

INTEREST SCHEMES BILL 2015

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FIRST SCHEDULE

SECOND SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for the registration, administration and dissolution of schemes relating to interests and related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Interest Schemes Act 2015.

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

Interpretation

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

“advertisement” means the disseminating or conveying of information, invitation or solicitation by any means or in any form including oral and written communication by means of print, electronic and any other media;

“approved accounting standards” has the meaning assigned to it in the Companies Act 2015 [*Act*];

“approved company auditor” has the meaning assigned to it in the Companies Act 2015;

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

“company” means a company incorporated under the Companies Act 2015 or corresponding previous written law and includes a corporation that is a public company which is registered as a foreign company in Malaysia;

“corresponding previous written law” means any written law relating to companies which has been at any time in force in any part of Malaysia and which corresponds with any provision of this Act;

“Court” has the meaning assigned to it in the Companies Act 2015;

“director” has the meaning assigned to it in the Companies Act 2015;

“financial year”, in relation to a scheme, means the period of twelve months ending on 31 December or on such other date as specified in the trust deed or contractual agreement;

“foreign company” has the meaning assigned to it in the Companies Act 2015;

“foreign scheme” means a scheme relating to an interest of which the right to participate or a right to the interest in the scheme is offered by a management company which is a public company limited by shares on behalf of a foreign company;

“interest” means any interest or right to participate, whether enforceable or not and whether actual, prospective or contingent whether in Malaysia or elsewhere—

- (a) in any investment scheme;
- (b) in any time-sharing scheme; or
- (c) in any recreational membership scheme,

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

- (i) any shares in or debenture of a corporation;
- (ii) a capital market product as defined in section 2 of the Capital Markets and Services Act 2007 [*Act 617*];
- (iii) any interest in a partnership agreement unless the agreement—
 - (A) relates to a contract, arrangement, undertaking, or enterprise promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar contract, arrangement, undertaking or enterprise, whether or not that person is a party to the agreement; or
 - (B) is an agreement, or is within a class of agreements, prescribed by regulations for the purposes of this paragraph; or
- (iv) any participatory interest in any product offered by the licensees regulated under the Financial Services Act 2013 [*Act 758*] and the Islamic Financial Services Act 2013 [*Act 759*], approved issuers of a designated payment instruments regulated under the Financial Services Act 2013 and the Islamic Financial Services Act 2013 and development financial institutions prescribed under the Development Financial Institutions Act 2002 [*Act 618*];

“interest holder” means a person who participates in a scheme;

“management company”, in relation to any interests issued or proposed to be issued or any deed that relates to any interests issued or proposed to be issued, means a company incorporated under the Companies Act 2015 or corresponding previous written law by or on behalf of which the interests have been or are proposed to be issued;

“Minister” means the Minister charged with the responsibility for companies;

“officer” has the meaning assigned to it in the Companies Act 2015;

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

“product disclosure statement” means any product disclosure statement or invitation inviting applications or offers to subscribe for or purchase or offering for subscription or purchase any interest in a small scheme;

“prospectus” means any prospectus, notice, circular advertisement or invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any interest in premium scheme or foreign scheme;

“registered scheme” means a small scheme, premium scheme or foreign scheme registered and authorised by the Registrar in accordance with section 10;

“Registrar” means the Registrar as designated under section 20A of the Companies Commission of Malaysia Act 2001;

“scheme”, in relation to an interest, includes any contract, arrangement, undertaking, enterprise, programmes or plans of actions relating to an investment scheme, a time-sharing scheme or a recreational membership scheme;

“Shariah Advisory Committee” means a committee established by the Commission under section 43;

“Shariah compliant scheme” means a scheme referred to in section 4 of which the trust deed and prospectus or contractual agreement and product disclosure statement, whichever is applicable, are in compliance with the Shariah framework under section 43;

“small scheme” means a scheme relating to an interest of which the right to participate or right to the interest in the scheme is offered by a management company which is a company incorporated under the Companies Act 2015;

“unregistered scheme” means a scheme which is not registered or authorized under this Act or under the corresponding previous written law.

(2) A reference in this Act to a trust deed or contractual agreement shall be construed as including a reference to any instrument amending or affecting the trust deed or contractual agreement, as the case may be.

PART II

REGISTRATION OF SCHEMES

Issuance and requirement for registration of schemes

3. (1) No person except a management company may issue or offer to the public for the subscription or purchase of or invite the public to subscribe for or purchase any interest.

(2) No person shall—

(a) issue or cause to be issued any advertisement inviting any person to become participants in a scheme, or offering any person to become participants in a scheme, or containing information calculated to lead directly or indirectly any person to become participants in a scheme, or containing an offer to become participants in a scheme; or

(b) advise or procure any person to become or offer any person to become a participant in the scheme,

unless the scheme is registered and authorized under this Act.

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

Nature of schemes

4. (1) A scheme shall be either—

- (a) an investment scheme;
- (b) a recreational membership scheme;
- (c) a time-sharing scheme; or
- (d) a combination of such schemes.

(2) A scheme is an investment scheme if the interest holder does not have day-to-day control over the operation of the scheme, whether or not the interest holder has the right to be consulted or to give direction and that—

- (a) the interest holder contributes money or money's worth as a consideration to acquire a right or interest to profits, assets or realisation of any financial or business undertaking of the scheme, whether the right or interest are actual, prospective or contingent and are enforceable or not; or
- (b) the contribution by the interest holder is pooled or used in common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property for which the interest holder is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party.

(3) A scheme is a recreational membership scheme if—

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

(4) A scheme is a time-sharing scheme if—

(a) an interest holder is or may become entitled to use, occupy or possess for two or more periods during the period for which the scheme, whether in Malaysia or elsewhere is to operate, property to which the scheme relates; and

(b) the scheme is to operate for a period of not less than three years.

(5) A scheme referred to in subsection (2), (3) or (4) may be in the form of Shariah compliant scheme.

Types of schemes that may be registered

5. A scheme may be registered as a premium scheme, a small scheme or a foreign scheme.

Registration of premium scheme

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

(a) is a public company limited by shares incorporated under the Companies Act 2015 or corresponding previous written law;

(b) specifies in its constitution that the management of scheme is one of its main objects; and

(c) meets the minimum amount of paid up capital as determined by the Commission.

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

Registration of small scheme

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

- (a) is a company limited by shares incorporated under the Companies Act 2015 or corresponding previous written law;
- (b) specifies in its constitution that the management of the interest scheme is one of its main objects;
- (c) meets the minimum amount of paid up capital as determined by the Commission; and
- (d) will not raise fund exceeding the threshold as specified by the Commission.

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

Registration of foreign scheme

8. (1) An application for the registration of a foreign scheme may be made by a foreign company registered under Division 1 of Part V of the Companies Act 2015 provided that the foreign company—

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

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

Application for registration of a scheme

9. (1) A management company may apply to the Registrar in the manner as determined by the Registrar for the registration of one or more schemes referred to in section 5.

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

- (a) the name of the management company;
- (b) the names and addresses of the directors, secretary and auditor of the management company;
- (c) if the scheme or part of the scheme is managed by a third party, the names and addresses of the third party;
- (d) the names and addresses of the trustees appointed by the management company;
- (e) in the case of a foreign scheme, the names and addresses of the foreign company, its directors and agents in Malaysia as referred to in Division 1 of Part V of the Companies Act 2015 and the trustees appointed by the management company;
- (f) the amount proposed to be raised by the scheme; and
- (g) any other information as the Registrar may require.

(3) The application shall be accompanied with a prescribed fee and the following documents:

- (a) in the case of a premium scheme—
 - (i) a copy of the constitution of the management company;
 - (ii) a prospectus; and
 - (iii) a trust deed;

(b) in the case of a small scheme—

- (i) a copy of the constitution of the management company;
- (ii) a product disclosure statement; and
- (iii) a contractual agreement; or

(c) in the case of a foreign scheme—

- (i) a copy of certificate of incorporation of the foreign company at its country of origin or such other equivalent document;
- (ii) a copy of the constitution of the management company;
- (iii) a copy of the approval or registration by the relevant authority at its country of origin authorising the foreign company to offer interests under a scheme;
- (iv) a copy of a prospectus and an approved trust deed, or such other similar document in the country of origin;
- (v) a prospectus; and
- (vi) a trust deed.

(4) In considering the application made under subsection (3), the Registrar may direct the management company to furnish other document or further information or clarification.

(5) In relation to an application made under this section, the Registrar may—

- (a) require the management company to appear before the Registrar for personal representation;
- (b) direct the management company to compensate any person who have purchased any interest in the scheme prior to the application; or

- (c) restrain the management company from carrying on the following activities, including, but not limited to, activities which were carried on prior to the application:
- (i) promoting any interest relating to a scheme to members of the public;
 - (ii) dealing or generating interest in its products or offering of products;
 - (iii) printing, publishing or distributing or causing to be printed, published or distributed, written materials promoting interest schemes;
 - (iv) making any recommendation or offering advice, whether orally or in writing, to any person in relation to a product or a decision by a person regarding whether or not to invest in a product; or
 - (v) inducing, soliciting, collecting or receiving money from a person in relation to the scheme.

(6) The Registrar may approve or refuse the application if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

Certificate of authorization

10. (1) Upon approval of the application under section 9, the Registrar shall enter the particulars of the scheme in the register and—

(a) issue a certificate of authorization; and

(b) allocate an authorization number,

to the management company in respect of the scheme.

(2) In issuing a certificate of authorization, the Registrar shall have the power to impose any terms and conditions as he thinks fit.

(3) The certificate of authorization issued under this section shall be conclusive evidence that the requirements of this Act in respect of registration have been complied with and that the scheme is registered under this Act.

Power of Registrar to suspend certificate of authorization

11. (1) The Registrar shall have the power to suspend the certificate of authorization issued under section 10 if there is an action against the person to determine—

- (a) whether there is a contravention of any provision under this Act or the Companies Act 2015; or
- (b) whether there is a contravention of any condition or restriction imposed in relation to the approval.

(2) Upon the determination of the matters as specified in paragraph (1)(a) or (b) being made, the Registrar shall have the power to further suspend the certificate of authorization if the Registrar is satisfied that there is a case against the management company.

Revocation of certificate of authorization

12. (1) The Registrar may revoke the certificate of authorization issued under section 10 if—

- (a) the management company has contravened any provision of this Act;
- (b) the management company has contravened any provision of the Companies Act 2015;
- (c) the management company has failed to comply with any conditions imposed by the Registrar under subsection 10(2);
- (d) it is desirable in the interest of interest holders or potential interest holders to do so; or
- (e) the scheme is used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order or contrary to the national security or interest.

(2) Before revoking the certificate of authorization, the Registrar may serve on the management company a notice requiring the management company to show cause within thirty days from the date of the notice as to why the certificate of authorization should not be revoked.

(3) The Registrar shall revoke the certificate of authorization and shall cause the particulars relating to the scheme to be removed from the register, if—

- (a) the reply to the show cause notice issued under subsection (2) is not received within thirty days from the date of the notice; or
- (b) after considering the reply to the show cause notice issued under subsection (2), the Registrar is not satisfied with the cause shown.

(4) Upon revocation of a certificate of authorization under subsection (3), the Registrar shall have the power to direct the management company to—

- (a) compensate any person who have purchased any interest in the scheme;
- (b) restrain the management company from carrying on the activities under paragraph 9(5)(c); or
- (c) comply with any other direction that the Registrar thinks fit.

Appeal to the Minister on revocation

13. (1) A management company which is aggrieved by the decision of the Registrar under section 12 may appeal to the Minister in writing within thirty days after being notified of the decision.

(2) Where an appeal is made under subsection (1), the decision of the Registrar under section 12 shall not take effect until the appeal is disposed of by the Minister.

(3) On an appeal, the Minister may affirm, vary or set aside the decision of the Registrar or make any decision that the Minister thinks fit.

Power to refuse registration

14. The Registrar shall refuse to register the application of a proposed scheme if he is satisfied that—

- (a) the proposed scheme is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Malaysia; or
- (b) the registration of the proposed scheme would be contrary to the national security or interest.

Provision applicable to foreign schemes on reciprocity arrangement

15. (1) If, under—

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

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

(2) The notice under subsection (1) may not be served unless—

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

(3) The notice shall—

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

(4) The notice under subsection (1) may provide for the suspension, disqualification, restriction wholly or partly the administration of a scheme by a person and may provide for—

- (a) the withdrawal of the registration or approval of a scheme in Malaysia;
- (b) the disqualification of a person to register a scheme under this Act; or
- (c) the restriction, wholly or partly, of a person in respect of the administration of a scheme.

(5) A notice which partly restricts the administration of a scheme may prohibit a person from—

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

(6) For the purposes of this section, a person is connected with a foreign country, if—

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

Conversion from small scheme to premium scheme

16. (1) A small scheme may be converted to a premium scheme if its management company fulfils the requirement specified in section 6.

(2) A management company may apply to convert a small scheme to a premium scheme by lodging with the Registrar—

- (a) a statement signed by all of its directors in the manner and form as the Registrar may determine containing the information specified in subsection 9(2) and the following particulars:
 - (i) the name and authorization number of the small scheme;

- (ii) the date on which the small scheme was registered and authorized;
- (iii) that as at the application date, the management company appears to be able to pay its debts as the debts become due in the normal course of business;
- (iv) that as at the application date, all outstanding statutory fees or any amount owing to any government agency has been settled;
- (v) that the management company has placed an advertisement in at least one widely circulated newspaper in Malaysia and in the *Gazette* of its intention to convert to a premium scheme;
- (vi) that all of the interest holders relating to the small scheme have agreed with the application to convert to a premium scheme; and

(b) the documents referred to in paragraph 9(3)(a).

(3) The Registrar may, in any particular case, require the statement referred to in subsection (2) to be verified in the manner the Registrar thinks fit.

Registration of conversion

17. (1) Upon receiving of the statement and documents under section 16 and upon payment of a prescribed fee, the Registrar may, subject to the provisions of this Act, register the scheme as a premium scheme and issue a certificate of authorization in the form as the Registrar may determine stating that the premium scheme is registered under this Act, from the date specified in the notice.

(2) The Registrar may approve or refuse the application if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

Effect of conversion

18. From the date of registration of conversion—

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

PART III**TRUST DEED, TRUSTEES AND PROSPECTUS****Chapter 1***Trust Deed and Contractual Agreement***Approval of trust deed and contractual agreement**

19. (1) For the purposes of an application under section 9, an approval for a trust deed or contractual agreement shall only be granted if—

- (a) an approval for the appointment of trustee referred to in subsection 22(2) has been obtained; and
- (b) the approval for the appointment of the trustee has not been revoked and the trustee has not ceased office.

(2) In granting the approval, the Registrar shall have the power to impose any conditions that he thinks fit.

Contents of trust deed and contractual agreement

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

(2) The Registrar shall not grant his approval to a trust deed or a contractual agreement unless the trust deed or the contractual agreement contains the following:

- (a) the provisions relating to the appointment of trustees;
- (b) the covenants as set out in the First Schedule;
- (c) the provision on charges that may be made by the management company unless the charges do not exceed the percentages or amounts as are prescribed in the regulations;
- (d) the provision on the price at which the interests to which the trust deed or a contractual agreement relates are to be sold or purchased by the management company unless the price is consistent with the regulations; and
- (e) such other matters or things that are required to be included in the trust deed or contractual agreement as prescribed in the regulations.

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

Amendment to trust deed and contractual agreement and void provisions

21. (1) The parties to a trust deed or a contractual agreement may amend a trust deed or contractual agreement by supplemental trust deed or supplemental contractual agreement, as the case may be.

(2) No amendment of a trust deed or contractual agreement is valid unless the approval of a majority in value of interest holders has been obtained in the manner specified in the trust deed or contractual agreement.

(3) The Registrar may direct that the approval under subsection (2) be dispensed with if the Registrar is satisfied, subject to the trustee certifying the fact under that subsection, that the amendment—

- (a) is required only to enable the provisions of this Act or of the trust deed or contractual agreement to be complied with;
- (b) will not materially affect the existing benefits of the interest holders;
- (c) will not prejudice the interests of the interest holders;
- (d) does not amend the fundamental provisions or objects of the trust deed or contractual agreement; and
- (e) does not release the trustee from any responsibility to the interest holders.

Chapter 2

Trustees

Appointment of trustee

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

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

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

Eligibility for appointment as trustee

23. (1) The companies registered under the Trust Companies Act 1949 [*Act 100*] or any other person approved by the Minister, shall be eligible to be appointed as trustees.

(2) Notwithstanding subsection (1), no person shall be eligible to be appointed as trustee, if—

(a) the person is directly or indirectly associated with the persons who have control over the management company; or

(b) the person is an adjudicated bankrupt.

(3) For the purposes of this section, unless the contrary is proved, a person is presumed, to have control over the management company if the person is entitled to exercise or control the exercise of not less than twenty per centum of votes attached to the voting shares of the management company.

(4) If a trustee has been adjudicated bankrupt, the trustee shall no longer be eligible to act as a trustee and the management company shall immediately appoint a new trustee.

(5) A trustee who contravenes this section commits an offence and shall, upon conviction, be liable to a fine not exceeding three million ringgit.

Duties of trustee

24. (1) Every trustee shall—

(a) exercise all due diligence and vigilance in carrying out his functions and duties as a trustee and in monitoring the rights and interests of the interest holders to which the trust deed or contractual agreement, as the case may be, relates;

(b) ensure that the covenants in the trust deed, supplemental trust deed or contractual agreement and contents in the prospectus or product disclosure statement are delivered; and

(c) carry out his duties in a timely manner.

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

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

(3) The trustees shall notify the Registrar if the trustees know or have reasonable cause to believe there is an occurrence of any matter which has or likely to have a material adverse effect on the scheme.

(4) For the purposes of subsection (3), “material adverse effect” includes circumstances that may endanger the continued existence of the scheme or reduce the protection of interest holders in the scheme.

Liability of trustee

25. (1) Subject to this section, any provision contained—

- (a) in a trust deed or a contractual agreement that is or at any time has been approved by the Registrar; or
- (b) in any contract with the interest holders to which such a trust deed or contractual agreement relates,

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

(2) Subsection (1) shall not invalidate—

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

- (b) any provision enabling such a release to be given—
- (i) on the approval of a majority of not less than seventy five per centum of the interest holders to vote in person or by proxy at a meeting summoned for the purpose; and
 - (ii) with respect to specific acts or omissions or on the trustee ceasing to act.

Resignation and removal of trustees

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

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

(3) The notice under subsection (2) shall be invalid if the removal is objected by at least fifty per centum of the interest holders.

(4) The interest holders may remove the trustees by giving three months' notice to the trustee and the management company after the decision was made through a resolution of the meeting of the interest holders and agreed by not less than ten per centum of the interest holders present in person or by proxy.

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

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

(7) The trustees shall, on the resignation or removal, within fourteen days from the date of appointment of a new trustee, vest the trust accounts to the new trustees and deliver all books, documents, records and other property relating to the scheme to the new trustees.

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

(9) Upon the execution of the supplemental trust deed or supplemental contractual agreement, the new trustees shall exercise all powers, duties and obligations in respect of the scheme.

Chapter 3

Prospectus and Product Disclosure Statement

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

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

(a) in the case of a premium scheme or a foreign scheme, an approved trust deed; or

(b) in the case of a small scheme, an approved contractual agreement.

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

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

Requirement to register and lodge prospectus or product disclosure statement

28. (1) A prospectus or product disclosure statement shall not be issued, circulated or distributed by any person unless—

(a) the prospectus or product disclosure statement has first been registered by the Registrar; and

(b) the prospectus or product disclosure statement has complied with the provisions of this Act.

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

(3) A person shall not issue, circulate or distribute any form of application for subscription of interest of a scheme unless—

(a) he is authorized in writing by the Registrar; and

(b) the form is accompanied with a copy of a prospectus or product disclosure statement which has been registered by the Registrar.

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

Registration of prospectus or product disclosure statement

29. A prospectus or product disclosure statement shall be registered if—

(a) a copy of the prospectus or product disclosure statement signed by every director and every person who is named in the prospectus or product disclosure statement as a proposed director of the management company or by his agent authorized in writing is lodged with the Registrar on or before the date of its issue;

(b) the prospectus or product disclosure statement is submitted to the Registrar together with—

(i) a written application for the registration of the prospectus or product disclosure statement;

(ii) copies of all consents required under section 33;

- (iii) copies of all material contracts referred to in the prospectus or product disclosure statement or, in the case of a contract not reduced into writing, a memorandum giving full particulars of the contract, verified in accordance with any requirements specified by the Registrar; and
- (iv) any other information or documents as may be required by the Registrar.

Refusal to register prospectus or product disclosure statement

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

- (a) the Registrar is of the opinion that the prospectus or product disclosure statement does not comply with any provision of this Act;
- (b) the issue or invitation in respect of interests to which the prospectus or product disclosure statement relates does not comply with this Act; or
- (c) the Registrar is of the opinion that the prospectus or product disclosure statement contains any statement or information that is false or misleading or that the prospectus or product disclosure statement contains any statement or information from which there is a material omission.

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

(3) For the purposes of subsection (2), “director” includes any person named in the prospectus or product disclosure statement.

Keeping of documents relating to prospectus or product disclosure statement

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

- (a) any consent required under section 33 in relation to the issue of the prospectus or product disclosure statement; and
- (b) every material contract or document referred to in the prospectus or product disclosure statement,

to be deposited at the registered office of the management company in Malaysia after the registration of the prospectus or product disclosure statement and shall keep each copy for the period as may be specified by the Registrar.

(2) The copies referred to in subsection (1) shall be made available for inspection by any person without charge.

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

Contents of prospectus or product disclosure statement

32. (1) Every prospectus or product disclosure statement issued under this Act shall comply with the requirements relating to the contents of the prospectus or product disclosure statement as specified in the Second Schedule.

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

- (a) with regard to any matter not disclosed, the director or other person proves that he has no knowledge of the non-compliance or contravention;
- (b) the director or other person proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or

- (c) the non-compliance or contravention is in respect of a matter which in the opinion of the Court dealing with the case is immaterial or is otherwise in the opinion of the Court reasonable to be excused upon considering all the circumstances of the case.

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

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

(5) Nothing in this section shall limit or diminish any liability which any person may incur under this Act or any other written law.

Consent from person to issue prospectus or product disclosure statement containing his statement

33. (1) A prospectus or product disclosure statement which includes a statement purporting to be made by any person including experts, or to be based on a statement made by such person, shall not be issued unless—

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

(2) Subsection (1) shall not apply to a statement which is an extract of an official statement or any other statement as may be specified by the Registrar.

(3) If any prospectus or product disclosure statement is issued in contravention of this section, the management company and every person who is a party to the issue of the prospectus or product disclosure statement commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

Relief from requirements in relation to form and content of prospectus or product disclosure statement

34. (1) The Registrar may, on the application in writing by any person required to comply with subsection 32(1), relieve that person or approve any variation from the requirements of this Act relating to the form and content of a prospectus or product disclosure statement.

(2) In granting the relief or approval of the variation under subsection (1), the Registrar may impose such terms and conditions as the Registrar thinks fit.

(3) The Registrar shall not grant a relief or an approval of the variation under subsection (1) unless he has considered the nature and objectives of the scheme and is satisfied that—

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

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

Certain advertisement deemed to be prospectus or product disclosure statement

35. (1) Every advertisement offering or calling an attention to an offer or intended offer to the public in respect of interests shall be deemed to be a prospectus if the advertisement contains the following information:

- (a) the number and description of the interests;
- (b) the name and date of registration of the management company and its paid up share capital;
- (c) a concise statement of the general nature of the activity of the scheme, the names, addresses and occupations of the directors or proposed directors and the trustees for the interest holders;
- (d) the particulars of the opening and closing dates of the offer and the time and place at which copies of the full prospectus and forms of application for the interests may be obtained; and
- (e) states that applications for subscription of interests will proceed only on the forms of application being referred to, and attached to a printed copy of the prospectus.

(2) A statement that, or to the effect that, the advertisement is not a prospectus shall not affect the operation of this section.

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

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

(5) For the purposes of this section, if—

- (a) an advertisement offering or calling attention to an offer or intended offer of interests relating to a scheme to the public for subscription or purchase is published or disseminated;
- (b) the person who published or disseminated the advertisement before so doing, obtained a certificate signed by at least two directors of the management company, that the proposed advertisement is an advertisement that will not be deemed to be a prospectus by virtue of subsection (1); and
- (c) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of that subsection,

the management company and each person who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement, but no other person shall be deemed to be such a person.

(6) Any person who has obtained a certificate referred to in paragraph (5)(b) shall forthwith deliver the certificate to the Registrar when so requested by the Registrar.

(7) In this section—

- (a) where an advertisement that is deemed to be a prospectus by virtue of subsection (1) does not comply with the requirements of this Act as to prospectus, the person who published or disseminated the advertisement, and every officer of the management company concerned, or other person, who authorized or permitted the publication or dissemination, commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both; or
- (b) any person who contravenes subsection (6) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding two hundred and fifty thousand ringgit or to both and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(8) This section shall apply to product disclosure statement issued by a management company and any references to “prospectus” shall be construed as references to “product disclosure statement”.

(9) Nothing in this Act shall limit or diminish any liability which any person may incur in any other provisions under this Act or any other written law.

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

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

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

- (a) the interests have been offered to the public; and
- (b) the persons accepting the offer in respect of any interests were subscribers,

but without prejudice to the liability, if any, of the persons making the offer in respect of false or misleading statements or material omission in the document or otherwise.

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

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

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

(5) In addition to other requirements under this Part, the document making the offer shall state—

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

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

(7) This section shall apply to product disclosure statement issued by a management company and any references to “prospectus” shall be construed as references to “product disclosure statement”.

Information memorandum deemed to be prospectus or product disclosure statement

37. Any information memorandum purporting to describe the business affairs of the person making the offer issued by that person or his agent shall be deemed to be a prospectus or product disclosure statement, in so far as regarding the liability of the person or his agent, for any untrue statement or non-disclosure of material information.

Supplemental prospectus or replacement prospectus

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

- (a) a significant new matter has arisen being a matter the information of which is required by this Act to be disclosed in a prospectus;

- (b) there is a significant change affecting a matter disclosed in the prospectus;
- (c) the prospectus contained a material statement that is false or misleading; or
- (d) there is a material omission from the prospectus.

(2) After becoming aware of the matters referred to in subsection (1), the person shall, as soon as practicable, submit a supplemental or replacement prospectus, as the case may be.

(3) A supplemental prospectus shall—

- (a) clearly identify the prospectus to which the supplemental prospectus relates; and
- (b) contain a statement in bold or coloured print on each page of the supplemental prospectus stating that—
 - (i) it is a supplemental prospectus to be read in conjunction with the original prospectus; and
 - (ii) if other supplemental prospectus have been issued in relation to the same original prospectus, both the original prospectus and previous supplementary prospectus.

(4) The supplemental prospectus shall be deemed to be part of the original prospectus to which the supplemental prospectus relates and the provisions under this Chapter regarding the contents of prospectus and liability in respect of false or misleading statements and material omissions in a prospectus shall apply and have effect accordingly.

(5) Where a supplemental prospectus has been registered with the Registrar under subsection (1), every copy of the original prospectus shall be issued together with a copy of the supplemental prospectus.

(6) A replacement prospectus shall—

- (a) clearly identify the prospectus which the replacement prospectus replaces;
- (b) contain a statement in bold or coloured print at the beginning of the prospectus stating that it is a replacement prospectus; and
- (c) be regarded as replacing the original prospectus previously registered under section 29.

(7) A supplemental prospectus or replacement prospectus may be registered for the purposes of subsection (1), notwithstanding that the original prospectus to which the supplemental prospectus or replacement prospectus relates or replaces has been issued, as the case may be, if—

- (a) the original prospectus relates to an invitation or offer which is addressed to an identifiable category of persons to whom the original prospectus is directly communicated by the person making the invitation or offer or by his appointed agent, and a copy of the supplemental prospectus or replacement prospectus is sent to each of those persons in accordance with subsection (8); or
- (b) the original prospectus relates to an invitation or offer to the general public and a copy of the supplemental prospectus or replacement prospectus is advertised in every newspaper which originally advertised the invitation or offer or calling attention to the invitation or offer in accordance with subsection (8).

(8) For the purposes of subsection (7), a notice shall—

- (a) in the case of paragraph (7)(a), be sent together with a copy of the supplemental prospectus or replacement prospectus to every person referred to in that subsection;

(b) in the case of paragraph (7)(b), be advertised together with the supplemental prospectus or replacement prospectus stating that—

- (i) a copy of the supplemental prospectus or replacement prospectus has been registered with the Registrar; and
- (ii) every person who has submitted his application prior to the date of the notice is entitled to withdraw his application within fourteen days from the date of the notice and all application money received in respect of the subscription of interest will be refunded in full without interest or profit.

(9) This section shall apply to product disclosure statement issued by a management company and any references to “prospectus” shall be construed as references to “product disclosure statement”.

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

Civil liability for misstatement in prospectus or product disclosure statement

39. (1) A person who subscribes for or purchases any interest and suffers loss or damage as a result of any statement or information contained in a prospectus or product disclosure statement that is false or misleading or any statement or information contained in a prospectus from which there is a material omission may recover the amount of loss or damage from the following persons:

- (a) the management company and each director of the management company at the time of the issue of the prospectus, for any loss or damage;
- (b) the person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;

- (c) a promoter, for any loss or damage in respect of the prospectus or the relevant part of the prospectus for which he is involved in the preparation;
- (d) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or
- (e) a person who authorised or caused the issue of a prospectus in contravention of section 40, for any loss or damage caused by such contravention.

(2) No person shall be liable under subsection (1) if he proves that—

- (a) having consented to become a director of the management company, he withdrew his consent before the issue of the prospectus, and that the prospectus was issued without his authority or consent;
- (b) the prospectus was issued without his knowledge or consent and he gave reasonable public notice after he becomes aware of its issue;
- (c) after the issue of the prospectus and before allotment or sale of the interest, he withdrew his consent after he becomes aware of any false or misleading statement in the prospectus and gave reasonable public notice of the withdrawal together with his reasons; or
- (d) in relation to every false or misleading statement—
 - (i) he had reasonable ground to believe that the statement was true up to the time of the allotment or sale of the interests;
 - (ii) purporting to be a statement, or based on a statement, or contained in what purports to be a copy of or extract from a report of valuation, of an expert, and that he has reasonable ground to believe that the person making the statement is an expert and competent to make a true statement

up to the time of the issue of the prospectus and that person has given the consent required under section 33 to the issue of the prospectus and has not withdrawn that consent before delivery of a copy of the prospectus for registration or before any allotment or sale pursuant to the prospectus; and

- (iii) purporting to be a statement made by an official or contained in what purports to be a copy of or extract from a public official document, the statement was a true and fair representation of the statement or copy of or extract from the document.

(3) Subsection (2) shall not apply in the case of a person liable, by reason of his having given a consent required of him under section 33, as a person who has authorized or caused the issue of the prospectus in respect of a false and misleading statement purporting to have been made by him.

(4) A person who apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required by him under section 33 as a person who has authorized the issue of a prospectus in respect of a false or misleading statement purporting to be made by him shall not be liable if he proves that—

- (a) he had withdrawn his consent in writing before a copy of the prospectus was lodged with the Registrar;
- (b) after a copy of the prospectus was lodged with the Registrar and before allotment or sale of the interests, he withdrew his consent in writing after he becomes aware of the false or misleading statement and gave reasonable public notice of the withdrawal together with the reason; or
- (c) he was competent to make the statement and that he had reasonable ground to believe that the statement is true up to the time of the allotment or sale of the interests.

(5) Where—

- (a) the prospectus contains the name of a person as a director of the management company, or a person who has agreed to become a director but has not given his consent to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue of the prospectus; or
- (b) the consent of a person is required under section 33 to the issue of the prospectus and he either has not given the consent or has withdrawn the consent before the issue of the prospectus,

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

(6) This section shall be applicable to product disclosure statement issued by a management company and any references to “prospectus” shall be construed as references to “product disclosure statement”.

Criminal liability for misstatement in prospectus or product disclosure statement

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

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

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

(a) the statement or omission is immaterial; or

(b) he has made all enquiries as are reasonable in the circumstances and after making such enquiries, he has reasonable grounds to believe and did believe the statement is true or the omission is immaterial up to the time of the issue of the prospectus.

(3) This section shall be applicable to product disclosure statement issued by a management company and any references to “prospectus” shall be construed as references to “product disclosure statement”.

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

Registrar and persons not to be taken to have authorised or caused issuance of prospectus or product disclosure statement

41. (1) For the purposes of this Chapter, the Registrar shall not be taken to have been involved in the preparation of a prospectus or product disclosure statement or authorized or caused the issuance of a prospectus or product disclosure statement for any reason including when he performed his functions or exercised his powers under this Act.

(2) For the purposes of sections 38 and 39, a person shall not be deemed to have authorized or caused the issue of a prospectus or product disclosure statement by reason of—

(a) him having given a consent as required under section 33;
or

(b) his name being included in the prospectus as a trustee for interest holders, auditor, banker and advocate and solicitor.

Stop order

- 42.** (1) Where in the opinion of the Registrar—
- (a) a prospectus or product disclosure statement does not comply with or is not prepared in accordance with any provision of this Act;
 - (b) a prospectus or product disclosure statement contains a statement or information that is false or misleading;
 - (c) a prospectus or product disclosure statement contains a statement or information from which there is a material omission; or
 - (d) the management company has contravened any provision of the Companies Act 2015,

the Registrar may, by stop order in writing served on the management company or such other person as the Registrar may determine, direct the management company or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further interests to which the prospectus or product disclosure statement relates, as the case requires.

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

(3) If the Registrar considers that by giving an opportunity to be heard would cause a delay that will be prejudicial to the public interest, the Registrar may make an interim stop order without giving the opportunity to be heard.

(4) An interim stop order under subsection (3) shall, unless sooner revoked, have effect for sixty days from the date on which it is made or the conclusion of the hearing in subsection (2), whichever date is the later.

(5) Where a stop order made under subsection (1) or an interim stop order made under subsection (3) is in force, this Chapter shall apply as if the prospectus has not been registered.

(6) An interim stop order made under subsection (3) may be revoked in writing if the Registrar is satisfied that the circumstances that resulted in the making of the stop order no longer exist.

(7) Where applications to subscribe for or purchase of interests to which the prospectus or product disclosure statement relates have been made prior to the stop order made under subsection (1)—

(a) where the interests have not been issued to the applicant—

- (i) the application shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the money shall forthwith refund all moneys received from the applicants without interest or returns; and
- (ii) if the money is not refunded within fourteen days of the stop order, the management company shall be liable to refund such money with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Registrar from the expiration of fourteen days; or

(b) where the interests have been issued to the applicants, the issue of the interests shall be deemed to be void and the management company or such other person shall—

- (i) forthwith refund without interest all moneys received from the applicant and if any such money is not refunded within fourteen days of the date of service of the stop order, the issuer shall be liable to refund such money with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Registrar from the expiration of fourteen days; and

(ii) take necessary steps to effect the stop order.

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

Issuance of trust deeds, contractual agreements, prospectuses or product disclosure statements in accordance with Shariah principles

43. (1) A trust deed, contractual agreement, prospectus or product disclosure statement as required under this Chapter may be issued in accordance with Shariah principles as approved by the Commission.

(2) The Commission shall have the power to establish a Shariah Advisory Committee to advise the Commission and the Registrar on the appropriate Shariah framework to be adopted and approved for the purposes of this Act.

PART IV

MANAGEMENT, AUDIT AND MEETINGS

Chapter 1

Management Company

Management company to have registered office in Malaysia

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

(2) The management company shall notify the Registrar of any change in the address of its registered office within fourteen days of such change.

(3) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

General duties and obligations of management company

45. (1) Every management company shall—

- (a) take all reasonable steps and exercise due diligence to ensure that the scheme is managed in accordance with the provisions of this Act, offer document such as the prospectus or product disclosure statement and the trust deed or the contractual agreement;

- (b) exercise due diligence and care in managing assets and funds of the scheme;
- (c) be responsible for the act and omissions of its employees, any person for the time being exercising the functions of the management company or the persons whose services have been availed by the management company;
- (d) remain liable to the interest holders for any commissions or omissions, notwithstanding anything contained in any contract or agreement;
- (e) ensure that its officers or employees do not make improper use of their position or information to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the scheme; and
- (f) comply with the covenants contained in the trust deed or with the terms of the contractual agreement.

(2) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Obligations to trustees

46. (1) A management company—

- (a) shall pay to the trustees any money payable to the trustee under the trust deed or contractual agreement within thirty days after the money is received by the company;
- (b) shall not without the approval of the trustees, publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of interests or the yield to which the trust deed or contractual agreement relates or containing any invitation to buy interests;
- (c) shall make available or ensure that there is made available to the trustees any details as the trustees require with respect to all matters relating to the contract, arrangement, undertaking or enterprise to which the trust deed or contractual agreement relates;

- (d) shall make available to the trustee all the books of the company, whether kept at the registered office or elsewhere for inspection; and
- (e) shall give to the trustees such oral or written information as the trustees require with respect to all matters relating to the contract, arrangement, undertaking or enterprise of the company or any property of the company or otherwise relating to the scheme, whether acquired before or after the date of the trust deed or contractual agreement.

(2) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit.

Duty to buy back interests

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

Separation of funds of interest holders and other persons

48. (1) The management company shall ensure that a separate trust account is maintained and controlled by the trustees for each scheme that the management company administers.

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

- (a) to an interest holder or person entitled to such payment; or
- (b) in accordance with this Act, any other written law, the trust deed or contractual agreement.

(3) Any excess remaining in the trust account after payment of or provision for all claims of interest holders whose funds have, or should have been deposited in such account, is not considered as a trust property and shall be dealt with as if the excess were unclaimed moneys under the law relating to unclaimed moneys.

(4) The Registrar may, on an application from a person having a financial interest or a claim against a trust account, make an order—

- (a) to prohibit the trustee from operating a trust account in any way; and
- (b) to appoint any person to administer the account and to specify the duties and powers of the person administering the account.

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

Prohibition to invest and lend money to management company, etc.

49. (1) The money available for investment under the trust deed or the contractual agreement shall not be invested in or lent to the management company, trustee or to any company deemed to be related to the management company or the trustees under section 7 of the Companies Act 2015.

(2) Notwithstanding subsection (1), the money available for investment under the trust deed or the contractual agreement may be invested in or lent to a prescribed corporation.

(3) For the purposes of this section, “prescribed corporation” means—

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

(4) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Registrar may specify duties, obligations and conduct relating to schemes

50. In relation to each type of scheme, the Registrar shall have the power to specify—

- (a) the duties, obligations and conduct of a management company;
- (b) the duties and obligations of the trustees;
- (c) the calculation of issued price and buy back price of each unit of interest;
- (d) the management of funds of the scheme;
- (e) the requirements relating to meetings of interest holders; and
- (f) any other matters to the benefit of interest holders.

Chapter 2

Accounts and Audit

Accounting records and audit

51. (1) A management company and every director and manager of the management company shall—

- (a) cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the scheme and enable a true and fair profit and loss accounts and balance sheets and any documents required to be attached to the records to be prepared; and
- (b) cause the records in paragraph (a) to be kept in such manner as to enable the records to be conveniently and properly audited.

(2) A management company and every director and manager of the management company shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which the entries relate.

(3) Notwithstanding subsection (1), the accounting and other records of operations outside Malaysia may be kept by the management company at a place outside Malaysia and provided that such accounting and other records shall be sent to and kept at a place in Malaysia and be at all times open to inspection by the directors, such statements and returns with respect to the business dealt with in the records so kept as will enable true and fair financial statements and any documents required to be attached to the financial statement to be prepared.

(4) If any accounting and other records are kept at a place outside Malaysia under subsection (1) or (2), the Registrar may require the management company to produce those records at a place in Malaysia or determine the type and manner of the records to be kept in Malaysia.

(5) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Appointment and approval of auditor

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

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

(3) An auditor who has been removed by a management company from his office as an auditor shall inform the Registrar within seven days from the date of his removal.

Powers and duties of auditor

53. (1) Every auditor of a scheme shall report to the interest holders on the financial statements and on the scheme's accounting and other records relating to those financial statements and the report shall be circulated to the interest holders.

(2) An auditor shall state in the report referred to in subsection (1)—

- (a) whether the financial statements are in his opinion properly drawn up—
 - (i) so as to give a true and fair view of the scheme's affairs; and
 - (ii) in accordance with the applicable approved accounting standards;
- (b) if in his opinion the financial statements have not been drawn up in accordance with a particular applicable approved accounting standard—
 - (i) whether in his opinion the financial statements, would, if drawn up in accordance with that approved accounting standard, have given a true and fair view of the scheme's affairs; and
 - (ii) whether the financial statement would not, if so drawn up, have given a true and fair view of those matters, his reasons for holding that opinion;
- (c) whether the accounting and other records and the registers required under this Act to be kept by the management company relating to the scheme are, in his opinion, properly kept in accordance with this Act;
- (d) any defect or irregularity in the financial statements and any matter not set out in the financial statements or consolidated financial statements without regard to which a true and fair view of the matters dealt with by the financial statements or consolidated financial statements would not be obtained; and

(e) if the auditor is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.

(3) An auditor of a scheme shall have a duty to form an opinion and to state in his report particulars of any deficiency, failure or shortcoming as to each of the following matters:

(a) whether the auditor has obtained all the information and explanations that he requires; or

(b) whether proper accounting and other records, including registers, have been kept by the management company relating to the scheme as required by this Act.

(4) An auditor of a scheme has a right of access at all reasonable times to the accounting and other records including registers of the scheme, and is entitled to require from any officer of the management company any information and explanations as he requires for the purposes of audit.

(5) The auditor's report shall be attached to or endorsed on the financial statements and shall be circulated to all interest holders and shall be open for inspection by any interest holders at any reasonable time.

(6) An auditor of a scheme or the auditor's agent authorised by the auditor in writing is entitled to attend any annual meeting of the scheme and to receive all notices of, and other communications relating to, any annual meeting which an interest holder is entitled to receive, and to be heard at any annual meeting which the auditor's agent attends on any part of the business of the meeting which concerns the auditor in his capacity as an auditor.

(7) An auditor shall, in the course of the performance of his duties as auditor of a scheme, immediately report in writing to the Registrar, if he is satisfied that—

(a) there has been a breach or non-observance of any of the provisions of this Act; and

- (b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by his comment in the report on the financial statements or by bringing the matter to the notice of the directors of the management company.

(8) An officer of a management company who refuses or fails without lawful excuse to allow an auditor of the scheme or an auditor of a management company who refuses or fails without lawful excuse to allow an auditor of the scheme access, in accordance with this section, to any accounting and other records, including registers, of the scheme or the management company in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand ringgit or to both.

(9) Any auditor who contravenes subsection (7) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

Duty of auditor to disclose irregularity or undesirable practice

54. (1) Every auditor shall—

- (a) in the course of performance of his duties as an auditor of a scheme, report to the management company—
 - (i) any irregularity or undesirable practice in the administration of the scheme which has come to his knowledge; or
 - (ii) any serious offence involving fraud or dishonesty has which been committed by the officers of the management company; and
- (b) submit a copy of such report to the Registrar if there is reasonable cause to believe that such report is or might be of material significance to the Registrar.

(2) For the purposes of this section—

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

(b) “a serious offence involving fraud or dishonesty” means an offence that is punishable by imprisonment for a term that is not less than two years or the value of the assets derived or likely to be derived or any loss suffered by the scheme, management company or interest holder from the commission of such offence exceeds two hundred and fifty thousand ringgit.

(3) An auditor who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

Chapter 3

Meetings of a Scheme

Requisition of meeting by interest holders

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

(2) The directors of the management company shall call for the meeting of interest holders if the management company received an application from not less than fifty in number or ten per centum of the interest holders, whichever is lesser.

(3) A meeting summoned for the purposes of this section shall be—

(a) held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice;

(b) chaired by—

(i) a person who is appointed by the interest holders to which the trust deed or contractual agreement relates who are present at the meeting; or

(ii) where no appointment is made under subparagraph (i), a nominee of the trustee; and

(c) conducted in accordance with the trust deed or contractual agreement or, if there is no such provision in the trust deed or contractual agreement, as directed by the chairman of the meeting.

(4) The management company and every officer who contravene subsection (1) commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

Notice of meetings of interest holders

56. (1) A meeting of the interest holders shall be called by a notice of at least twenty one days or any longer period as specified in the trust deed or contractual agreement.

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

(a) every interest holder;

(b) every trustee; and

(c) every auditor.

Manner in which notice is given

57. (1) Notice of a meeting of interest holders shall be in writing and shall be given to the interest holders either—

(a) in hard copy;

(b) in electronic form;

(c) partly in hard copy and partly in electronic form; or

(d) by means of a website.

(2) Unless otherwise provided in a trust deed or contractual agreement, a notice—

- (a) given in hard copy shall be sent to any interest holder either personally or by post to the address supplied by the interest holder to the management company for such purpose; or
- (b) given in electronic form shall be transmitted to the electronic address provided by the interest holder to the management company for such purpose or by publishing on a website.

Notification of publication of notice of meeting on website

58. (1) Notice of a meeting of interest holders shall not be validly given by a management company by means of a website unless a notification to that effect is given in accordance with this section.

(2) The management company shall notify the interest holders of the publication of the notice on the website and such notification shall be in writing and shall be given in hard copy or electronic form stating—

- (a) that it concerns a meeting of interest holders; and
- (b) the place, date and time of the meeting.

(3) The notice shall be made available on the website throughout the period beginning from the date of the notification referred in subsection (2) until the conclusion of the meeting.

Procedures at meetings and proxies

59. The provisions under Subdivisions 5 and 6 of Division 5 of Part III of the Companies Act 2015, in relation to a company limited by shares, shall apply to procedures of meeting and proxies with the following modifications:

- (a) references to “company” shall be construed as references to “management company”;

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

Records of resolutions and meetings, etc.

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

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

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

Records as evidence of resolutions, etc.

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

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

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

PART V

WINDING UP OF SCHEMES

Winding up of scheme as required by trust deed or contractual agreement

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

(a) at a specified time; or

(b) in the specified circumstances or on the happening of a specified event.

(2) A provision of the trust deed or contractual agreement that purports to provide that the scheme is to be wound up if a particular company ceases to be its management company shall be void.

Winding up at direction of interest holders of an investment scheme

63. (1) The interest holders of an investment scheme may call for a meeting to consider and vote on a resolution to direct the management company to wind up the scheme.

(2) The resolution shall be approved by at least seventy five per centum of the interest holders of the scheme or a higher percentage as stated by the trust deed or contractual agreement.

Winding up in the event of accomplishment or non-accomplishment of the purpose of the scheme

64. (1) If the management company considers that the purpose of the scheme has been accomplished or cannot be accomplished, the management company may take steps to wind up the scheme in accordance with this section.

(2) The management company shall send to the interest holders of the scheme, the Registrar and the trustee a notice in writing—

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

(3) The management company may wind up the scheme if no meeting is called within twenty eight days to consider the proposed winding up and the Registrar is satisfied of that fact after receiving certification from the trustee.

Winding up ordered by Court

65. (1) An application to wind up the scheme may be made to the Court by—

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

(2) The Court may order the management company of a scheme to wind up the scheme if—

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

(3) An order under paragraph (2)(b) may be made on the application of a creditor.

Duties of management company in winding up of a scheme

66. (1) The management company shall ensure that the scheme is wound up in accordance with its trust deed or contractual agreement and any order under subsection 67(2)—

- (a) on the occurrence of the specified circumstances or events referred to in section 62;
- (b) if a special resolution has been passed under section 63;
or
- (c) if the Court makes an order under section 65.

(2) An interest shall not be issued by a management company once the circumstance under subsection (1) arises.

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

Ancillary orders

67. (1) An application for an order under subsection (2) for the winding up of a scheme may be made to the Court by—

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

(2) Upon an application made under this section, the Court may—

- (a) appoint a qualified person to take responsibility for ensuring a registered scheme is wound up in accordance with its trust deed or contractual agreement and any order including for the reason that the management company has ceased to exist or is not properly discharging its obligations in relation to the winding up; or
- (b) give directions on how a scheme is to be wound up, including for the reason that the provisions in the trust deed or contractual agreement are inadequate or impracticable.

(3) For the purposes of this section, “a qualified person” means an approved liquidator as defined in the Companies Act 2015.

Unclaimed money to be paid to Registrar

68. (1) If, on the completion of the winding up of a registered scheme, the management company or person appointed under section 67 has in their possession or under their control any unclaimed or undistributed money or other property that was part of the property of the scheme, the management company or the person shall, as soon as practicable, surrender the money or transfer the property to the Registrar.

(2) The provisions under Subdivision 2 of Division 4 of Part IV of the Companies Act 2015 shall be applicable in dealing with the money or property so vested with the Registrar with the necessary modifications and adaptations.

Voluntary deregistration

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

(2) The management company may only apply for deregistration if the scheme did not meet the minimum requirement of the interest holders as specified in the prospectus or product disclosure statement and all the interest holders agree that the scheme shall be deregistered.

(3) If the Registrar is satisfied that the application complies with subsection (2), the Registrar shall publish the notice of the proposed deregistration in the website of the Commission and a copy of the notice shall be given to the management company and the trustees.

(4) After the lapse of seven days from the date of the publication of the notice on the website, the Registrar shall deregister the scheme and the scheme shall be deemed to have been dissolved.

PART VI

ENFORCEMENT OF THE ACT

Injunction

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

(a) a contravention of this Act;

(b) an attempt to contravene this Act;

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

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

(2) If a person refused or failed, is refusing or failing to do an act or thing that the person is required by this Act to do, the Court may, on the application of the Registrar or any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the Court thinks appropriate, requiring the person who refuses or fails, is refusing or failing, or is intending to refuse or fail to do that act or thing.

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

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

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

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

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

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

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

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

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

Power of Registrar to intervene

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

- (a) the scheme is unable to meet its obligation when they fall due;

- (b) the operation, management or administration of the scheme has not been conducted in accordance with the trust deed, supplemental trust deed, contractual agreement or supplemental contractual agreement; or
- (c) the terms and conditions for the authorization of a scheme imposed by the Registrar have not been complied with.

(2) In exercising the power under subsection (1), the Registrar may make one or more of the following:

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

Power of Registrar to terminate unregistered scheme

72. (1) The Registrar shall have the power to terminate an unregistered scheme and may make one or more of the following:

- (a) direct any person to compensate any person who have purchased any interest in the scheme;
- (b) restrain any person from carrying on any of the following activities:
 - (i) promote any interest in the scheme to the public;
 - (ii) deal or generate interest in its products or offering of products;

- (iii) print, publish or distribute or cause to be printed, published or distributed, written materials promoting interest in the schemes;
 - (iv) make any recommendation, or offer advice, whether orally or in writing, to any person in relation to a product or a decision by a person regarding whether or not to invest in a product;
 - (v) induce, solicit, collect or receive money from a person in relation to the scheme; or
- (c) give any other directions as the Registrar thinks fit.

(2) The Registrar may apply to the Court for an order to nullify any contract made as a result of any offer of interest in an unregistered scheme and such other consequential order as the Court thinks fit.

(3) The application made under subsection (2) shall be by way of *ex parte* application.

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

Power to exempt from compliance with the Act

73. (1) The Minister may, by notice published in the *Gazette*, exempt any company or class of companies or any person or class of persons from complying with all or any of the provisions of this Act in relation to any interest or class of interests specified in the notice.

(2) The notice in subsection (1) may provide that an exemption may be subject to the terms and conditions specified in the notice.

(3) The company and every officer who contravene any term or condition specified in the notice of exemption commit an offence.

Protection to certain officers who make disclosures

74. (1) Where an officer of a management company in the course of performance of his duties has reason to believe that—

- (a) any matter which may or will constitute a breach or non-observance of the provisions of this Act or the subsidiary legislation made under this Act; or
- (b) a serious offence involving fraud or dishonesty, has been, is being or is likely to be committed against this Act or the management company or by other officer of the management company,

he may report the matter in writing to the Registrar.

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

(3) No officer of a management company shall be liable to be sued in any Court nor be subject to any tribunal process, including disciplinary action for any report submitted by him under subsection (1) if the report was submitted in good faith.

General penalty

75. (1) A person commits an offence if he—

- (a) does any act that he is prohibited to do under this Act;
- (b) omits to do any act that he is required or directed to do under this Act; or
- (c) otherwise contravenes or fails to comply with any provision of this Act.

(2) A person who commits an offence under this Act shall, on conviction, be liable to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not mentioned—

(a) in the case of a person who is an individual, to a penalty not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both; or

(b) in the case of a person other than an individual, to a penalty not exceeding fifty thousand ringgit.

(3) For the purposes of this section, “individual” means a natural person.

PART VII

ADMINISTRATION OF THE ACT

Register of interest holders

76. (1) A management company shall, in respect of each trust deed or contractual agreement with which the management company is concerned, keep a register of the interest holders and enter in the register—

(a) the names and addresses of the interest holders;

(b) the extent of the holding of each interest holder and, if his interest consists of a specific interest in any property, a description of the property and its location is sufficient to identify it;

(c) on the date the name of each person was entered in the register as a holder;

(d) the date at which any person ceased to be a holder; and

(e) any other information as the Registrar thinks necessary.

(2) A management company may keep and maintain the register of interest holders at a place other than at its registered office but shall notify the Registrar of that fact.

Duty to lodge returns, statements, etc.

77. (1) Where a trust deed or contractual agreement is or has at any time been an approved trust deed or contractual agreement and remains in force, the management company shall, within two months after the end of each financial year applicable to the scheme, lodge with the Registrar—

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

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

(2) The return lodged shall be accompanied with the audited financial statements of the scheme prepared under section 53.

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

(4) Upon request by an interest holder of any documents lodged with the Registrar under paragraphs (1)(b), (c), (d) and (e), the management company shall send a copy of the documents to the interest holder within thirty days from the request.

Documents to be kept at registered office

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

- (a) all trust deeds or contractual agreements;
- (b) all prospectuses or product disclosure statements;
- (c) all certificates issued under this Act;
- (d) all registers, statutory books, records and documents as required under this Act;
- (e) all minutes of all meetings and resolutions of interest holders;
- (f) the copies of all written communications to all interest holders or all holders of the same class of shares;

- (g) the copies of all financial statements of the scheme; and
- (h) the accounting records of the scheme required under section 51.

(2) The documents referred to in subsection (1) shall be kept at the registered office for a period of at least seven years, unless otherwise stated in the other provisions of this Act.

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

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

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

79. (1) The documents and records of a management company referred to in section 77 shall be—

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

(2) A management company shall take reasonable precautions to prevent documents and records kept in the form referred to in subsection (1) from being falsified.

(3) If a management company discovers that a document or record has been falsified, the management company shall inform the Registrar, and the Registrar shall have the power to direct the management company to—

- (a) amend, rectify or vary the document or record as may be necessary; or
- (b) take any other actions as the Registrar thinks fit.

(4) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

Inspection of registers and documents at registered office

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

(2) Any person authorized under this Act to inspect the register or document shall be allowed to make copies or take the documents or part of the document, or take extracts from the documents.

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

(4) The management company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Registers and inspection of documents lodged with Registrar

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

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

(a) inspect any document filed or lodged with the Registrar;

(b) request for a certificate of the authorization of a scheme or any other certificate issued under this Act; or

(c) request for a copy of or extract from any document that he is entitled to inspect under paragraph (a) or any certificate referred to in paragraph (b) to be given and certified by the Registrar.

False and misleading statements

82. (1) Every management company which advertises, circulates or publishes any return, report, certificate, financial statement or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or thing thereby making the document misleading in a material respect and every officer of the management company who knowingly authorizes, directs or consents to the advertising, circulation or publication commits an offence, and shall, on conviction—

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

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

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

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

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

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

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

Evidentiary value of copies certified by Registrar

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

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

Evidence of statutory requirements

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

- (a) no scheme was registered under this Act or corresponding previous written law at a date or during a period specified in the certification, the certification shall be received as *prima facie* evidence that under the name of the scheme and at the date or during that period, that scheme was not registered; and
- (b) the requirement of this Act or corresponding previous written law as specified in the certification—
 - (i) has or has not been complied with at a date or within a period specified in the certification; or
 - (ii) has been complied with at a date specified in the certification but not before that date,

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

Rectification of registers

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

- (a) contains matter contrary to law;

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

(2) Upon receipt of the application under subsection (1), in order for the Registrar to decide whether to approve or refuse the application, the Registrar may—

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

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

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

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

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

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

Electronic lodgement of documents

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

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

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

(4) Where a document is electronically lodged with the Registrar, the Registrar shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however arising appearing in any document obtained by any person under the service referred to in subsection (1) if such error or omission occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service or without the knowledge of the Registrar.

Issue of document electronically

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

Electronic information, document, etc., certified by Registrar admissible in evidence

88. Any information, document, or any copy of or any extract from any document electronically lodged with the Registrar under this Act, issued by the Registrar shall be a true copy or extract from any documents lodged with or submitted to the Registrar under section 86 or issued by the Registrar under section 87 shall, in any proceedings, be admissible as *prima facie* evidence of matters specified in that information, document, copy or extract.

Power to amend Schedules

89. The Minister may, by order published in the *Gazette*, amend the Schedules.

Regulations

90. (1) The Minister may make regulations as may be expedient or necessary for the better carrying out of the objects and purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) prescribing the establishment and administration of compensation fund for the purposes of interest schemes registered under this Act and the manner the compensation fund is to be applied;
- (b) prescribing the lodgement or registration of documents and the time and manner of submission of documents for lodgement or registration;
- (c) prescribing the fees to be paid to the Registrar in respect of any document required to be lodged, filed and registered with or issued by the Registrar under this Act or any act required to be performed by the Registrar or for the inspection of any such document;
- (d) prescribing the fees to be paid to the Registrar in respect of any services performed by the Registrar; or
- (e) prescribing any other matter as are necessary or expedient to be prescribed for giving effect to this Act.

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

Power to declare interests to be regulated under the securities laws

91. (1) The Minister charged with the responsibility for finance may request the Minister to declare that certain interests or class of interests is more appropriately regulated under securities laws as defined in the Securities Commission Act 1993 [*Act 498*].

(2) The Minister may, after consultation with the Minister charged with the responsibility for finance, make regulations for the purposes of a declaration under subsection (1).

Saving and transitional

92. (1) On the commencement of this Act, any recognised scheme shall be deemed to have been registered as a premium scheme under this Act.

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

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

(4) Nothing shall affect any person's liability to be prosecuted or punished for offences or breaches committed under Part 5 of Division IV of the Companies Act 1965 before the commencement of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

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

(6) In this section, "recognized scheme" means a scheme relating to an interest whose trust deed and prospectus have been duly registered under the Companies Act 1965 [*Act 125*].

FIRST SCHEDULE

[Section 21]

COVENANTS TO BE INCLUDED IN A TRUST DEED OR CONTRACTUAL AGREEMENT

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

1. Covenants binding the management company:

- (a) that the management company will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any contract, arrangement, undertaking or enterprise to which the trust deed or contractual agreement relates is carried on and conducted in a proper and efficient manner;
- (b) that the management company will not sell any interest to which the trust deed or contractual agreement relates otherwise than at a price calculated in accordance with the trust deed or contractual agreement;
- (c) that no moneys available for investment under the deed or contractual agreement will be invested in or lent to the management company, the trustee or any company other than which is allowed under this Act;
- (d) that the management company will give such particulars as are sufficient to disclose the nature of the contract, arrangement, undertaking or enterprise, and the nature of the interests, to which the trust deed or contractual agreement relates;
- (e) that in the case of a premium scheme or a foreign scheme, the management company will provide a provision creating a trust or containing a declaration of trust, and setting out full particulars of the trust, including precise information as to the circumstances in which the money, marketable securities, investments and other property subject to the trust are or will be vested in the trustee, and the obligations towards the holders of those interests in regard to that property;
- (f) that in the case of a small scheme, the management company will provide a provision stating that the money, marketable securities, investments and other property subject to the trust are to be held in trust by the trustees and the obligations towards the holders of those interests in respect to that property;
- (g) that the management company undertakes and declares –
 - (i) to keep and maintain an up-to-date register of interest holder and to make that register available for inspection, free of charge, by any interest holder at any time at the management company's registered office or other place of which notification to the Registrar has been given;

- (ii) that the units or sub-units of interests purchased or subscribed pursuant to the prospectus or product disclosure statement issued under section 33 of the Act shall not be allotted later than six months after the date of the statement;
 - (iii) that certificates in respect of units or sub-units of interests purchased or subscribed for pursuant to the prospectus or product disclosure statement are issued by the management company not later than two months after the allotment of the units or sub-units, unless the conditions of issuance expressly provide that certificates need to be issued; and
 - (iv) where the trust deed or contractual agreement requires, or confers a right on, interest holders to enter into an agreement in connection with the contract, arrangement, undertaking, or enterprise, a provision incorporating, whether by way of annexure or otherwise, the terms and form of that agreement;
- (h) that the management company will provide provisions relating to—
- (i) the duration, if ascertainable, of the contract, arrangement, undertaking or enterprise or, if the duration is not ascertainable, a statement of that fact;
 - (ii) where the interests consist of rights or interests in or arising out of an investment relating to property that tends to depreciate in value through use or effluxion of time, particulars of the provision made or to be made for the replacement of that property and the source or sources from which the replacement is to be made or from which the cost of the replacement is to be met or, if no provision is made, a statement of that fact;
 - (iii) the method of calculation of the highest price at which an interest to which the trust deed or contractual agreement relates may be sold by the management company;
 - (iv) the circumstances in which the management company or any other person may be required to purchase from the interest holder any interest for which the interest holder has subscribed or which he has acquired, and the method of calculation of the purchase price of the interest;
 - (v) the circumstances in which, and methods by which, all or any of the investments or other property comprising or forming part of an interest to which the trust deed or contractual agreement relates may be varied;
 - (vi) the conditions governing the transfer of the interests to which the trust deed or contractual agreement relates;

- (vii) the conditions governing the distribution of income to the interest holders;
 - (viii) the appointment of a trustee;
 - (ix) the retirement, removal and replacement of the trustee;
 - (x) the retirement, removal and replacement of the management company or, if the management company is not liable to be removed by trustees or by the interest holders, a statement of that fact;
 - (xi) the appointment, retirement, removal and replacement of the auditor of the financial statements relating to interests under the trust deed or the contractual agreement; and
 - (xii) the termination or winding up of the contract, arrangement, undertaking or enterprise;
- (i) that the officers of the management company involved in the development, management and operation of the scheme have had prior experience and expertise in managing public companies or related businesses;
 - (j) that the management company has obtained approval and consents from the relevant local authorities, if applicable, for the development of the scheme;
 - (k) that the management company will comply with all relevant written laws, notices, directions, orders, requirements or demands of any government, statutory bodies or other authority affecting the scheme;
 - (l) that the management company will not use the land for any other purpose other than for the purposes of the scheme without the prior consent of Registrar; and
 - (m) that the management company will not alter or vary its nature of business of the scheme without the prior consent of the Registrar.
2. Covenants binding on the management company in respect of the trustees and auditors:
- (a) that the management company will give to the trustee or auditor such oral or written information as the trustee or auditor requires in respect of all matters relating to the contract, arrangement, undertaking or enterprise of the management company or any property, whether acquired before or after the date of the trust deed or contractual agreement, of the management company or otherwise relating to the affairs of the scheme;

- (b) that the management company will make available to the trustee or auditor appointed by the management company, for the inspection of all the books of the management company whether kept at the management company's registered office or any other place of which notification to the Registrar has been given;
 - (c) that the management company will make available or ensure that there is made available to the trustee such details as the trustee requires in respect of all matters relating to the contract, arrangement, undertaking or enterprise to which the trust deed or contractual agreement relates;
 - (d) that the management company pay to the trustee any money payable by the management company to the trustee under the trust deed or contractual agreement within thirty days after the receipt of the moneys by the company;
 - (e) that the management company will obtain the approval of the trustee in relation to the publication of any advertisement, circular or other document containing any statement in respect of the sale price of the interests or yield to which the trust deed or contractual agreement relates or containing any invitation to buy interests; and
 - (f) that the management company will not sell, transfer, charge or otherwise dispose of or encumber the land or property to any party except with the prior written consent of the trustee.
3. Covenants binding on the trustee:
- (a) that the trustee will exercise due diligence and vigilance in carrying out its functions and duties and in monitoring the rights and interests of the interest holders to which the trust deed or contractual agreement relates;
 - (b) that the trustee will ensure that the interest of interest holders are preserved and protected at all times;
 - (c) that the trustee will investigate and take appropriate steps to ensure any complaints made by interest holders are resolved;
 - (d) that the trustee will keep or cause to be kept proper books of account in relation to the scheme;
 - (e) that the trustee will ensure the financial statements of the scheme to be audited by an auditor at the end of each financial year;
 - (f) that the trustee will send or cause to be sent financial statements of the scheme together with the report of the auditor to each of the interest holders within two months after the end of the financial year;

- (g) that the trustee will hold the moneys standing in the trust accounts as prescribed in the trust deed or contractual agreement and invest the moneys in suitable liquid and secured investment in accordance with the terms of the trust deed or contractual agreement; and
- (h) that the trustee will immediately report to the Registrar any breach or non-compliance of trust deed or contractual agreement by the management company or its agents.

SECOND SCHEDULE

[Section 32]

CONTENTS OF PROSPECTUS AND PRODUCT DISCLOSURE STATEMENT RELATING TO A SCHEME

PART I – Matters required to be stated in the prospectus and product disclosure statement

1. The date of the prospectus or product disclosure statement.
2. The date of and parties to the trust deed or contractual agreement referred to in section 28.
3. The date of and parties to any trust deed or contractual agreement or instrument by which any of the provisions of the approved trust deed or contractual agreement relating to the interest has been amended or abrogated.
4. The name and address of the registered office of the trustee or representative under any such trust deed or contractual agreement.
5. A summary of the provisions of the trust deed or contractual agreement regulating the retirement, removal and replacement of the trustee or representative.
6. The name and address of the registered office of the management company.
7. The names, descriptions and addresses of all the directors of the management company.
8. A summary of the provisions of the trust deed or contractual agreement regulating the retirement, removal and replacement of the management company.
9. The name and address of the auditor of the financial statements relating to interests under the trust deed or contractual agreement.
10. A summary of the provisions of the trust deed or contractual agreement regulating the appointment, retirement, removal and replacement of such auditor.

11. The duration, if ascertainable, of the contract, arrangement, undertaking or enterprise to which the trust deed or contractual agreement relates. In the case where the duration is not ascertainable, to state that fact.
12. Full particulars with respect to the termination or winding up of the scheme.
13. The particulars as are sufficient to disclose the true nature of the scheme in respect of which the interest is to be issued or offered to the public for subscription or purchase and the general nature of the property to which the interest relates.
14. The nature of the interest to be so issued or offered and of any units or sub-units into which the interest is divided and the rights in relation to the interest of the persons who become the interest holders.
15. The expected minimum subscription of interest holders to be registered under the scheme and the time frame for the subscription to be achieved.
16. The address which the register of interest holders is or will be kept and the days on and the hours during which it is or will be accessible to the public.
17. The method of calculation provided by the trust deed or contractual agreement of the price at which the management company may sell the interest or any right in respect of the interest or any unit or sub-unit of the interest.
18. The particulars as are sufficient to describe the duties and obligations imposed on the trustee or representative appointed by the trust deed or contractual agreement relating to the interest.
19. The name and address of each person or corporation with whom an interest a holder is required, obliged or entitled to enter into any contract whether by way of lease or otherwise in connection with the scheme.
20. The full names, descriptions and residential addresses of the directors of each corporation referred to in paragraph 19.
21. Whether any property to which the interest relates vests in the trustee or representative, the nature and description of the property and the conditions or circumstances.
22. Where the interest consists of rights or interests in or arising out of an investment relating to property that ordinarily depreciates in value through use or effluxion of time, such particulars as are sufficient to disclose the true particulars of the provision made for replacement of that property and the source from which the replacement is to be made or from which the cost of the replacement is to be met.

23. Except where the interest relates only to marketable securities which were purchased or acquired at not more than the ruling market prices—
- (a) the names and residential addresses of the vendors of any property to which the interest relates, whether the property was purchased or acquired by the management company or by any person or corporation referred to in paragraph 19 or is proposed to be so purchased or acquired; and
 - (b) a full and true description of the property and the amount paid or to be paid to each vendor.
24. The particulars as are sufficient to disclose the true nature and extent of the interest, if any, of each director of the management company, whether as a director, direct or indirect shareholder, partner or otherwise, in the business of each vendor and in such property.
25. The obligations imposed upon the management company or any other person to purchase any interest or rights or the units or sub-units of the interest from any interest holder and a statement of the method provided by the trust deed or contractual agreement for the calculation of the purchase price.
26. A summary of the rights and obligations of the management company and of the trustee or representative governing the valuation of any investment made or property held in relation to the interest.
27. A summary of the provisions of the trust deed or contractual agreement where the investments or other property comprising or forming part of the interest to which the trust deed or contractual agreement relates may be varied.
28. Full information regarding the remuneration of the trustee or representative and the management company respectively, and the charges, if any, that will be made by way of that remuneration upon the sale or purchase of any such interest and upon the distribution of income and capital or otherwise in connection with the scheme.
29. Whether the interest or any rights or the units or sub-units of the interest are transferable by the interest holders and, if so, a summary of the provisions of the trust deed or contractual agreement regulating the transfer.
30. A summary of the provisions of the trust deed or contractual agreement relating to the distribution of the income derived from the scheme to the interest holders or the units or sub-units of the interest.
31. The full particulars as to whether and to what extent any factor other than cash receipts by way of dividend, interest or bonus has been or will be taken into account in calculating the amount of income that will be payable to an interest holder.
32. If any reference is made to the yield of income obtained or likely to be obtained by the interest holders or the units or sub-units of the interest, a statement as to whether and to what extent anything other than cash receipts by way of dividend, interest or bonus has been taken into account in calculating the yield.

33. A summary of the provisions of the Act and of the trust deed or contractual agreement regulating the convening of meetings of interest holders or the units or sub-units of the interest.

34. The name and description and the date of commencement of operation of other scheme involving the issue of interests to the public conducted by the management company within five years immediately preceding the date of the prospectus.

35. A declaration—

- (a) that units or sub-units of interests issued in accordance with the prospectus or product disclosure statement shall not be allotted later than six months after the date appearing in the statement under paragraph 1; and
- (b) that certificates shall be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed not more than two months after the allotment of the units or sub-units, unless the conditions of issue of the units or sub-units expressly provide that no certificates shall be issued.

36. A summary of the provisions of the trust deed or contractual agreement with respect to the undertakings—

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

PART II—Reports to be set out in the prospectus or product disclosure statement

37. A report by a person who at the time of making the report was an approved company auditor, and whose name must appear as such in the prospectus or product disclosure statement, setting out—

- (a) the information as sufficiently discloses—
 - (i) the number of distributions, if any, of income to interest holders or the units or sub-units of interests to which the trust deed or contractual agreement relates in each of the five years immediately preceding the date of the statement during which those interests had been in existence;
 - (ii) the amount of each distribution and the extent to which each distribution consisted of any component other than dividends, interest and bonuses; and
 - (iii) where the distribution consisted of any component other than dividend, interest and bonus, the nature and value of each of those components;

- (b) the information as sufficiently discloses the selling and purchase price, of those interests, units or sub-units on the date upon which each distribution was made;
- (c) the information as sufficiently discloses the selling and purchase price, of those interests, units or sub-units on such date, being a date within a period of fourteen days immediately preceding the date of the prospectus as is specified in the relevant report;
- (d) in respect of the management company and every corporation with which an interest holder has entered into a contract in connection with the scheme, for each of the five years preceding the date of prospectus, the full information on—
 - (i) financial statements;
 - (ii) rate of dividends;
 - (iii) the assets and liabilities as at the last date to which the financial statements were made up.

38. In respect of every issue of interests relating to any other schemes administered by the management company within the period of five years immediately preceding the date of the prospectus, the report required under paragraph 37 shall also state required under subparagraphs (a), (b) and (c).

39. Any report from independent consultants or expert on the viability of the scheme including risks associated with the scheme.

40. In the case of a company which carries on a business for less than five years and the financial statements of the company have only been made up in respect of four years, three years, two years or one year, the period shall be construed as five years for the purposes of this Schedule.

Modification

41. For the purposes of small schemes, references to “auditor” in paragraph 37 and “independent consultant” in paragraph 39 shall be construed as references to “directors of the management company”.

EXPLANATORY STATEMENT

This Bill seeks to provide for the registration, administration and dissolution of schemes relating to interests and for related matters.

2. Part I of the proposed Act deals with preliminary matters.

Clause 1 contains the short title of the proposed Act and seeks to empower the Minister to appoint the date of commencement of the proposed Act.

Clause 2 contains the definition of certain words and expressions used in the proposed Act.

3. Part II deals with the requirements relating to the registration of schemes.

Clause 3 seeks to provide that no person is allowed to offer or propose to offer interests relating to schemes unless the scheme has been registered and authorised under the proposed Act. In addition, this *clause* also seeks to provide that only a management company is allowed to offer issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest in a scheme.

Clause 4 seeks to detail out the characteristics of investment scheme, recreational membership scheme and time-sharing scheme.

Clause 5 seeks to provide for the classification of schemes which may be registered under the proposed Act comprising premium scheme, small scheme or foreign scheme.

Clauses 6, 7 and 8 seek to provide conditions for the registration of premium scheme, small scheme or foreign scheme respectively.

Clause 9 provides the procedures and requirements for the application to register a scheme under the proposed Act. This *clause* also seeks to provide for the Registrar, in connection with an application for registration, additional powers including the power to direct the management company to compensate any person who has purchased any interest prior to the registration and to restrain the management company from carrying on activities which are connected with the offering or inviting to subscribe or purchase of interests prior to the application being approved.

Clause 10 seeks to provide for the issuance of certificate of authorization upon the approval of an application to register a scheme and that the certificate serves as conclusive evidence that the requirements in respect to the registration have been complied with.

Clause 11 seeks to empower the Registrar to suspend the registration of a scheme if there is an action to determine a contravention of any provisions under the proposed Act or the proposed Companies Act 2015 or the terms and conditions in relation to the approval.

Clause 12 seeks to empower the Registrar to revoke the certificate of authorization in certain circumstances including on failure to comply with the provisions of the proposed Act, the proposed Companies Act 2015 or the terms and conditions of the authorization, or if it is in the interest of the interest holders of the scheme or if the scheme has been used for unlawful purposes. This *clause* also seeks to set out the process and procedures relating to the revocation.

Clause 13 seeks to provide for the procedures for appeal to the Minister on the revocation order made by the Registrar.

Clause 14 seeks to provide for the power of the Registrar to refuse an application for registration of a scheme on the grounds that the proposed scheme is likely used for unlawful purpose or contrary to the national interest.

Clause 15 provides for the reciprocity arrangement with regard to foreign schemes which are registered under the proposed Act if the scheme at the country of origin has been suspended, disqualified or restricted in its operations. Under this *clause*, the Minister may serve on the management company of the scheme a notice of similar effect.

Clause 16 seeks to provide for the conversion of a small scheme into a premium scheme if the management company fulfils the conditions set out under *clause 6*. This *clause* further provides for the procedures of the conversion.

Clause 17 seeks to provide for the Registrar's power to register an application for conversion and issue a certificate of authorization to that effect if he is satisfied with the requirements for conversion.

Clause 18 seeks to provide for the effect of conversion by stating that all properties, interests, rights and liabilities of the small scheme is vested into the premium scheme and that the small scheme is deemed to have ceased upon the registration of conversion.

4. Part III deals with the requirements relating to trust deeds or contractual agreements, trustees and prospectuses.

Chapter 1 of Part III deals with matters relating to trust deed and contractual agreement.

Clause 19 seeks to provide that an approval of a trust deed or a contractual agreement shall only be given if the management company has appointed a trustee and that the trustee has not ceased office.

Clause 20 clarifies that any provision in a trust deed or a contractual agreement which is inconsistent with the proposed Act is void. This *clause* also seeks to provide for the Registrar to refuse to grant an approval of a trust deed or a contractual agreement unless the trust deed or the contractual agreement contains the minimum requirements as set out in this *clause* including the appointment of trustees and the covenants as required under the proposed Act.

Clause 21 allows a trust deed or a contractual agreement to be amended by way of supplemental trust deed or supplemental contractual agreement through the approval of a majority in value of interest holders. This *clause* also provides that the approval of interest holders may not be necessary if the amendment is required for the purposes of compliance with the proposed Act or will not prejudice the interest of the interest holders.

Chapter 2 of Part III deals with matters relating to trustees.

Clause 22 seeks to provide for the appointment of trustees by a management company before a scheme can be registered. This *clause* also seeks to empower the Registrar to impose any terms and conditions on the trustees having regard to the nature of the scheme.

Clause 23 seeks to provide for the eligibility criteria for a person to be appointed as trustees including restriction on those who are directly or indirectly have control over the management company or have been adjudicated a bankrupt.

Clause 24 seeks to provide for the duties of trustees including the duty to exercise due diligence in monitoring the rights and interests of the interest holders and to ensure that the covenants set out in the trust deed or contractual agreement are delivered. This *clause* also imposes a duty to the trustee to report to the Registrar on any non-compliance of provisions in the proposed Act, trust deed or contractual agreement or if the scheme is unable to meet any of its obligations when they fall due or if the management company is carrying on business which would be prejudicial to the interest holders.

Clause 25 provides that any provision in a trust deed or contractual agreement is void if the provision has the effect of exempting or indemnifying a trustee against any liability for a breach of trust.

Clause 26 allows a trustee to resign by giving a three month notice or a shorter period if provided for in the trust deed or contractual agreement. This *clause* also provides the procedures when the management company or the interest holders may remove a trustee.

Chapter 3 of Part III deals with prospectus and product disclosure statements in relation to a scheme.

Clause 27 prohibits any person from issuing or offering to purchase any interest unless in the case of a premium scheme, a trust deed or contractual agreement, or in the case of a small scheme, a prospectus or product disclosure statement is in force.

Clause 28 requires a prospectus or a product disclosure statement to be lodged and approved by the Registrar before it can be issued, circulated or distributed to the public.

Clause 29 provides for the procedures and requirements for a prospectus or a product disclosure statement to be registered under the proposed Act.

Clause 30 empowers the Registrar to refuse to register a prospectus or product disclosure statement if he is of the opinion such document does not comply with the provisions of the proposed Act or if it contains statements which are false or misleading.

Clause 31 requires a management company to keep certain documents relating to a prospectus or a product disclosure statement at its registered office for a period specified by the Registrar.

Clause 32 seeks to provide that the contents of a prospectus or a product disclosure statement shall comply with the provisions set out in Second Schedule of the proposed Act.

Clause 33 seeks to impose a requirement that if a prospectus or a product disclosure statement contains statements which purportedly made by an expert, the consent from the expert must be obtained prior to the prospectus or product disclosure statement being issued.

Clause 34 empowers the Registrar to relieve any person from the requirements relating to the contents and forms of a prospectus or a product disclosure statement if the relief will not cause non-disclosure of information necessary for the assessment of investing in the scheme and that the relief will not impose unreasonable burden on the applicant.

Clause 35 seeks to provide that certain advertisements which offers or calls attention for an offer is deemed to be a prospectus if the advertisements contains information, *inter alia*, the description of the interests, name and details of the management company, general nature of the activity of the scheme and other details regarding the application for subscriptions.

Clause 36 seeks to provide that any document by which the offer for sale any interests to the public is made shall be deemed as prospectus and that provisions under Chapter 3 of Part III relating to prospectus shall apply.

Clause 37 provides that any memorandum containing information describing the business affairs of a person making an offer shall also be deemed as a prospectus and the person shall be responsible for any untrue statements or non-disclosure of material information.

Clause 38 requires the lodgement of a supplemental prospectus or replacement prospectus if there has been new information required to be disclosed, significant changes affecting any disclosure in the prospectus, material omission or if the prospectus contained false and misleading statements.

Clause 39 seeks to provide for the categories of persons responsible who will be liable for any misstatement in a prospectus or product disclosure statement. The *clause* also provides defences to such persons including that the prospectus or product disclosure statement was issued without his consent or his knowledge.

Clause 40 seeks to provide for criminal liability on persons who have issued any prospectus or product disclosure statement containing statement or information which is false or misleading or there has been material omission.

Clause 41 seeks to provide for the categories of persons who shall not be deemed to have authorised or caused the issuance of a prospectus or product disclosure statements. Such persons include the Registrar in carrying out his functions under the proposed Act or persons who are named in the prospectus or product disclosure statement as the trustee, auditor, banker or advocate and solicitor.

Clause 42 seeks to empower the Registrar to issue a stop order or an interim stop order to stop any allotment, issuance or offer of interests if he is of the opinion, among others, that the prospectus or product disclosure statement does not comply with the provisions of the proposed Act, contains false or misleading statements or contains statements from which there is a material omission.

Clause 43 seeks to provide for the issuance of trust deeds, contractual agreements, prospectus or product disclosure statements to be issued in accordance with Syariah principles approved by the Companies Commission of Malaysia. This *clause* also allows the establishment of the Shariah Advisory Committee to advise the Companies Commission of Malaysia and the Registrar on related matters.

5. Part IV deals with the requirements relating to management, audit and meetings.

Chapter 1 of Part IV deals with matters relating to management companies.

Clause 44 imposes a requirement for a management company to maintain a registered office in Malaysia at all times and to notify the Registrar in the event of any change in the address of the registered office.

Clause 45 seeks to provide for the general duties and obligations of a management company including the duty to exercise due diligence to ensure that the scheme is managed in accordance with the proposed Act and that the covenants in the trust deed or contractual agreement are delivered accordingly.

Clause 46 seeks to provide for the obligations of a management company to the trustees. Among others, a management company is obliged to pay to the trustee any money received pursuant to the trust deed or contractual agreement to seek the trustee's approval before any advertisement to invite the public to buy any interest is published, to give access to its books for inspection and to provide any information relating to the scheme.

Clause 47 imposes an obligation on a management company a duty to buy back interests in accordance with the re-purchase price as specified in the trust deed or contractual agreement.

Clause 48 imposes an obligation on a management company to ensure that a fund of a scheme is maintained through a separate trust account. This *clause* also deals with the management of the fund.

Clause 49 prohibits funds of a scheme from being invested or lent to a management company, trustee or persons connected with them. Funds of a scheme shall only be invested in a banking institution or a corporation which is declared by the Minister charged with the responsibility for finance to be suitable for such an investment.

Clause 50 empowers the Registrar to specify the duties, obligations and conduct of the management company for the different types of scheme.

Chapter 2 of Part IV deals with matters relating to accounts and audit.

Clause 51 imposes a requirement on a management company and its officers to keep accounting records and other records that will sufficiently explain the financial position of the scheme and to enable the financial statements to be prepared and audited.

Clause 52 provides that the management company shall appoint an auditor to audit the whole of the business of a scheme that it administers.

Clause 53 seeks to provide the powers and duties of an auditor including the duty to report to the interest holders on the financial statements and accounting records of the scheme. This *clause* also imposes a duty on the auditor to report to the Registrar if he discovers any non-observance to the provisions of the proposed Act of which he is of the opinion that the matter would not be dealt with by the management company.

Clause 54 imposes a duty on the auditor of a scheme to the management company on any irregularity or undesirable practice in the administration of the scheme or if there is a serious offence involving fraud or dishonesty has been committed by the officers of the management company. Such report shall be submitted to the Registrar.

Chapter 3 of Part IV deals with meetings of a scheme.

Clause 55 seeks to provide for the requisition of a meeting by interest holders. The conduct of a meeting requisitioned under this *clause* shall be carried out in accordance with the provisions in the trust deed or contractual agreement or in the absence of such provisions, at the direction of the chairman of the meeting.

Clause 56 provides for the procedures relating to notice of meeting and the categories of persons who are entitled to the notice.

Clause 57 provides for the manner in which a notice may be given.

Clause 58 provides for the procedures for publishing a notice of meeting of a scheme on a website.

Clause 59 provides that provisions relating to meetings and proxies under Subdivisions 5 and 6 of Division 5 of Part III of the proposed Companies Act 2015 shall apply to meetings of scheme unless otherwise specified in the trust deed or contractual agreement.

Clause 60 imposes an obligation on a management company to keep minutes of meetings at the registered office for a period of at least seven years.

Clause 61 provides that the records of the proceeding of the annual meeting shall be sufficient evidence that the meeting have been duly held and convened and all the proceedings at the meeting have taken place.

6. Part V deals with the winding up of schemes and related matters.

Clause 62 provides that a trust deed or contractual agreement may provide for a scheme to be wound up at a specified time or due to specified circumstances. However, any provision purporting to provide that if a company ceases to be the management company of the scheme shall be void.

Clause 63 provides that interest holders of an investment scheme may direct the scheme to be wound up.

Clause 64 seeks to provide for the procedures to be carried out by a management company in the event the objectives of the scheme have been accomplished or have not been accomplished.

Clause 65 seeks to provide for the procedures in the winding up of a scheme by the Court including the categories of persons who may apply to the Court for the winding order.

Clause 66 seeks to provide that in the winding up of a scheme, the management company has the duty to ensure that the scheme is wound up in accordance to the provisions of the trust deed or contractual agreement or the Court order, as the case may be. This *clause* also prohibits any issuance of interests once steps to wind up the scheme have commenced.

Clause 67 seeks to provide for ancillary orders that may be made by the Court in connection with a winding up of a scheme.

Clause 68 provides that if there are still money or other property left undistributed after the completion of the winding up of a scheme, such money or property shall be surrendered to the Registrar and that the provisions relating to the management of assets of defunct companies under the proposed Companies Act 2015 shall be applicable.

Clause 69 provides that a management company may apply to the Registrar to voluntarily deregister a scheme if the scheme fails to meet the minimum number of interest holders subscribing to the scheme as stated in the trust deed or contractual agreement.

7. Part VI deals with enforcement provisions.

Clause 70 provides that the Registrar or other person whose interest may be affected may seek an injunction order from the Court.

Clause 71 empowers the Registrar to intervene in the management of a scheme if the scheme is insolvent, the scheme has not been administered or managed in accordance with the trust deed or contractual agreement or the terms and conditions for the authorization of the scheme has not been complied with. This *clause* also seeks to empower the Registrar to order the management company to cease offering any interests, to appoint an auditor to audit the scheme or to wind up the scheme.

Clause 72 empowers the Registrar to terminate any scheme which is not registered under the proposed Act and to direct such scheme, among others, to compensate any person who has bought the interests, cease from offering any interests or soliciting or collecting any money from the public.

Clause 73 empowers the Minister to exempt any company or class of companies or person or class of persons from all or any requirements of this proposed Act.

Clause 74 seeks to protect certain officers of a management company who make disclosures on any matter which may or will constitute a breach of the proposed Act or a serious offence would be committed against the management company by other officer of the management company. Any officer who makes such disclosure shall not be discriminated against including being removed, demoted or subjected to any disciplinary actions.

Clause 75 seeks to provide for the general penalty of a fine not exceeding fifty thousand ringgit or imprisonment not exceeding three years or to both for offences for which no specific penalty is provided for.

8. Part VII deals with matters relating to the administration of the proposed Act.

Clause 76 requires a management company to keep a register of interest holders for each scheme it administers at its registered office.

Clause 77 imposes a duty on a management company to lodge a return within two months after the end of each financial year and to be accompanied with the audited financial statements of the scheme.

Clause 78 sets out the documents which shall be kept at the registered office of a management scheme.

Clause 79 provides the forms of documents and other means of recording documents which can be in written form or in the form, electronic or otherwise, that allows the documents or information to be easily accessible and reproduced in written form.

Clause 80 provides that any documents which is to be made available for inspection shall be made available to the persons who have the right to inspect.

Clause 81 requires the Registrar to keep such registers as necessary for the purposes of the proposed Act and any person on payment of fees, may make inspection of documents which are lodged with the Registrar.

Clause 82 seeks to make the disclosure of false or misleading statements as an offence.

Clause 83 seeks to provide for evidentiary value of copies certified by the Registrar relating to documents which are filed or lodged with the Registrar in a proceeding.

Clause 84 provides that if the Registrar certifies that a scheme was or was not registered during the period specified in the certificate or the requirement of the proposed Act has or has not been complied with, the certification shall be received as *prima facie* evidence.

Clause 85 provides the procedures for rectification of an entry which is in the registers kept by the Registrar.

Clause 86 seeks to provide for the Registrar to provide a service for lodgement of documents electronically.

Clause 87 empowers the Registrar to issue documents electronically.

Clause 88 seeks to provide that any extract of information or document lodged with the Registrar and certified as true copy shall be *prima facie* evidence of any matter specified in the extract.

Clause 89 empowers the Minister to amend the Schedules of the proposed Act.

Clause 90 empowers the Minister to make regulations as may be expedient or necessary for the better carrying out the objects and purposes of the proposed Act.

Clause 91 empowers the Minister to make regulations to declare that certain interests or class of interests is more appropriately regulated under securities laws as defined in the Securities Commission Act 1993 upon request of the Minister charged with the responsibility for finance.

Clause 92 deals with matters relating to savings and transitional.

FINANCIAL IMPLICATIONS

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

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