act with such modifications as may be necessary;
- (d) the revocation or withdrawal of any exemption granted; and
- (e) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

Opportunity to be heard

72. 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.

Power to reprimand for misconduct

73.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public or of the protection of the protected parties of licensed trust companies, reprimand the relevant person.

(2) In this section —

“misconduct” means —

(a) the contravention of —

(i) any provision of this Act;

(ii) any condition or restriction of a licence or an exemption granted under this Act;

(iii) any written direction issued by the Authority under this Act; or

(iv) any code, guideline, policy statement or practice note issued or published under section 75;

(b) the failure by an officer of a licensed trust company or an exempt person to discharge any duty or function of his office; or

(c) the commission of an offence under section 65 or 66(1);

“officer” —

(a) in relation to a body corporate, means a director, chief executive, manager, resident 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;

“partner” includes a person purporting to act as a partner;

“relevant person” means any licensed trust company, exempt person, or officer of a licensed trust company or an exempt person.

Appointment of assistants

74.—(1) Subject to subsection (2), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(2) The Authority may, by notification published in the *Gazette*, appoint one or more of its officers to exercise the power to grant an exemption to any person under a provision of this Act or to revoke any such exemption.

(3) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

Codes, guidelines, etc., by Authority

75.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes 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, policy statement, practice note or no-action letter 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, policy statement, practice note 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, policy statement, practice note or no-action letter; and
- (b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter however expressed shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) Any failure of a person to comply with any provision of a code, guideline, policy statement or practice note 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, guideline, policy statement or practice note 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, policy statement, practice note 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.

Power of Authority to publish information

76.—(1) The Authority may, where it thinks it necessary or expedient in the interest of the public, a section of the public or the protected parties of licensed trust companies, publish in such form or manner as it thinks fit —

(a) any information relating to —

(i) any licensed trust company;

(ii) any exempt person; or

(iii) any other person or class of persons granted an exemption under section 81; or

(b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

5 (2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to —

(a) the lapsing, revocation or suspension of the approval, licence or exemption granted to any person referred to in subsection (1);

(b) the removal of an officer of any person referred to in subsection (1);

10 (c) the composition of any offence —

(i) under this Act committed by any person; or

(ii) under any other law (whether of Singapore or any country or territory outside Singapore) involving a person referred to in subsection (1);

15 (d) any civil or criminal proceedings brought —

(i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or

20 (ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;

25 (e) any disciplinary proceedings brought against any person referred to in subsection (1) by the Authority and the outcome of such proceedings; and

(f) any other action as may have been taken by the Minister or the Authority against any person referred to in subsection (1).

Power of Authority to issue written directions

30 77.—(1) The Authority may, if it thinks it necessary or expedient in the interest of the public or the protected parties of licensed trust companies, issue written directions, either of a general or specific nature, to —

(a) any licensed person;

(b) any exempt person;

(c) any officer of a licensed person or an exempt person; or

(d) any class of the persons referred to in paragraphs (a), (b) or (c),

to comply with such requirements as the Authority may specify in the written directions.

(2) Without prejudice to the generality of subsection (1), any written direction may be issued with respect to —

(a) the standards to be maintained by the person concerned in the conduct of his business;

(b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

(c) the qualifications, experience and training of the officers of the licensed person or exempt person.

and the person to whom such direction is issued shall comply with the direction.

(3) Any person who contravenes any of the directions issued under 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 of \$5,000 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.

(5) The Authority may at any time vary, rescind or revoke any written direction under subsection (1).

Power of court to make certain orders

78.—(1) Where on the application of the Authority, it appears to the court that a person —

(a) has committed an offence under this Act;

(b) has contravened any condition or restriction of a licence; or

(c) is about to do an act that, if done, would be an offence or contravention,

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:

- 5 (i) in the case of a persistent or continuing breach of this Act or of any condition or restriction of a licence, an order restraining a person from carrying on any or all of the trust business or from holding himself out as so carrying on any or all of the trust business or so acting;
- 10 (ii) 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;
- (iii) any ancillary order deemed to be necessary or desirable in consequence of the making of any of these orders.

15 (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.

20 (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.

25 (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

30 **79.—**(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, the court may, on the application of the Authority, grant an injunction restraining the 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 to do, the court may, on the application of the Authority, make an order requiring the person to do that act or thing.

5 (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
10 order requiring a person to do any act or thing, pending the determination of the application.

(4) 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 the Authority or by any person affected by the injunction,
15 order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(5) 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
20 injunction, order, interim injunction or interim order is rescinded.

(6) 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
25 to both.

(7) 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 —

30 (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

35 (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.

(8) 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.

(9) Where the Authority 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 the Authority or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(10) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.

Service of documents

80.—(1) Any notice or direction to be given or served by the Authority on a person shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(2) In the case of a corporation, the last known address referred to in subsection (1) shall be —

- (a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or
- (b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not

maintain a place of business in Singapore, its registered office in the place of its incorporation.

Exemption

5 **81.**—(1) The Authority may, by regulations, exempt any person 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, by notice in writing exempt the person from all or any of the provisions of this Act or the requirements specified in any written direction made by the Authority under this Act if the Authority considers it appropriate to do so in the
10 circumstances of the case.

(3) An exemption granted under subsection (2) —

(a) may be granted subject to such conditions or restrictions as the Authority may specify by notice in writing;

15 (b) need not be published in the *Gazette*; and

(c) may be withdrawn at any time by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (1) or (3)(a) shall be guilty of an offence.

Amendment of Schedules

20 **82.**—(1) The Minister may, by order published in the *Gazette*, amend, add to or vary the First, Second or Third Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

25 (3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

Regulations

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

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

- (a) applications for the grant of licences under this Act and matters incidental thereto;
 - (b) the minimum financial and other requirements that an applicant must fulfil for it to be issued a licence under this Act;
 - 5 (c) the activities of, and standards to be maintained by, a licensed trust company, an exempt person or any person who is granted an exemption under section 81, including the manner, method and place of conducting trust business; and
 - (d) the particulars to be recorded in, or in respect of, books kept by a licensed trust company.
- 10 (3) Except as otherwise expressly provided in this Act, the regulations made under this Act —
- (a) may be of general or specific application;
 - (b) may provide that a contravention of any specified provision thereof shall be an offence; and
 - 15 (c) may provide for penalties not exceeding a fine of \$25,000 or imprisonment for a term not exceeding 12 months or both for each offence.

Consequential amendments to other written laws

- 20 **84.** The Minister may, by order published in the *Gazette*, repeal or amend any written law which appears to him to be —
- (a) unnecessary having regard to the provisions of this Act; or
 - (b) inconsistent with any provision of this Act.

Repeal of Trust Companies Act

- 25 **85.** The Trust Companies Act (Cap. 336) is repealed.

Transitional and savings provisions

- 86.** The Authority may, by regulations, prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient.

FIRST SCHEDULE

Section 2

TRUST BUSINESS

1. The following businesses constitute trust business for the purposes of this Act:
 - 5 (a) the provision of services with respect to the creation of an express trust;
 - (b) acting as trustee in relation to an express trust;
 - (c) arranging for any person to act as a trustee in respect of an express trust; and
 - (d) the provision of trust administration services in relation to an express trust.
2. In this Schedule, “provision of trust administration services” includes —
 - 10 (a) the keeping of accounting records relating to an express trust and the preparation of trust accounts;
 - (b) the preparation of trust instruments or other documents relating to a trust;
 - (c) acting as a custodian without also acting as a trustee;
 - (d) the management and administration of trust assets subject to an express
15 trust;
 - (e) dealing with trust assets subject to an express trust, including the investment, transfer and disposal of such assets;
 - (f) the distribution of trust assets subject to an express trust; and
 - (g) the payment of expenses or remuneration out of a trust.

SECOND SCHEDULE

Section 3(3)

SPECIFIED PERSONS

1. The following persons are specified persons for the purposes of this Act:

- 5 (a) a bare trustee;
- (b) a trustee-manager of a registered business trust;
- (c) a person preparing or advising on a will; and
- (d) a person acting as the executor or administrator of the estate of a deceased person.

10 2. In this Schedule —

“bare trustee” means a trustee who has no beneficial interest in the subject matter of a trust;

“trustee-manager” has the same meaning as in section 2 of the Business Trusts Act 2004.

THIRD SCHEDULE

Section 50

PURPOSES FOR WHICH AND PERSONS TO WHOM PROTECTED
INFORMATION MAY BE DISCLOSED

PART I

FURTHER DISCLOSURE NOT PROHIBITED

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purposes for which confidential information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
1. Disclosure is permitted in writing by the settlor or a protected party about whom the information regards, or if he is deceased, his appointed personal representative.	Any person as permitted by the settlor or a protected party or, if he is deceased, his appointed personal representative.	
2. Disclosure is solely in connection with an application for a grant of probate or letters of administration in respect of a deceased protected party's estate.	Any person whom the licensed trust company in good faith believes is entitled to the grant of probate or letters of administration.	
3. Disclosure is solely in connection with — (a) where the protected party is an individual, the bankruptcy of the protected party; or	All persons to whom the disclosure is necessary for the purpose specified in the first column.	<i>Note: Court may order the proceedings to be held in camera [see section 50(3) and (4)].</i>

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
<p>(b) where the protected party is a body corporate, the winding up of the protected party.</p>		
<p>4. Disclosure is solely with a view to the institution of, or solely in connection with, the conduct of proceedings relating to a trust that is administered by a licensed trust company.</p>	<p>All persons to whom the disclosure is necessary for the purpose specified in the first column.</p>	<p><i>Note: Court may order the proceedings to be held in camera [see section 50(3) and (4)].</i></p>
<p>5. Disclosure is necessary for —</p> <p>(a) compliance with an order or request made under any specified written law to furnish information, for the purposes of an investigation or prosecution, of an offence alleged or suspected to have been committed under any written law; or</p> <p>(b) the making of a complaint or report under any specified written law for an offence alleged or suspected to have been committed under any written law.</p>	<p>Any police officer or public officer duly authorised under the specified written law to carry out the investigation or prosecution or to receive the complaint or report, or any court.</p>	

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purposes for which confidential information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
6. Disclosure is necessary for compliance with a garnishee order served on the licensed trust company attaching assets in a trust.	All persons to whom the disclosure is required to be made under the garnishee order.	
7. Disclosure is in compliance with the provisions of this Act, or any notice or directive issued by the Authority to licensed trust companies.	The Authority or any person authorised or appointed by the Authority.	

PART II

FURTHER DISCLOSURE PROHIBITED

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purposes for which confidential information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
1. Disclosure is solely in connection with the performance of duties as an officer, or a professional adviser of the licensed trust company.	Any — (a) officer of the licensed trust company in Singapore; (b) officer designated in writing by the head office of the licensed trust company; or	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
2. Disclosure is solely in connection with the conduct of internal audit of the licensed trust company or the performance of risk management.	<p>(c) auditor, lawyer, consultant or other professional adviser appointed or engaged by the licensed trust company under a contract for service.</p> <p>In the case of —</p> <p>(a) a licensed trust company incorporated outside Singapore —</p> <p>(i) the head office or parent company of the licensed trust company;</p> <p>(ii) any branch of the licensed trust company outside Singapore designated in writing by the head office of the licensed trust company; or</p>	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
	<ul style="list-style-type: none"> (iii) any related corporation of the licensed trust company designated in writing by the head office of the licensed trust company; or (b) a licensed trust company incorporated in Singapore — <ul style="list-style-type: none"> (i) the parent company; or (ii) any related corporation of the licensed trust company designated in writing by the head office of the licensed trust company. 	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
3. Disclosure is solely in connection with the performance of operational functions of the licensed trust company where such operational functions have been out-sourced.	Any person including the head office of the licensed trust company or any branch thereof outside Singapore which is engaged by the licensed trust company to perform the out-sourced functions.	If any out-sourced function is to be performed outside Singapore, the disclosure shall be subject to such conditions as may be specified in a written direction issued by the Authority or otherwise imposed by the Authority.
4. Disclosure is solely in connection with — (a) the merger or proposed merger of the licensed trust company or its holding company with another company; or	Any person participating or otherwise involved in the merger, acquisition or issue, or proposed merger, acquisition or issue, including any of his lawyers or other professional advisers (whether or not the merger or acquisition is subsequently entered into or completed).	

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purpose for which confidential information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
<p>(b) any acquisition or issue, or proposed acquisition or issue, of any part of the share capital of the licensed trust company or its holding company,</p> <p>whether or not the merger or acquisition is subsequently entered into or completed.</p>		

PART III

Interpretation

In this Schedule, unless the context otherwise requires —

- 5 “appointed personal representative”, in relation to a deceased person, means a person appointed as executor or administrator of the estate of the deceased person;
- 10 “lawyer” means an advocate and solicitor of the Supreme Court of Singapore, or a foreign lawyer any person who is duly authorised or registered to practise law in a country or territory other than Singapore by a foreign authority having the function conferred by law of authorising or registering persons to practise law in that country or territory;
- “public officer” includes any officer of a statutory board; and
- 15 “specified written law” means the Companies Act (Cap. 50), the Criminal Procedure Code (Cap. 68), the Goods and Services Tax Act (Cap. 117A), the Income Tax Act (Cap. 134), the Internal Security Act (Cap. 143), the Kidnapping Act (Cap. 151) and the Prevention of Corruption Act (Cap. 241).
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EXPLANATORY STATEMENT

This Bill seeks to repeal and re-enact with amendments the Trust Companies Act (Cap. 336) so as to provide for the licensing and regulation of trust companies and for matters connected therewith.

PART I

PRELIMINARY

Part I (clauses 1 and 2) deals with preliminary matters.

Clause 1 relates to the short title and commencement of the Bill.

Clause 2 defines certain terms used in the Bill.

PART II

LICENSING OF TRUST COMPANIES

Part II (clauses 3 to 15) contains provisions relating to the licensing of trust companies.

Clause 3 prohibits any person from carrying on any trust business or from holding himself out as carrying on any trust business in or from within Singapore unless that person is a licensed trust company. This requirement, however, will not apply to the persons specified in the Second Schedule.

The clause also prohibits any licensed trust company from establishing a place of business outside Singapore to carry on any trust business without the prior approval of the Monetary Authority of Singapore (“the Authority”).

Clause 4 sets out the procedure for the application for a trust business licence.

Clause 5 sets out the criteria on which the Authority will grant a trust business licence.

Clause 6 requires every licensed trust company to pay to the Authority such licence fee as may be prescribed.

Clause 7 empowers the Authority to attach conditions and restrictions to a trust business licence.

Clause 8 makes it an offence for any person to provide the Authority with false statements in connection with an application for a trust business licence.

Clause 9 imposes a duty on a licensed trust company to notify the Authority of changes in certain particulars relating to the licensed trust company.

Clause 10 sets out the circumstances under which a trust business licence will lapse, and empowers the Authority to revoke or suspend a trust business licence in certain circumstances.

Clause 11 sets out certain restrictions subject to which a licensed trust company may cease to carry on its trust business or surrender its trust business licence to the Authority.

Clause 12 allows the Authority to petition for the winding up of a licensed trust company under the Companies Act (Cap. 50).

Clause 13 requires a licensed trust company to obtain the approval of the Authority before appointing any person as its resident manager or director.

Clause 14 empowers the Authority to direct a licensed trust company to remove certain of its officers in certain circumstances.

Clause 15 exempts certain persons from having to obtain a trust business licence in respect of their carrying on of trust business.

PART III

CONTROL OF VOTING POWERS AND SHAREHOLDINGS

Part III (clauses 16 to 21) provides for the control of voting powers and shareholdings in licensed trust companies.

Clause 16 places certain restrictions in relation to the control of shareholdings and voting power in a licensed trust company.

Clause 17 provides for how a person may apply for the Authority's approval to become a controller of licensed trust company.

Clause 18 sets out the circumstances under which the Authority may serve a notice of objection on any person who controls a licensed trust company and imposes a duty on a person served with such a notice to comply with the requirements thereof.

Clause 19 imposes on a licensed trust company the duty to furnish the Authority with information relating to its controllers and the quantity of their control in the licensed trust company.

Clause 20 makes it an offence for any person to contravene clauses 16(1), 18(3) or 19 or to fail to comply with any condition imposed under clause 17(2).

Clause 21 places certain restrictions on the holding by a licensed trust company of issued shares or voting power in a corporation.

PART IV

PROBATE AND ADMINISTRATION

Part IV (clauses 22 to 26) replicates certain provisions of the Trust Companies Act (Cap. 336) (to be repealed by clause 85) in relation to the administration of estates by a licensed trust company.

Clause 22 allows a licensed trust company to act as an executor of the will of any testator and to apply for probate of the will.

Clause 23 allows any person who is entitled to apply for probate of the will of any testator to authorise a licensed trust company to apply for probate in his stead.

Clause 24 sets out the procedure to be followed when a licensed trust company petitions for probate or letters of administration.

Clause 25 exempts a licensed trust company from having to furnish security (as required under the Probate and Administration Act (Cap. 251)) for the administration of any estate in respect of which the licensed trust company has obtained letters of administration.

Clause 26 prohibits a licensed trust company from being appointed, or from accepting any appointment, as the guardian of an infant or as the committee of a mentally disordered person.

PART V

CONDUCT OF BUSINESS

Part V (clauses 27 and 28) regulates the conduct of business by a licensed trust company.

Clause 27 places certain restrictions on the granting of credit facilities by a licensed trust company to its directors.

Clause 28 prohibits a licensed trust company or any of its employees involved in the management of the assets of an express trust from entering into any transaction for the purchase or sale of securities or futures contracts for its or his own account unless all instructions to purchase or sell securities or futures contracts of the same class for the account of the trust have been fulfilled.

PART VI

BOOKS, ACCOUNTS AND AUDIT

Part VI (clauses 29 to 38) contains provisions relating to the auditing of the books and accounts of licensed trust companies.

Division 1 — Books and Accounts

Clause 29 requires a licensed trust company to keep certain books and to furnish certain returns to the Authority in relation to its transactions and financial position, and to the transactions entered by it on behalf of any trust for which it is acting as a trustee and the financial position of such trust.

Division 2 — Audit

Clause 30 requires a licensed trust company to appoint an auditor to audit its accounts.

Clause 31 requires a licensed trust company to lodge with the Authority its profit and loss account and balance-sheet for each financial year.

Clause 32 requires the auditor of a licensed trust company to report to the Authority certain matters or irregularities concerning the accounts or affairs of the licensed trust company which he discovers while performing his duties as such auditor.

Clause 33 empowers the Authority, in certain circumstances, to appoint an auditor to examine and audit the books of a licensed trust company.

Clause 34 makes it an offence for any person to destroy, conceal or alter any book relating to the business of a licensed trust company or any trust that is administered by the licensed trust company so as to prevent, delay or obstruct the carrying out of any audit in respect of the books of the licensed trust company.

Clause 35 imposes on a licensed trust company the duty to take reasonable precautions to prevent falsification of the books required to be kept by it under the Bill and to facilitate the discovery of any falsification of any such book.

Clause 36 prohibits (subject to certain exceptions) an auditor of a licensed trust company or any employee of such auditor from disclosing any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee.

Clause 37 empowers the Authority to impose certain additional duties on the auditor of a licensed trust company.

Clause 38 protects the auditor of a licensed trust company or an employee of such auditor, in the absence of malice, from liability for defamation that may arise from any statement made orally or in writing in the discharge of his duties or from the submission of any report to the Authority under clause 32, 33(4) or 37(1)(d).

PART VII

SUPERVISION AND INVESTIGATION

Part VII (clauses 39 to 47) spells out the powers of the Authority in relation to the supervision of licensed trust companies and the investigation of offences under the Bill.

Division 1 — General

Clause 39 provides that a person is not excused from disclosing information to the Authority pursuant to a requirement made of him under Part VII of the Bill on the ground that the disclosure of the information might tend to incriminate him.

Clause 40 preserves the position as regards privileged communication made by or to an advocate and solicitor in that capacity or otherwise. However, the advocate and solicitor is obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

Division 2 – Inspection Powers of Authority

Clause 41 confers power on the Authority to inspect, under conditions of secrecy, the books of a licensed trust company. The clause also sets out certain obligations of the licensed trust company in relation to inspections carried out by the Authority.

Division 3 – Investigative Powers of Authority

Clause 42 provides for the conduct of investigations by the Authority for the purposes of enforcing the Bill.

Clause 43 empowers the Authority to require any person to provide information or produce any book relating to any matter under investigation.

Clause 44 provides for the circumstances under which the Authority may apply to a Magistrate for the issue of a warrant to search premises and to seize books required to be produced under clause 43.

Clause 45 sets out the powers that the Authority has in regard to books produced under a requirement made under clause 43, books seized under a warrant issued under clause 44 or where books are delivered into the possession of the Authority.

Clause 46 provides that a person who fails to produce any book under clause 43 may be required by the Authority to state, to the best of his knowledge, the place where the book may be found, or the person who last had possession, custody or control of the book and the place where such person may be found.

Clause 47 sets out the penalties for certain contraventions, including a refusal or failure to comply with a requirement made under clause 43, 45(7) or 46.

PART VIII

DISCLOSURE OF INFORMATION

Part VIII (clauses 48 to 50) contains provisions regulating the disclosure of information.

Clause 48 allow for the inspection of the branches and offices of foreign trust companies in Singapore by the parent supervisory authority of such trust company with the approval of the Authority.

Clause 49 relates to the disclosure of reports prepared following an inspection or investigation by the Authority, or an inspection of the branch or office of a foreign trust company by its parent supervisory authority.

Clause 50 prohibits (subject to certain exceptions specified in the Third Schedule) the disclosure by a licensed trust company or its officers of information regarding a protected party or the business or other affairs of the protected party.

PART IX

APPEALS

Part IX (clauses 51 to 55) relates to the procedures for appeals made to the Minister under the Bill.

Clause 51 sets out the matters in respect of which an appeal may be made to the Minister.

Clause 52 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 give such directions as it thinks fit. Every appeal to the Minister has to be referred to an Appeal Advisory Committee, but the Minister is not bound by the recommendations of such Committee. The decision of the Minister on any appeal is final.

Clause 53 provides for the constitution and powers of the Appeal Advisory Committees. The clause 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.

Clause 54 provides that the Bill does not require the disclosure of information that the Minister or any public servant (including a member of an Appeal Advisory Committee deemed as such under clause 53) considers to be against the public interest to disclose.

Clause 55 empowers the Minister to make regulations relating to the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees.

PART X

MISCELLANEOUS

Part X (Clauses 56 to 86) contains miscellaneous provisions.

Clause 56 clarifies that the application by a licensed trust company for registration as a member or shareholder in the books of any company or corporation and the entry of the name of a licensed trust company in the books of any company or corporation do not constitute a notice of trust.

Clause 57 clarifies that a licensed trust company may be appointed as a trustee in all cases in which the court or any person has power to appoint a trustee, in the same manner as if the licensed trust company were a private individual.

Clause 58 clarifies that a licensed trust company, acting in a fiduciary capacity, is capable of acquiring and holding any property in joint tenancy in the same manner as if it were a private individual.

Clause 59 clarifies that a licensed trust company may act as an agent or attorney for any person under any deed or instrument by which the licensed trust company is so appointed as such agent or attorney.

Clause 60 requires a licensed trust company to keep all moneys, property and securities received or held by it in a fiduciary capacity distinct and in separate accounts from its own moneys, property and securities.

Clause 61 requires all unclaimed money and assets in the hands of a licensed trust company to be paid into court.

Clause 62 makes it an offence for any officer, auditor, employee or agent of a licensed trust company to falsify books, to wilfully omit to make an entry, or to alter, extract, conceal or destroy an entry, in any book.

Clause 63 imposes on persons who furnish the Authority with any information or sign any document lodged with the Authority under the Bill a duty to ensure that the information or document is not false or misleading.

Clause 64 empowers a District Court to try any offence under the Bill and to impose the full penalty or punishment in respect of the offence.

Clause 65 provides that where a body corporate, a partnership or other unincorporated association is guilty of an offence under the Bill, its officers, members or partners shall also be guilty of that offence under certain circumstances.

Clause 66 makes it an offence for an officer of a licensed trust company to fail to take all reasonable steps to ensure that the provisions of the Bill are complied with and that statements submitted under the Bill are accurate and correct.

Clause 67 prescribes the penalty for offences under the Bill where no penalty is expressly provided.

Clause 68 empowers a court to impose, on a corporation or body corporate that has been convicted of an offence under the Bill, up to 2 times the maximum fine that may otherwise be imposed but for the clause. Certain offences are, however, excluded from the application of the clause.

Clause 69 provides that proceedings for an offence under the Bill may be taken only with the consent of the Attorney-General.

Clause 70 empowers the Authority to compound any offence under the Bill that is prescribed as a compoundable offence.

Clause 71 empowers the Authority to make regulations to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to trust business, to which Singapore or the Authority is a party.

Clause 72 provides that the Authority may prescribe the manner in which a person is to be given an opportunity to be heard, where this is provided for in the Bill.

Clause 73 empowers the Authority to reprimand persons regulated under the Bill for misconduct, including an officer of a licensed trust company or an exempt person.

Clause 74 empowers the Authority to appoint assistants to assist it in the exercise of its powers, or the performance of its functions or duties, under the Bill.

Clause 75 empowers the Authority to issue and, in its discretion, publish such codes, guidelines, policy statements, practice notes and no-action letters as it considers necessary for providing guidance on, among others, the operation of the provisions of the Bill. The clause also provides that the failure by a person to observe any code, guideline, policy statement or practice note may be relied upon, by any party in civil or criminal proceedings, to establish or negate any liability in question. The clause further provides that the issue, by the Authority, of a no-action letter does not prevent the institution of proceedings against any person for a contravention of any provision of the Bill.

Clause 76 provides that the Authority may publish information relating any licensed trust company, exempt person or other person, and such other information as the Authority may have acquired under the Bill.

Clause 77 confers on the Authority the power to issue written directions if the Authority thinks it necessary or expedient in the interest of the public or the protected parties of licensed trust companies to do so. Any person who contravenes a direction issued under the clause commits an offence.

Clause 78 relates to the power of the court, on the application of the Authority, to make certain orders against any person who has committed, or is about to commit, an offence under the Bill (including an offence under any subsidiary legislation made thereunder).

Clause 79 provides for a court, on the application of the Authority, to grant an injunction to restrain a person from engaging in any conduct that constitutes or would constitute a contravention of the Bill, or to make an order requiring the person to do the act or thing required under the Bill.

Clause 80 relates to the service of documents under this Bill.

Clause 81 empowers the Authority to make regulations to exempt any person or any class thereof from all or any of the provisions of the Bill and to attach conditions and restrictions when granting such exemption.

Clause 82 empowers the Minister to amend, add to or vary the First, Second and Third Schedules.

Clause 83 empowers the Authority to make regulations for carrying out the purposes and provisions of the Bill and for the due administration thereof.

Clause 84 empowers the Minister to make consequential amendments to other written laws (by way of order published in the *Gazette*) arising from the enactment of this Bill.

Clause 85 repeals the Trust Companies Act (Cap. 336).

Clause 86 empowers the Authority to make regulations to prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient, arising from the enactment of this Bill.

The First Schedule (which is related to the new definition of “trust business” in section 2), describes the types of businesses that constitute trust business for the purposes of this Bill.

The Second Schedule specifies the persons to whom the prohibition in clause 3 against the carrying on of a trust business without a trust business licence will not apply.

The Third Schedule (which is related to clause 50) sets out the purposes for which and the persons to whom certain protected information may be disclosed.

EXPENDITURE OF PUBLIC MONEYS

This Bill will not involve the Government in any extra financial expenditure.