

# **GUIDELINES ON UNIT TRUST FUNDS**

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# GUIDELINES ON UNIT TRUST FUNDS

## Chapter 1

### INTRODUCTION

- 1.01 The *Guidelines on Unit Trust Funds* is issued by the SC pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA). These guidelines set out requirements to be complied with by any person intending to establish a unit trust fund in Malaysia and issue, offer or invite any person to subscribe or purchase units of the unit trust fund.
- 1.02 These guidelines replace and supersede the *Guidelines on Unit Trust Funds* issued on 1 April 2003 and all guidance notes and circulars issued pursuant to those guidelines.
- 1.03 These guidelines are aimed at providing a regulatory environment that would protect the interests of the investing public and facilitate the orderly development of the unit trust industry in Malaysia. In addition, these guidelines are also drawn up to govern the operation of unit trust funds established in Malaysia.
- 1.04 These guidelines and the securities laws form the regulatory framework for unit trust funds in Malaysia, and should be read together. All parties to a unit trust fund are expected to be guided by the letter and spirit of the regulatory requirements.
- 1.05 The SC may take action against persons who fail to comply with and/or observe any of the provisions in these guidelines, as are permitted under section 354 of the CMSA and/or other relevant provisions under the CMSA.
- 1.06 The SC may exempt where it deems appropriate or, upon application, grant exemptions or variations from compliance with any requirement in these guidelines.
- 1.07 The SC may, from time to time, issue practice notes to further provide greater clarity and guidance on any of the provisions in these guidelines. The practice notes must be complied with in the same manner as these guidelines.
- 1.08 These guidelines (including practice notes) may be reviewed as and when necessary.

- 1.09 Any person engaged in dealing, marketing and distribution activities for unit trust funds (including issuance of advertisements and promotional materials) or online transactions/activities for unit trust funds, should observe and ensure compliance with relevant securities laws and the following guidelines:
- (a) *Guidelines on Marketing and Distribution of Unit Trust Funds;*
  - (b) *Guidelines on Unit Trust Advertisements and Promotional Materials;* and
  - (c) *Guidelines on Online Transactions of, and Online Activities in Relation to, Unit Trusts.*
- 1.10 Under section 232(1) of the CMSA, a person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase, any securities unless a prospectus has been registered by the SC and the prospectus complies with the requirements or provisions of the CMSA. In addition, pursuant to section 235(1)(f) of the CMSA, the SC has issued the *Prospectus Guidelines for Collective Investment Schemes* which sets out the minimum information required by the SC in a fund's prospectus.

## Chapter 2

### DEFINITIONS

2.01 In these guidelines, the following words have the following meanings, unless the context otherwise requires:

accounting records	includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.
accounts	means a profit and loss account (or income and expenditure statement) and balance sheet (or statement of assets and liabilities) and include notes or statements (other than auditor's report or director's report) attached or intended to be read with the profit and loss account and balance sheet.
adviser	means a Malaysian incorporated—  (a) investment bank/merchant bank;  (b) universal broker; or  (c) such other person who provides advice/information to the applicant where such advice/information is submitted to the SC in relation to or in connection with any proposal.
auditor	has the same meaning as given under the CMSA.
assets of the fund	includes the assets of the fund and all amounts due to the fund.

cancellation price for units	means the price payable by the unit trust fund for the cancellation of a unit in the fund.
close-ended fund	means a fund with limited number of units in issue and has a limited offer period.
CMSA	means the <i>Capital Markets and Services Act 2007</i> .
collective investment schemes	<p>means, for the purpose of these guidelines, any arrangement where—</p> <ul style="list-style-type: none"><li>(a) it is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property (“referred to as “scheme’s assets”) or sums paid out of such profits or income;</li><li>(b) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme’s assets; and</li><li>(c) the scheme’s assets is managed by an entity who is responsible for the management of the scheme’s assets and is approved/authorised/licensed by a relevant regulator to conduct fund management activities;</li></ul> <p>and includes among others unit trust funds, real estate investment trusts, exchange-traded funds, restricted investment schemes and closed-end funds.</p>
cooling-off right	means the right of a unit holder to obtain a refund of the unit holder’s investment in the fund, if the unit holder so requests within the cooling-off period.

creation price for units	means the price payable to the unit trust fund for the creation of a unit in the fund.
debenture	has the same meaning as given under the CMSA.
deed	has the same meaning as given under the CMSA.
derivative	means an instrument the value of which depends upon the value of underlying indices or assets such as currencies, securities, commodities or other derivative instruments.
eligible issuer	means a person who is allowed to issue structured products under the <i>Guidelines on the Offering of Structured Products</i> .
eligible market	means a market that—  (a) is regulated by a regulatory authority;  (b) operates regularly;  (c) is open to the public; and  (d) has adequate liquidity for the purposes of the fund in question.
financial statements	includes a profit and loss account (or an income and expenditure statement), a balance sheet (or statement of assets and liabilities), a statement showing either all changes in equity, or changes in equity other than those arising from capital transactions with owners and distribution to owners, a cash flow statement and accounting policies and explanatory notes.
forward price	means the price of a unit that is the NAV per unit calculated at the next valuation point after an instruction or a request is received.

fund manager	means a person who holds a Capital Markets Services Representative's Licence to carry on the regulated activity of fund management.
fund management	has the same meaning as given under the CMSA.
fund's property	means assets of the fund.
fund reports	means the annual and interim reports of the unit trust fund.
group of companies	means any company and its related corporations.
historic price	means the price of a unit that is the NAV per unit calculated at the valuation point before an instruction or request is received.
independent member	<p>in relation to the board of directors of a management company, the investment committee of a unit trust fund, the Shariah adviser and the panel of advisers, refers to a person who is free of any relationship with the management company or the controlling or significant shareholder(s) of the management company that would otherwise interfere with the member's exercise of independent judgement. In any case, a period of six months must elapse before a person who was previously connected to the management company or controlling/ significant shareholder(s) can be deemed to be independent. The following is a non-exhaustive list of persons that would not be considered as "independent member":</p> <ul style="list-style-type: none"><li>(a) Officer of the management company;</li><li>(b) Officer of the trustee of the fund;</li><li>(c) Officer of any body corporate or unincorporate that has power to</li></ul>

appoint or make recommendations towards the appointment of board of directors of the management company, members of the investment committee, the Shariah adviser and the panel of advisers of the fund;

- (d) Person related to an officer of the management company or trustee of the fund;
- (e) Person representing or seen to be representing any body corporate or unincorporate with a controlling interest in the management company; or
- (f) Person who, within six months prior to his appointment as independent member, has derived any remuneration or benefit (other than retirement benefit) from the management company or any body corporate or unincorporate that has power to appoint or make recommendations towards the appointment of board of directors of the management company, members of the investment committee, the Shariah adviser and the panel of advisers of the fund.

Islamic bank means a bank licensed under the *Islamic Banking Act 1983*.

liabilities of the fund include all amounts payable by the fund, accrued expenses and taxes, and any appropriate provisions for contingencies.

licensed institution means any institution licensed or deemed to be licensed under the *Banking and Financial Institutions Act 1989* and *Islamic Banking Act 1983*.

licensed bank	has the same meaning as given under the <i>Banking and Financial Institutions Act 1989</i> .
licensed merchant bank	has the same meaning as given under the <i>Banking and Financial Institutions Act 1989</i> .
management company	has the same meaning as given under the CMSA.
management expense ratio (MER)	means the ratio of the sum of fees and the recovered expenses of the unit trust fund to the average value of the unit trust fund calculated on a daily basis, i.e.

$$\frac{\text{Fees of the unit trust fund} + \text{Recovered expenses of the unit trust fund}}{\text{Average value of the unit trust fund calculated on a daily basis}} \times 100$$

Where:

Fees = All ongoing fees deducted/ deductible directly from the unit trust fund in respect of the period covered by the management expense ratio, expressed as a fixed amount, calculated on a daily basis. This would include the annual management fee, the annual trustee fee and any other fees deducted/ deductible directly from the unit trust fund;

Recovered expenses = All expenses recovered from/ charged to the unit trust fund, as a result of the expenses

incurred by the operation of the unit trust fund, expressed as a fixed amount. This should not include expenses that would otherwise be incurred by an individual investor (e.g. brokerage, taxes and levies); and

Average value of the unit = The NAV of the unit trust fund, including unit trust net income value of the fund, less expenses on an accrued basis, in respect of the period covered by the management expense ratio, calculated on a daily basis.

net asset value (NAV) means the value of all the fund's assets less the value of all the fund's liabilities at the valuation point.

*For the purpose of computing the annual management fee and annual trustee fee, the NAV of the fund should be inclusive of the management fee and trustee fee for the relevant day.*

NAV per unit means the NAV of the fund divided by the number of units in circulation, at the valuation point.

officer has the same meaning as given under the CMSA.

ordinary resolution means a resolution passed by a simple majority of votes validly cast at a meeting of unit holders.

partner	in relation to a director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer or major shareholder of the management company, the management company or trustee, means such person who falls within any of the following categories:
	<ul style="list-style-type: none"><li data-bbox="474 459 934 855">(a) A person with whom the director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer or major shareholder of the management company, the management company or trustee is in or proposes to enter into partnership with. "Partnership" for this purpose is given the meaning under section 3 of the <i>Partnership Act 1963</i>; and</li><li data-bbox="474 890 934 1225">(b) A person with whom the director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer or major shareholder of the management company, the management company or trustee has entered into or proposes to enter into a joint venture, whether incorporated into or not.</li></ul>
person connected	in relation to a director, chief executive officer or major shareholder of the management company, the management company or trustee, means such person who falls under any of the following categories:

- (a) A family member of the director, chief executive officer or major shareholder of the management company;
- (b) A trustee of a trust (other than a trustee for an employee share scheme or pension scheme) under which the director, chief executive officer or major shareholder of the management company; management company or trustee; or a family member of the director, chief executive officer or major shareholder of the management company, is the sole beneficiary;
- (c) A partner of the director, chief executive officer or major shareholder of the management company; management company or trustee; or a partner of a person connected with that director, chief executive officer or major shareholder of the management company; management company or trustee;
- (d) A person who is accustomed or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the director, chief executive officer or major shareholder of the management company; management company or trustee;
- (e) A person in accordance with whose directions, instructions or wishes the director, chief executive officer or major shareholder of the management company; management company or trustee; is accustomed or is under obligation, whether formal or informal, to act;

- (f) A body corporate or its directors which/who is/are accustomed or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the director, chief executive officer or major shareholder of the management company; management company or trustee;
- (g) A body corporate or its directors whose directions, instructions or wishes the director, chief executive officer or major shareholder of the management company; management company or trustee; is accustomed or under obligation, whether formal or informal, to act;
- (h) A body corporate in which the director, chief executive officer or major shareholder of the management company; management company or trustee; and/or persons connected to him are entitled to exercise or control the exercise of, not less than 15% of the votes attached to the voting shares in the body corporate; or
- (i) A body corporate which is a related corporation.

portfolio turnover ratio (PTR)

means the ratio of the average sum of acquisitions and disposals of the unit trust fund for the year to the average value of the unit trust fund for the year calculated on a daily basis, i.e.

[Total acquisitions of the fund for the year + Total disposals of the fund for the year] / 2

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Average value of the unit trust fund for the year calculated on a daily basis

prospectus has the same meaning as given under the CMSA.

qualified investors means the following:

- (a) An individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies;
- (b) A corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts;
- (c) A unit trust scheme or prescribed investment scheme;
- (d) A company registered as a trust company under the *Trust Companies Act 1949* or a corporation that is a public company under the *Companies Act 1965* or under the laws of any other country which has been allowed by the SC to be a trustee and has absolute discretion in the investment of the trust assets of a trust with total net assets exceeding RM10 million or its equivalent in foreign currencies; or
- (e) A pension fund approved by the Director General of Inland Revenue under Section 150 of the *Income Tax Act 1967*.

related corporation	has the same meaning as given under the CMSA.
related party	means— <ol style="list-style-type: none"><li>(a) the management company of the fund;</li><li>(b) the trustee of the fund;</li><li>(c) a director, chief executive officer or major shareholder of the management company; or</li><li>(d) a person connected with any director, chief executive officer or major shareholder of the management company; or a person connected with the management company or trustee.</li></ol>
repurchase price	means the price payable to a unit holder for a unit in the unit trust fund pursuant to a repurchase request.
SC	means the Securities Commission established under the SCA.
SCA	means the <i>Securities Commission Act 1993</i> .
securities	has the same meaning as given under the CMSA.
securities laws	has the same meaning as given under the SCA.
selling price	means the price payable by an investor for a unit in the unit trust fund pursuant to a purchase request.
special resolution	means a resolution passed by a majority of not less than 3/4 of unit holders voting at a meeting of unit holders.

*For the purpose of terminating or winding up a fund, a special resolution is passed by a majority in number representing at least 3/4 of the value of the units held by unit holders voting at the meeting*

structured products	has the same meaning as given under the <i>Guidelines on the Offering of Structured Products</i> .
total return of the fund	means the sum of the income generated by the fund which is reflected as distribution and the capital gains/loss of the fund which is reflected in the movement in the price of a unit.
unit	has the same meaning as given under the CMSA.
units in circulation	means units created and fully paid.
unit split	refers to where a unit is split into more than one unit subsequently.
unit trust fund or fund	has the same meaning as the expression “unit trust scheme” or “scheme” in the CMSA.
wholesale fund	means a unit trust fund that is issued and offered to qualified investors.

## Calculation of Time Period

- 2.02 References to “days” in the guidelines will be taken to mean calendar days unless otherwise stated. Furthermore, any time period stated in these guidelines where no specific method for determining the time period is set out, the period shall start on the day after the day of the event.

## Chapter 3

### THE MANAGEMENT COMPANY

#### Appointment of Management Company

- 3.01 As prescribed under sections 288(2) and 289(1) of the CMSA, only a management company approved by the SC can act as a management company to a fund.
- 3.02 A management company is a company that–
- (a) establishes a fund;
  - (b) issues, offers for subscription, makes an invitation to subscribe for or purchase units of the fund; and
  - (c) operates and administers the fund.
- 3.03 Where a management company carries on any regulated activity specified in Schedule 2 of the CMSA, the management company should be a holder of a Capital Markets Services Licence to carry on the regulated activity, and should observe and comply with the relevant guidelines issued by the SC for licence holders.

#### Eligibility Requirements

- 3.04 A management company must–
- (a) be an entity incorporated in Malaysia;
  - (b) have a minimum of 30% Bumiputera equity;
  - (c) not have more than 49% foreign equity; and
  - (d) have a minimum shareholders' funds of RM10 million at all times.
- 3.05 Clauses 3.04(b) and (c) do not apply to an Islamic fund management company under the Special Scheme.

## **Directors**

- 3.06 The board of directors of a management company should comprise at least two independent members, while maintaining a minimum ratio of at least one-third independent members at all times. The independent directors of a management company should, in addition to their duties and responsibilities as directors, represent and safeguard the interests of unit holders.
- 3.07 A director of a management company should not–
- (a) hold office as director of more than one management company at any one time; and
  - (b) hold office as member of the investment committee of funds operated by another management company.

## **Key Personnel**

### ***Chief Executive Officer***

- 3.08 A management company should appoint a chief executive officer who is a full-time officer.

### ***Designated Person Responsible for the Fund Management Function of the Fund***

- 3.09 A management company should appoint an individual as a designated person responsible for the fund management function of the fund, whether the function is undertaken internally within the management company or externally. Where the function is delegated to an external party, the management company should ensure that the delegate appoints a designated person for the fund.
- 3.10 For the purpose of clause 3.09, the designated person must be a holder of a Capital Markets Services Representative's Licence to carry on the regulated activity of fund management. Where the designated person is in a foreign fund management company, the designated person must be licensed/registered/approved/authorised to carry on the activity of fund management by the relevant regulator in his home jurisdiction.

### **Compliance Officer**

- 3.11 A management company should appoint a compliance officer to ensure compliance with the deed, prospectus disclosures, these guidelines and securities laws.
- 3.12 A compliance officer should report to the board of directors.
- 3.13 Where a management company manages a fund expressed to be managed and administered in accordance with Shariah principles, the compliance officer should have a basic knowledge of Shariah laws/principles.
- 3.14 The duties and functions of a compliance officer include, but are not limited to, the following:
  - (a) Work closely with the chief executive officer in all compliance issues and liaise with other departments/divisions to discharge the duties and functions effectively;
  - (b) Prepare and table compliance reviews regularly (i.e. at every board of directors meeting and/or the audit and compliance committee meeting). The compliance review should examine the compliance issues relating to each area of the management company's operations;
  - (c) Maintain and review compliance procedures for each area of the management company's operations;
  - (d) Examine and/or investigate any irregularity in the management company's operations. All findings should be properly documented. Where necessary, the compliance officer should notify and/or consult the trustee and/or the SC;
  - (e) Be responsible for the compliance manual and the code of conduct for employees of the management company, including liaising with the human resource department in briefing new employees on compliance matters, regulatory requirements and management company's policies and procedures. The compliance officer together with the respective departments should continuously review and

- update the compliance manual and code of conduct to reflect new conditions;
- (f) Liaise with the human resource department/training unit to provide training, updates, and/or advise the management company on compliance matters, industry and regulatory developments. In this regard, the training may be extended to the members of the board of directors, investment committee and Shariah adviser/panel of advisers (where applicable);
  - (g) Monitor and resolve conflict of interest situations between funds managed and administered by the management company, and within the management company. Where appropriate, the compliance officer should advise the board of directors (or the audit and compliance committee) of the management company, the investment committee and/or Shariah advisers/panel of advisers of the fund(s) concerned accordingly;
  - (h) Report to the investment committee, the board of directors (including audit committee, if any) and Shariah adviser (where applicable) on whether dealings in the fund's property are appropriate to the fund and/or in accordance with Shariah principles (where applicable); and
  - (i) Be responsible to advise on any matter relating to compliance with the applicable requirements, including on fund management and on dealings by employees and directors of the management company and investment committee members.

### **Internal Audit**

- 3.15 A management company should maintain an internal audit function to report on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls.
- 3.16 The internal audit must, among others–
- (a) follow clearly defined terms of the internal audit framework

which sets out the scope, objectives, approach and reporting requirements;

- (b) adequately plan, control and record all audit work performed, and record the findings, conclusions and recommendations; and
- (c) highlight matters in the audit report, which should be resolved satisfactorily in a timely manner.

### **Roles and Responsibilities of Management Company**

- 3.17 In addition to the duties stipulated under the CMSA, a management company should observe, act and carry out its duties in accordance with the prescribed roles and responsibilities set out in this chapter.

#### ***General***

- 3.18 A management company should operate the fund and exercise its responsibilities according to the deed and prospectus, these guidelines, securities laws and acceptable and efficacious business practices within the unit trust industry.
- 3.19 A management company should–
- (a) exercise the degree of care and diligence that a reasonable person would exercise in the position of a management company;
  - (b) act in the best interests of unit holders and, if there is a conflict between unit holders’ interests and its own interests, give priority to unit holders’ interests;
  - (c) not improperly make use of information acquired through being the management company to–
    - (i) gain an advantage for itself or other person; or
    - (ii) cause detriment to unit holders in the fund;

- (d) ensure that the fund's property is–
    - (i) clearly identified as the fund's property; and
    - (ii) held separately from the property of the management company and any other fund managed by the management company; and
  - (e) comply with any other duty, not inconsistent with the CMSA and these guidelines, that is conferred on the management company by the deed.
- 3.20 A management company should, among others–
- (a) establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor risks in relation to the fund it operates and manages;
  - (b) have adequate human resources with the necessary qualification, expertise and experience to carry on business as a management company; and
  - (c) have adequate and appropriate systems, procedures and processes to undertake the business in a proper and efficient manner.
- 3.21 A management company should account to the trustee for any loss suffered by the fund as a result of the management company's failure to exercise the degree of care and diligence required in operating and managing the fund.
- 3.22 A management company should ensure that its officers and delegates–
- (a) do not make improper use of information acquired through being such an officer or delegate of the management company to–
    - (i) gain an advantage for himself or another person; or
    - (ii) cause detriment to unit holders in the fund;
  - (b) do not make improper use of their position as such officers

or delegates to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to unit holders in the fund; and

- (c) comply with any other duty or obligation as may be prescribed under the securities laws, trust laws or these guidelines.

### ***Valuation and Pricing***

- 3.23 A management company should take all reasonable steps and exercise due diligence to ensure that the fund and the fund's units are correctly valued and priced, in line with the provisions of Chapter 10 and Schedule B of these guidelines, the deed and the prospectus.
- 3.24 For the purpose of valuing the fund's property and pricing the fund's units, a management company should not do or omit anything that would confer on itself a benefit or advantage at the expense of unit holders or potential unit holders.

### ***Transactions***

- 3.25 A management company should conduct all transactions for a fund at arm's length.
- 3.26 A management company should not act or conduct transactions in any manner that would result in unnecessary cost or risk to the fund.
- 3.27 Unless otherwise approved by the SC, a management company should not conduct transactions, directly or indirectly, with any party which has its own system of inviting investments in the fund.

### ***Maintenance of Records***

- 3.28 A management company should maintain proper accounting records and other records as are necessary—
  - (a) to enable a complete and accurate view of the fund to be formed; and

- (b) to comply with the deed, these guidelines, securities laws and any other relevant law.
- 3.29 A management company should ensure that the financial statements of the fund give a true and fair view of the fund's financial position as at the end of the fund's financial period.
- 3.30 A management company should prepare and present, or cause to be prepared and presented, its financial statements in accordance with approved accounting standards, the deed, these guidelines and securities laws.

### **Provision of Information**

- 3.31 A management company must submit or make available any information relating to the fund, its business and any other information as may be required by the SC and the trustee from time to time.

### **Holding of Units by Management Company**

- 3.32 A management company or its nominees should not hold any unit in the fund, other than when complying with repurchase requests and/ or in creating new units to meet anticipated requests for units by investors ("manager's box"), subject to a maximum of–
  - (a) three million units; or
  - (b) 10% of the units in circulation, whichever is the lower.

#### **Guidance**

Units created to meet confirmed requests for units and held by the management company pending allocation to potential investor (including units created to meet requests by investors under the Skim Pelaburan Ahli Kumpulan Wang Simpanan Pekerja) are not subjected to the limits above.

## Chapter 4

### THE TRUSTEE

#### Appointment of Trustee

4.01 As prescribed under sections 288(1)(a) and 289(1) of the CMSA, a trustee must be appointed for a fund and the appointment must be approved by the SC.

#### Eligibility Requirements

4.02 A trustee must–

- (a) be a trust company registered under the *Trust Companies Act 1949* or incorporated pursuant to the *Public Trust Corporation Act 1995*;
- (b) be registered with the SC; and
- (c) have a minimum issued and paid-up capital of not less than RM500,000.

#### Roles and Responsibilities of Trustee

4.03 In addition to duties stipulated under the CMSA, a trustee should observe, act and carry out its duties in accordance with the prescribed roles and responsibilities set out in this chapter.

#### General

4.04 A trustee should–

- (a) act honestly and in accordance with the deed and prospectus, these guidelines, trust laws and securities laws;
- (b) exercise the degree of care and diligence that a reasonable person would exercise in the position of a trustee;

- (c) act in the best interests of unit holders and, if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
- (d) not improperly make use of information acquired through being the trustee to–
  - (i) gain an advantage for itself or other person; or
  - (ii) cause detriment to unit holders in the fund; and
- (e) comply with any other duty, not inconsistent with the CMSA and these guidelines, that is conferred on the trustee by the deed.

4.05 A trustee should, among others–

- (a) have adequate human resources with the necessary qualification, expertise and experience to carry on business as a trustee to unit trust funds; and
- (b) have adequate and appropriate systems, procedures and processes, to carry out its duties and responsibilities in a proper and efficient manner.

4.06 A trustee should ensure that its officers and delegates–

- (a) do not make improper use of information acquired through being such an officer or delegate of the trustee to–
  - (i) gain an advantage for himself or another person; or
  - (ii) cause detriment to unit holders in the fund;
- (b) do not make improper use of their position as such officers or delegates to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to unit holders in the fund; and
- (c) comply with any other duty or obligation as may be prescribed under the securities laws, trust laws or these guidelines.

### ***Holding of the Fund's Property***

- 4.07 As prescribed under section 300(1) of the CMSA, a trustee should take custody and control of the fund's property and hold in trust for the unit holders in accordance with the deed, these guidelines and securities laws.
- 4.08 A trustee should ensure that a fund's property is–
- (a) clearly identified as the fund's property;
  - (b) held separately from any other asset/property held by or entrusted to the trustee; and
  - (c) registered in the name of, or to the order, of the fund.

### ***Trustee's Obligations on Oversight Functions***

- 4.09 A trustee should actively monitor the operation and management of the fund by the management company to safeguard the interests of unit holders.
- 4.10 A trustee should, at all times, through proper and adequate supervision, ensure that the fund is operated and managed by the management company, in accordance with–
- (a) the deed;
  - (b) the prospectus;
  - (b) these guidelines and securities laws; and
  - (c) acceptable and efficacious business practices within the unit trust industry.

#### **Guidance**

To safeguard the interests of unit holders, the trustee should conduct independent reviews and not only depend on the information submitted by the management company.

- 4.11 Where a fund is expressed to be managed in accordance with specific principles, the trustee should ensure that the fund is managed in accordance with those principles.
- 4.12 A trustee should ensure that it is fully informed of the investment policies of the fund set by the management company, and of changes made. If the trustee is of the opinion that the policies are not in the interests of unit holders, it should, after considering any representation made by the management company, instruct the management company to take appropriate action as the trustee deems fit and/or summon a unit holders' meeting to give such instructions to the trustee as the meeting thinks proper.
- 4.13 A trustee should exercise reasonable diligence in monitoring the management company's functions and do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed, disclosures in prospectus, requirements of these guidelines and provisions of the CMSA, unless the trustee is satisfied that the breach will not materially prejudice unit holders' interests.

### ***Trustee's Reporting and Disclosure Obligations***

- 4.14 As prescribed under the CMSA, a trustee should notify the SC as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of securities laws or any inconsistency between the disclosures in the prospectus and the provisions or covenants of the deed, which in the trustee's opinion, may indicate that the interests of unit holders are not being served.
- 4.15 Where a fund is to be managed in accordance with specific principles, a trustee should provide a transaction report(s) of the fund to the Shariah adviser/panel of advisers, whichever is applicable. If the transaction report is prepared by the management company, the trustee should approve the transaction report prior to it being submitted to the relevant adviser.

### ***Dealings in Fund's Property***

- 4.16 A trustee should take all steps to effect any instruction properly given

by the management company, or its fund management delegate, relating to acquisitions or disposals of, or the exercise of the rights attaching to, a fund's property.

### ***Creation, Cancellation and Dealing in Units of the Fund***

- 4.17 A trustee should take all steps to effect any instruction properly given by the management company under Chapter 10 of these guidelines.
- 4.18 A trustee should ensure that the systems, procedures and processes employed by the management company are adequate to ensure that the fund or fund's units are correctly valued and/or priced in line with provisions of Chapter 10 and Schedule B of these guidelines, the deed and prospectus.

### ***Provision of Information***

- 4.19 A trustee must submit or make available any statement, document, book, record and other information relating to the fund and the business of the trustee as may be required by the SC from time to time.

### ***Maintenance of Records***

- 4.20 A trustee should maintain and ensure that the management company maintains proper accounting records and other records as are necessary—
  - (a) to enable a complete and accurate view of the fund to be formed; and
  - (b) to ensure that the fund is operated and managed in accordance with the deed of the fund, prospectus, these guidelines and securities laws.

### ***Holding of Units by Trustee***

- 4.21 A trustee should not hold units or other interests in the fund.

## Chapter 5

### DELEGATION AND OUTSOURCING

#### General

- 5.01 A management company or trustee may delegate and outsource its functions to third parties.
- 5.02 Delegating and outsourcing to third parties do not relieve a management company or trustee from the responsibility for proper conduct of the delegated and outsourced activities. A management company or trustee remains responsible for the actions and omissions of its delegate or service provider as though they were its own actions and omissions.
- 5.03 A management company or trustee should ensure that–
- (a) adequate procedures are in place to monitor the conduct of its delegate or service provider and to ensure that the function delegated or outsourced is performed in a proper and efficient manner; and
  - (b) there are controls in place to ensure compliance with the deed, prospectus, these guidelines and securities laws.
- 5.04 A management company or trustee should also ensure that its delegate or service provider is suitable to undertake the particular functions, including that it–
- (a) is duly licensed or authorised by the relevant authority (where applicable);
  - (b) has adequate financial resources;
  - (c) has an adequate track record in the performance of the functions; and
  - (d) has adequate and appropriate human resources, systems, procedures and processes to carry out the function (including on compliance with applicable requirements and policies and procedures on internal controls).

- 5.05 The service agreement between the management company or trustee and its delegate or service provider should, among others, contain clear provisions on–
- (a) the services to be provided;
  - (b) the fees, remuneration and other charges of the delegate;
  - (c) any restriction or prohibition regarding the performance of the function to be delegated; and
  - (d) reporting requirements, including the line of reporting between the delegate and the management company and means of evaluating the performance of the delegate.

### **Delegation of Function by the Management Company**

- 5.06 Any delegation of a management company's function requires SC's prior approval.
- 5.07 Clause 5.06 does not apply to delegation of function to a holder of a Capital Markets Services Licence.
- 5.08 Where a management company appoints a foreign delegate, the agreement between the management company and its foreign delegate should include, in addition to the requirements set out in clause 5.05, the following provisions:
- (a) Adequate training arrangements between the foreign delegate and the management company; and
  - (b) Powers of examination and/or inspection by the management company and/or the trustee and/or the SC to ensure that the foreign delegate is in compliance with the applicable requirements of the deed, prospectus, these guidelines and securities laws.
- 5.09 An officer of the delegate (whether foreign or otherwise) should not hold office as member of–
- (a) the investment committee of any fund for which the fund manager is appointed to manage;

- (b) the Shariah adviser of any fund for which the delegate is appointed to manage; and
  - (c) the panel of advisers of any fund for which the delegate is appointed to manage.
- 5.10 The delegate's remuneration must be paid by the management company and not be charged to the fund.

### **Delegation of Function by the Trustee**

- 5.11 A trustee may delegate the custodial function for the fund's property.
- 5.12 Where the function is delegated, the trustee should ensure that—
- (a) it retains control of the fund's property at all times; and
  - (b) there are adequate arrangements to prevent the delegate from releasing the custody or control of the fund's property without its prior consent.

### **Outsourcing of Functions**

- 5.13 A management company may outsource its back office functions to external parties.
- 5.14 For the purpose of clause 5.13, a management company should observe and ensure compliance with the requirements in the *Guiding Principles for Outsourcing of Back Office Functions for Capital Market Intermediaries* and *Guidelines on Performance of Supervision Functions at Group Level for Capital Market Intermediaries* issued by the SC.

## Chapter 6

### OVERSIGHT ARRANGEMENT

- 6.01 In addition to the appointment of a trustee, a management company should establish and maintain additional arrangements to provide oversight on the operation and management of the fund.
- 6.02 A management company should implement and maintain the following arrangements:
- (a) Appointment of an investment committee for a fund; and
  - (b) Appointment of (where applicable)–
    - (i) Shariah adviser for a Shariah-compliant fund; or
    - (ii) panel of advisers for a fund that is expressed to be managed in accordance with specific principles.

### Investment Committee

#### *General*

- 6.03 An investment committee of a fund should comprise–
- (a) at least three individual members; and
  - (b) at least two independent members, while maintaining a minimum ratio of at least one-third independent members at all times.
- 6.04 A member of the investment committee should not hold office as–
- (a) member of an investment committee of funds managed and administered by another management company;
  - (b) director of another management company;
  - (c) Shariah adviser for the same fund;

- (d) member of the panel of advisers for the same fund; and
  - (e) an officer of the delegate that carry on the fund management function for the fund.
- 6.05 For a Shariah-compliant fund, the investment committee should comprise at least two Muslim members. A quorum is not present for the purpose of holding an investment committee meeting unless one Muslim member is present at the meeting.

### ***Roles and Responsibilities***

- 6.06 An investment committee should ensure that the fund is managed in accordance with–
- (a) the fund's investment objective;
  - (b) the deed;
  - (c) the prospectus;
  - (d) these guidelines and securities laws;
  - (e) the internal investment restrictions and policies; and
  - (f) acceptable and efficacious practices within the unit trust industry.
- 6.07 An investment committee's roles and responsibilities include the following:
- (a) Select appropriate strategies to achieve the proper performance of the fund in accordance with the fund management policies;
  - (b) Ensure that the strategies selected are properly and efficiently implemented by the management company or its fund management delegate; and
  - (c) Actively monitor, measure and evaluate the fund management performance of the management company or its fund management delegate.

## **Shariah Adviser**

### ***General***

- 6.08 A Shariah adviser should–
- (a) be independent of the management company;
  - (b) be registered with the SC;
  - (c) (where individuals are appointed) comprise at least three individuals; and/or
  - (d) (where a corporation is appointed) engage at least one Shariah expert who meets the fit and proper criteria in clauses 6.18 and 6.19.
- 6.09 Clauses 6.08(a) and (b) do not apply to a corporation which is an Islamic bank or a licensed institution approved by Bank Negara Malaysia to carry on an Islamic banking business.
- 6.10 Individuals appointed under clause 6.08(c) and (d) should not hold office as member of the investment committee of funds managed and administered by the same management company.

### ***Roles and Responsibilities***

- 6.11 The roles of a Shariah adviser include the following:
- (a) To advise on all aspects of unit trust and fund management business in accordance with Shariah principles;
  - (b) To provide Shariah expertise and guidance in all matters, particularly on the fund's deed and prospectus, fund structure, investments and other operational matters;
  - (c) To ensure that the fund is managed and operated in accordance with Shariah principles, relevant SC regulations and/or standards, including resolutions issued by the SC's Shariah Advisory Council;

- (d) To review the fund's compliance report and investment transaction report to ensure that the fund's investments are in line with Shariah principles; and
  - (e) To prepare a report to be included in the fund's annual and interim reports stating its opinion whether the fund has been operated and managed in accordance with the Shariah principles for the financial period concerned.
- 6.12 Where there is ambiguity or uncertainty as to an investment, instrument, system, procedure and/or process, the Shariah adviser should consult the SC.

## **Panel of Advisers**

### ***General***

- 6.13 A panel of advisers should—
- (a) comprise at least three individual members; and
  - (b) be independent of the management company.
- 6.14 A member of the panel of advisers should not hold office as member of the investment committee of the same fund or any other fund managed and administered by the same management company.

### ***Roles and Responsibilities***

- 6.15 A panel of advisers must ensure that the fund is operated and managed in accordance with the specific principles set out for the fund.
- 6.16 A panel of advisers should review the fund's compliance report and investment transaction report to ensure that the fund's investments are in line with the specific principles set out for the fund.
- 6.17 A panel of advisers should prepare a report to be included in the fund's annual and interim reports stating its opinion whether the fund has been managed and administered in accordance with the specific principles set out for the fund for the financial period concerned.

## Fit and Proper Criteria

- 6.18 The persons appointed should–
- (a) be of good repute and character;
  - (b) observe high standards of integrity and fair dealing in carrying out their duties and responsibilities;
  - (c) act with due skill, care and diligence in carrying out their duties and responsibilities;
  - (d) take reasonable care to ensure that they carry out their duties and functions in accordance with these guidelines; and
  - (e) possess the necessary qualifications, expertise and experience, particularly in the respective fields to perform their duties and responsibilities in a fit and proper manner.
- 6.19 The persons should not have been involved in any unethical and/or inappropriate practice. Among others, the persons could be subject to a disqualification in any of the following events:
- (a) A petition filed under bankruptcy laws or he has been declared bankrupt;
  - (b) A criminal proceeding for the conviction for fraud, dishonesty or any other offence punishable with imprisonment of one year or more, anywhere in the world;
  - (c) Any inquiry/investigation carried out by any government/statutory authority or body, in which an adverse finding was found; and
  - (d) Any unethical practice and activity which would render the persons unfit to perform an oversight function.
- 6.20 It is the responsibility of the management company to assess the ability of the persons to carry out the duties and responsibilities required of him. In the case of an establishment of a new management company, this responsibility lies with the holding company and/or promoter and its board of directors.

- 6.21 Where any person becomes subject to any disqualification or becomes otherwise unfit to hold office, the management company must ensure that the person vacates the position immediately. The management company must notify the SC immediately of any disqualification and when the position becomes vacant.
  
- 6.22 Where an individual is appointed as a member for more than one committee of funds managed and administered by the same management company, he should act separately and independently for each of the fund he is appointed for.

## Chapter 7

### CONSTITUTION OF THE FUND

#### Instrument Constituting the Fund

- 7.01 As prescribed under section 288(1)(b) of the CMSA, a management company should ensure there is in force a deed for a fund. The deed should contain the minimum requirements prescribed in Schedule C of these guidelines and those specified under securities laws.
- 7.02 A management company and trustee should ensure that the requirements of clause 7.01 are met at all times.
- 7.03 A management company and trustee are responsible for maintaining the deed and make necessary amendments to the deed in accordance with applicable guidelines and securities laws.

#### Name of Fund

- 7.04 A management company and trustee should ensure that the name of the fund is not inappropriate, misleading or conflicts with the name of another fund.
- 7.05 The SC may direct the management company to change the name of the fund if, in the opinion of the SC, the name of the fund is inappropriate, misleading or conflicts with the name of another fund.
- 7.06 When deciding whether to make a direction under clause 7.05, the SC will take into account, among other matters, whether the name of the fund—
- (a) implies that the fund has merits which are not justified;
  - (b) is inconsistent with the fund's investment objective or policy;
  - (c) might mislead investors into thinking that a person other than the management company is responsible for the fund or part of the fund;

- (d) is substantially similar to the name of another fund in Malaysia or elsewhere; or
- (e) is in the opinion of the SC likely to offend the public.

### **Investment Objective of the Fund**

- 7.07 The investment objective of a fund must be clear, specific and sufficiently stipulated in the deed.
- 7.08 Where the strategies to be adopted to meet the investment objective involve investment in a particular style, asset class, economic sector, market or geographical area, it is the management company's duty to ensure that an appropriate portion of the fund is invested in accordance with that intention.

### **Modifications to the Deed**

- 7.09 Any modification to a fund's deed must be made in accordance with the provisions of the deed and section 295 of the CMSA.
- 7.10 Unless otherwise provided by the securities laws, any modification to the deed, including any material change to the investment objective set out for the fund, must be approved by unit holders of the fund by way of a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held in accordance with the deed.

## Chapter 8

### INVESTMENTS OF THE FUND

#### General

- 8.01 The fund's property should be relevant and consistent with the investment objective of the fund.
- 8.02 Reasonable steps should be taken to ensure that, taking into account the investment objective and policy of the fund, the fund's property provides a prudent spread of risk.
- 8.03 The provisions in this chapter apply to all unit trust funds constituted in Malaysia.
- 8.04 For the purpose of this chapter, "fund manager" means any person responsible for the fund management function of a unit trust fund and includes the management company (if internally managed) or its fund management delegate.

#### Dealings in the Fund's Property

- 8.05 All dealings in the fund's property should be appropriate to the fund and consistent with—
  - (a) the deed;
  - (b) the prospectus;
  - (c) these guidelines and securities laws; and
  - (d) acceptable and efficacious practices within the unit trust and fund management industries.

#### Guidance

Dealings such as the disposal of assets with quick repurchase merely to realise capital gains, dealings for window-dressing or excessive dealing in the fund's property (i.e. churning) are not considered appropriate to the fund.

- 8.06 The fund manager should–
- (a) inform the trustee in writing of any acquisition or disposal of a fund's property within one business day after which the acquisition or disposal was effected;
  - (b) ensure that the fund's property has adequate proof of title or ownership to allow proper custodial arrangements to be made; and
  - (c) cancel a transaction or make a corresponding acquisition or disposal at its own expense to secure restoration of the previous position where the trustee conveyed an opinion that a particular acquisition or disposal exceeds the powers conferred on it, or is otherwise contrary to the interests of the unit holders.

**Investment Powers: General**

- 8.07 The fund's property may only consist, unless otherwise provided in these guidelines, of the following:
- (a) Transferable securities;
  - (b) Cash, deposits and money market instruments;
  - (c) Units/shares in collective investment schemes; and
  - (d) Derivatives.
- 8.08 For the purpose of these guidelines, "transferable securities" are equities, debentures and warrants.
- 8.09 Transferable securities and money market instruments held by the fund must be traded in or under the rules of an eligible market.
- 8.10 For investments in a foreign market, a foreign market is an eligible market where it has satisfactory provisions relating to–
- (a) the regulation of the foreign market;

- (b) the general carrying on of business in the market with due regard to the interests of the public;
  - (c) adequacy of market information;
  - (d) corporate governance;
  - (e) disciplining of participants for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of, or a failure to comply with the rules of the market; and
  - (f) arrangements for the unimpeded transmission of income and capital from the foreign market.
- 8.11 Notwithstanding clause 8.10, investments in a foreign market are limited to markets where the regulatory authority is a member of the International Organization of Securities Commissions (IOSCO).

### **Investments in Unlisted Securities**

- 8.12 Notwithstanding clause 8.09, the fund's property may consist of unlisted securities, subject to an exposure limit stipulated in Schedule A of these guidelines.
- 8.13 The exposure limit referred to in clause 8.12 does not apply to "unlisted securities" that are–
- (a) equities not listed or quoted on a stock exchange but have been approved by the relevant regulatory authority for such listing and quotation, and are offered directly to the fund by the issuer;
  - (b) debentures traded on an organised over-the-counter (OTC) market; and
  - (c) structured products.
- 8.14 The fund manager must ensure that there are appropriate policies and procedures for the valuation of the unlisted securities.

## **Investments in Collective Investment Schemes**

- 8.15 The fund's property may consist of units/shares in other collective investment schemes (referred to as target funds).
- 8.16 The target fund must–
- (a) be regulated by a regulatory authority;
  - (b) (if the target fund is constituted in Malaysia) be approved by the SC;
  - (c) (if the target fund is constituted outside Malaysia) be registered/authorised/approved by the relevant regulatory authority in its home jurisdiction; and
  - (d) operate on the principle of prudent spread of risk and its investments do not diverge from the general investment principles of these guidelines.
- 8.17 Where the fund invests in a target fund operated by the same management company or its related corporation, the fund manager must ensure that–
- (a) there is no cross-holding between the fund and the target fund;
  - (b) all initial charges on the target fund is waived; and
  - (c) the management fee must only be charged once, either at the fund or the target fund.

## **Investments in Warrants**

- 8.18 The fund's property may consist of warrants, provided that the warrants carry the right in respect of a security traded in or under the rules of an eligible market.

## Investments in Derivatives

- 8.19 The fund's property may consist of derivatives that are—
- (a) traded on an exchange; or
  - (b) traded over-the-counter.
- 8.20 The underlying instruments of a derivative should consist of permissible investments under clause 8.07 and may also include indices, interest rates and foreign exchange rates.
- 8.21 The fund's exposure from derivatives position should not exceed the fund's NAV at all times.
- 8.22 For the purpose of clause 8.19(b), a transaction in OTC derivatives may only be entered where—
- (a) the counter-party is a licensed institution or foreign-incorporated institution which is regulated by an equivalent regulatory authority abroad with a minimum long-term rating provided by any domestic or global rating agency that indicates strong capacity for timely payment of financial obligations;
  - (b) the fund manager has determined it is able to value the investment concerned to ensure that the pricing is reasonable;
  - (c) the counter-party is able to provide a reliable and verifiable valuation on a regular basis (preferably every business day) or at any time as may be requested by the fund manager or the trustee; and
  - (d) the counter-party must be ready to unwind, buy-back or close out the transaction upon request of the fund manager at a fair value determined on methods or bases which have been verified by the auditor of the fund and approved by the trustee.
- 8.23 For the purpose of clause 8.22(a), where the rating of the counter-party falls below the minimum required, or the counter-party ceases

to be rated, the fund manager should, within six months or sooner (if the trustee considers it to be in the best interest of the unit holders), take the necessary action to ensure that the requirements are complied with.

- 8.24 The writing of option derivatives and short position of futures contracts by the fund are strictly prohibited.
- 8.25 The fund manager must have in place necessary risk management measures which would enable it to monitor, measure and manage the risks of the fund's position in derivatives and their contribution to the overall risk profile of the fund.

### **Investments in Structured Products**

- 8.26 Notwithstanding clause 8.07, the fund's property may consist of structured products.
- 8.27 The fund manager must ensure that–
  - (a) the counter-party is an eligible issuer (for structured products issued in Malaysia) or an issuer regulated by the relevant regulatory authority (for structured products issued outside Malaysia);
  - (b) (unless otherwise stated in these guidelines) the counter-party has a minimum long-term rating by any domestic or global rating agency that indicates adequate capacity for timely payment of financial obligations; and
  - (c) clauses 8.22(b), (c) and (d) are complied with for OTC transactions.
- 8.28 For the purpose of clause 8.27(b), where the rating of the counter-party falls below the minimum required, or the counter-party ceases to be rated, the fund manager should, within six months or sooner (if the trustee considers it to be in the best interest of the unit holders), take the necessary action to ensure that the requirements are complied with.

## Investments in Deposits

- 8.29 The fund's property may consist of placement of deposits provided that it is with a licensed institution.

## Securities Lending

- 8.30 The fund may participate in the lending of securities within the meaning of the *Guidelines on Securities Borrowing and Lending* when the fund manager finds it appropriate to do so with a view of generating additional income for the fund with an acceptable degree of risk.
- 8.31 The lending of securities must–
- (a) be permitted under the deed and disclosed in the prospectus;
  - (b) comply with the *Guidelines on Securities Borrowing and Lending*; and
  - (c) comply with relevant rules and directives issued by Bursa Malaysia Securities Bhd, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd.
- 8.32 The fund manager must ensure that it has appropriate policies and practices for the lending of securities by the fund.
- 8.33 Except otherwise provided under clause 8.30, the fund's property may not be lent. In addition, the fund may not assume, guarantee, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any person.

## Borrowings

- 8.34 The fund is prohibited from borrowing other assets (including borrowing of securities within the meaning of *Guidelines on Securities Borrowing and Lending*) in connection with its activities.
- 8.35 Notwithstanding clause 8.34, the fund may borrow cash for the purpose of meeting repurchase requests for units.

- 8.36 For the purpose of clause 8.35, the management company should ensure that–
- (a) the fund’s cash borrowing is only on a temporary basis and that borrowings are not persistent;
  - (b) the borrowing period should not exceed one month;
  - (c) the aggregate borrowings of a fund should not exceed 10% of the fund’s NAV at the time the borrowing is incurred; and
  - (d) the fund may only borrow from licensed institutions.

### **Investment Limits**

- 8.37 The fund manager should ensure that the investment limits and restrictions set out in Schedule A of these guidelines are complied with at all times based on the most up-to-date value of the fund’s property.
- 8.38 The limits and restrictions in Schedule A does not apply to securities/instruments issued or guaranteed by the Malaysian government or Bank Negara Malaysia.
- 8.39 In determining compliance with the limits or restrictions, any accrued entitlement on the securities/instruments held by the fund may be excluded. The entitlement should not be exercised if the exercise results in a breach of any limit or restriction.
- 8.40 Notwithstanding clause 8.39, the right of convertibility may be exercised if it results in a breach of any limit or restriction, provided there are justifiable reasons and prior approval of the trustee has been obtained. Nonetheless, the fund manager should, within a time frame of not more than one month from the date of the breach, take all necessary steps and actions to rectify the breach.
- 8.41 Although the limits and restrictions under Schedule A of these guidelines apply only on a per fund basis, the fund manager is encouraged to have prudential internal limits and restrictions on a group-of-funds basis if the funds are operated by the same management company.

### **Breach of Investment Limits**

- 8.42 Notwithstanding clause 8.37, a 5% allowance in excess of any limit or restriction imposed under these guidelines is permitted where the limit or restriction is breached through an appreciation or depreciation of the fund's NAV (whether as a result of an appreciation or depreciation in value of the fund's property, or as a result of repurchase of units or payment made out of the fund).
- 8.43 The fund manager should not make any further acquisition to which the relevant limit is breached, and the fund manager should, within reasonable period of not more than three months from the date of the breach, take all necessary steps and actions to rectify the breach.

### **Wholesale Funds**

- 8.44 Clauses 8.07 to 8.43 do not apply to a wholesale fund.
- 8.45 The fund manager should determine the investment limits and restrictions for a wholesale fund, including the investment parameters and the types of investments to be made by the fund, and ensure clear and proper disclosures are made in the information memorandum.

### **Voting Rights**

- 8.46 The fund manager or the trustee is encouraged to exercise the voting rights for any share held by the fund at a shareholder meeting of corporations whose shares are so held.
- 8.47 Notwithstanding clause 8.46, the fund manager or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution.

## Chapter 9

### CHARGES, FEES AND EXPENSES

#### Charges for Dealing in Units

- 9.01 A management company may impose a charge for the sale and/or repurchase of units.
- 9.02 A management company should not impose a charge unless it is–
- (a) permitted by the deed;
  - (b) expressed as a fixed amount or calculated as a percentage of the price of a unit or amount invested; and
  - (c) disclosed in the prospectus.
- 9.03 The charges should not exceed the amount or rate stated in the prospectus unless–
- (a) the management company has notified the trustee in writing of the higher charge and the effective date of the charge;
  - (b) a supplementary/replacement prospectus stating the higher charge is issued; and
  - (c) 30 days have elapsed since the effective date of the supplementary/replacement prospectus.
- 9.04 Any increase in the maximum amount or maximum rate stated in the deed can only be made by way of a supplemental deed and in accordance with the requirements of the CMSA.
- 9.05 Discounts and rebates in any form are prohibited. A management company, its sales agents and distributors should clearly inform investors the actual rate of charges payable.
- 9.06 (Where applicable) For the purpose of calculating the charges, the calculation must be based on a fund's NAV per unit that has not been rounded up.

## **Management Fee and Trustee Fee**

- 9.07 A management company and trustee may only be remunerated by way of an annual fee charged to the fund.
- 9.08 The fees may only be charged to the fund if permitted by the deed and clearly disclosed in the prospectus.
- 9.09 The fees should be accrued daily and calculated based on the NAV of the fund. The number of days in a year should be used in calculating the accrued fees.
- 9.10 The fees should not be higher than that disclosed in the prospectus unless—
- (a) (for management fee) the management company has notified the trustee in writing of the new higher rate, and the trustee agrees after considering matters stated in clause 9.12;
  - (b) (for trustee fee) the trustee has notified the management company in writing of the new higher rate, and the management company agrees after considering matters stated in clause 9.14;
  - (c) the management company has notified unit holders of the higher rate and its effective date;
  - (d) a supplementary/replacement prospectus disclosing the new higher rate of fees has been registered and issued; and
  - (e) 90 days have elapsed since the date of the supplementary/replacement prospectus.
- 9.11 Any increase in the maximum rate stated in the deed may only be made by way of a supplemental deed and in accordance with the requirements of the CMSA.

## ***Remuneration of Management Company***

- 9.12 A management company should demonstrate, and the trustee must agree, that the management fee is reasonable, considering—

- (a) the roles, duties and responsibilities of the management company;
- (b) the interests of unit holders;
- (c) the nature, quality and extent of the services provided by the management company;
- (d) the size and composition of the fund's property;
- (e) the success of the management company in meeting the fund's investment objective;
- (f) the need to maximise returns to unit holders; and
- (g) the maximum rate stipulated in the deed.

9.13 Notwithstanding clause 9.12, if at any time the trustee is of the opinion that the management fee charged to the fund is unreasonable, the trustee should take such necessary action, which may include convening a unit holders' meeting, to ensure that the fee charged is commensurate with the services provided by the management company.

### ***Remuneration of Trustee***

9.14 The trustee fee should be reasonable, considering–

- (a) the roles, duties and responsibilities of the trustee;
- (b) the interests of unit holders;
- (c) the maximum rate stipulated in the deed; and
- (d) the size and composition of the fund's property.

### ***Expenses of the Fund***

9.15 Only expenses (or part thereof) directly related and necessary in operating and administering a fund may be paid out of the fund.

These include the following:

- (a) Commissions/fees paid to brokers/dealers in effecting dealings in the fund's property, shown on the contract notes or confirmation notes or difference accounts;
- (b) (Where the custodial function is delegated by the trustee) charges/fees paid to sub-custodians;
- (c) Tax and other duties charged on the fund by the government and other authorities;
- (d) Fees and other expenses properly incurred by the auditor appointed for the fund;
- (e) Fees for the valuation of fund's property by independent valuers for the benefit of the fund;
- (f) Costs incurred for the modification of the deed other than those for the benefit of the management company or trustee; and
- (g) Costs incurred for any meeting of unit holders other than those convened by, or for the benefit of, the management company or trustee.

9.16 General overheads and costs for services expected to be provided by the management company should not be charged to the fund. Cost of issuing a prospectus should be borne by the management company but may be charged to the fund if no sales charge is imposed.

9.17 A trustee should ensure that all expenses charged to the fund are legitimate. In addition, a trustee should ensure that the quantum of expenses charged to the fund is not excessive or beyond the standard commercial rates. Where uncertainties arise, a trustee should exercise its discretion carefully and appropriately in determining whether or not to allow the expense (or the quantum of the expense) to be charged to the fund.

9.18 A trustee may be reimbursed by the fund for any expense appropriately incurred in the performance of its duties and responsibilities as a trustee.

## Chapter 10

### DEALING, VALUATION AND PRICING

#### Initial Offer

- 10.01 The initial offer period should not exceed 21 days. However, the initial offer period may be extended up to 45 days for close-ended funds.
- 10.02 Dealing in units during the initial offer period should be at the initial price determined by the management company. Any creation or cancellation of units should also be at the initial price.
- 10.03 A management company should pay the trustee the value of units created within 10 days of giving instructions to the trustee to create units.
- 10.04 A trustee should pay the management company the value of units cancelled within 10 days of receiving instructions from the management company to cancel units.

#### Creation and Cancellation of Units

- 10.05 A management company should instruct the trustee in writing to create or cancel units of the fund, stating the number of units to be created or cancelled, and pay/receive cash to/from the trustee for the transaction.
- 10.06 A trustee should create or cancel units immediately on receipt of, and in accordance with, the instructions given by the management company and only for cash.
- 10.07 Where a request for units is received from investors, the management company should instruct the trustee to create new units at or before the next valuation point if the management company has insufficient units to meet the request.
- 10.08 A management company should not, when giving instructions to the trustee for the creation or cancellation of units, do or omit to do, anything which would confer on itself or a delegate a benefit at the expense of a unit holder or a potential unit holder.

- 10.09 Any instruction for the creation or cancellation of units may be modified but only if the trustee agrees and has taken reasonable care to determine that–
- (a) the modification corrects an error in the instruction; and
  - (b) the error is an isolated one.
- 10.10 Any error referred to in clause 10.09 should be corrected within the payment period applicable under clauses 10.11 and 10.12.
- 10.11 A management company should pay the trustee the value of units created within 10 days of giving instructions to the trustee to create units.
- 10.12 A trustee should pay the management company the value of units cancelled within 10 days of receiving instructions from the management company to cancel units. However, the trustee may extend the period where the fund does not have sufficient cash or liquid assets and the trustee considers payment within 10 days is not in the best interests of unit holders.
- 10.13 The creation and cancellation of units should be at NAV per unit of the fund as at the next valuation point after an instruction from the management company is received by the trustee.

### **Trustee May Refuse to Create or Cancel Units**

- 10.14 Notwithstanding any other provision under these guidelines, a trustee may by notice to the management company refuse to–
- (a) create units;
  - (b) cancel units; or
  - (c) create or cancel units in the number instructed by the management company,

where the trustee considers the creation or cancellation is not in the best interests of unit holders or it would result in a breach of the deed, these guidelines or securities laws.

## **Dealing in Units**

- 10.15 A management company must agree to issue and redeem, and effect the sale and repurchase of units upon the proper request of an investor.
- 10.16 A management company should, at all times during the business day, deal in units of a fund in accordance with the deed and the prospectus unless it has reasonable grounds to refuse a sale or repurchase.
- 10.17 A management company should—
- (a) pay the unit holder in cash the proceeds of the repurchase of units as soon as possible, at most within 10 days of receiving the repurchase request; and
  - (b) maintain adequate arrangements to enable it to meet any repurchase request within the stated period of time.
- 10.18 Clause 10.17(a) is not applicable to a wholesale fund. For a wholesale fund, a management company should determine the period to pay the unit holders and disclose the payment period clearly in the wholesale fund's information memorandum.
- 10.19 A management company should deal in units at a price determined in accordance with clauses 10.38 and 10.39.

## ***Close-ended Funds and Wholesale Funds***

- 10.20 For a close-ended fund and a wholesale fund, a management company may provide for limited repurchase arrangements appropriate to the fund's investment objective, if permitted by the deed and clearly disclosed in the prospectus or information memorandum.
- 10.21 Notwithstanding clause 10.20, a management company must allow for repurchase of units at least once a month.

## Loan Financing in the Sale of Units

- 10.22 A management company should ensure that the margin of finance for loans in the sale of units does not exceed 67% of the amount invested.

### Guidance

The above clause does not apply to payments for units via credit/charge card.

- 10.23 Where an investor takes on loan financing, the management company should obtain a unit trust loan financing risk disclosure statement signed by the investor acknowledging that he has understood its contents. A duplicate of the risk disclosure statement should be forwarded to the investor while the original should be filed by the management company for record and inspection purposes.

## Suspension of Dealing in Units

- 10.24 A trustee should suspend dealing in units of the fund—
- (a) where requests are made by the management company to cancel units to satisfy a repurchase request and the trustee considers that it is not in the best interests of unit holders to permit the fund's property to be sold or that the fund's property cannot be liquidated at an appropriate price or on adequate terms; or
  - (b) due to exceptional circumstances, where there is good and sufficient reason to do so, considering the interests of unit holders or potential investors.
- 10.25 A suspension under clause 10.24(a) should only be carried out where the interests of unit holders or potential investors would be materially affected if the dealing in units were not suspended. In such a case, the trustee should immediately call for a unit holders' meeting to decide on the next course of action.

- 10.26 A suspension under clause 10.24(b) must cease as soon as practicable after the exceptional circumstances have ceased, and in any event, within 21 days of the commencement of the suspension.
- 10.27 A trustee should not create and/or cancel units when dealing in units is suspended.
- 10.28 A trustee should immediately notify the SC in writing if dealing in units is suspended stating the reasons for the suspension.
- 10.29 Before resuming dealing in units after any suspension, the management company should notify the SC in writing of the proposed resumption and the date of the proposed resumption.
- 10.30 A management company may deal in units at a price calculated by reference to the first valuation point after restart of dealing in units.

## **Valuation**

- 10.31 To determine the fund's NAV per unit, a fair and accurate valuation of all assets and liabilities of the fund should be conducted. Valuations should be based on a process which is consistently applied and leads to objective and independently verifiable valuations.
- 10.32 The valuation points for a fund must be at least once every business day.
- 10.33 No valuation points are required during the initial offer period.
- 10.34 A management company may have additional valuation points for the fund during the business day, where it considers necessary.
- 10.35 For a fund with limited repurchase arrangements, clause 10.32 does not apply. The valuation points for a fund with limited repurchase arrangements should be clearly disclosed in the prospectus/information memorandum and must be at least once a month.
- 10.36 Upon completion of a valuation, the trustee should be immediately notified of the NAV per unit of the fund.

## **Price of a Unit**

- 10.37 The price of a fund's unit should be the NAV per unit of the fund.
- 10.38 Any dealing in units of the fund should be at a price that is the NAV per unit of the fund as at the next valuation point after the request for sale or repurchase of units is received by the management company (forward price).
- 10.39 Although forward price is preferred, the price of a unit may be the NAV per unit of the fund as at the valuation point immediately before the request for sale or repurchase of units is received by the management company (historic price).
- 10.40 If forward price is used, all dealings should be at forward price.
- 10.41 Where historic price is used, the management company should have an additional valuation point during the mid-day of business and reprice the units where it differs by more than 5% from the last valuation point ("material market movement").

## **Incorrect Valuation/Pricing**

- 10.42 Where incorrect valuation/pricing occurs, a management company should–
  - (a) notify the trustee; and
  - (b) notify the SC, unless the trustee considers the incorrect valuation/pricing to be of minimal significance.
- 10.43 The management company should take immediate remedial action to rectify any incorrect valuation/pricing. Rectification should be extended to the reimbursement of money–
  - (a) by the management company to the fund;
  - (b) from the fund to the management company; or
  - (c) by the management company to unit holders and/or former unit holders.

- 10.44 Notwithstanding clause 10.43, rectification need not, unless the trustee otherwise directs, extend to any reimbursement where the trustee considers the incorrect valuation/pricing to be of minimal significance.

### **Dilution Fee/Transaction Cost**

- 10.45 Where there are material costs involved in acquiring or disposing a fund's property, a management company may–
- (a) require the payment of a dilution fee or transaction cost; or
  - (b) make a dilution or transaction cost adjustment;
- provided that it is permitted by the deed and clearly disclosed in the prospectus.
- 10.46 The management company must ensure that the fee or adjustment made for dilution/transaction cost is fair and for the sole purpose of reducing dilution.
- 10.47 Where a fee is imposed, the management company should ensure that the fee becomes due at the same time payment is made for the creation, cancellation, sale or repurchase of units and such fee should be paid to the trustee as soon as practicable after receipt to become part of the fund's property.
- 10.48 Where an adjustment is made, it may be made to the NAV per unit to reduce the dilution in the fund or to recover any amount which the fund had already paid or reasonably expects to pay in the future for the creation or cancellation of units.
- 10.49 As soon as practicable after a valuation point, the management company should notify the trustee on the amount or rate of any dilution adjustment made to the NAV per unit of the fund or any dilution fee imposed.
- 10.50 A management company should not impose a dilution fee or make a dilution adjustment for the purpose of making a profit or avoiding a loss for the account of the affected unit holder.

**Publication of Price of a Unit**

- 10.51 A management company should publish the price of a fund's unit daily in at least one national Bahasa Malaysia newspaper and one national English newspaper.
- 10.52 The unit price published should be the latest price per unit calculated for the day, before the relevant newspaper ceases to accept material for publication in the next edition.
- 10.53 The unit price published in the newspaper should be rounded to four decimal places.

## Chapter 11

### OPERATIONAL MATTERS

#### Size of Funds

- 11.01 In determining the size of a fund (expressed in units), a management company should take into account its resources, expertise, experience and overall capability to carry out its duties in accordance with—
- (a) the deed;
  - (b) these guidelines and securities laws; and
  - (c) acceptable and efficacious business practices within the unit trust industry.
- 11.02 The SC reserves the right to review the reasonableness of the maximum size of the fund, having regard to the resources, expertise, experience and overall capability of the management company.

#### Register of Unit Holders

- 11.03 As prescribed under section 308(1) of the CMSA, a management company must keep and maintain an up-to-date register of unit holders at the registered office of the management company.
- 11.04 For the purpose of clause 11.03, a management company should—
- (a) ensure that the information required under section 308(2) of the CMSA is entered into the register;
  - (b) take reasonable steps to alter the register upon receiving written notice of a change of name or address of any unit holder; and
  - (c) supply to any unit holder an extract of the register relating to that unit holder on request.
- 11.05 As prescribed under section 310(1) of the CMSA, a management company may, on giving not less than 14 days notice to the SC, close

the register of unit holders at any time, but no part of the register should be closed for more than 30 days in aggregate in any calendar year.

- 11.06 Section 311 of the CMSA also prescribes that any unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion of any name in the register may seek legal recourse for the rectification of the register.

### ***Branch Register***

- 11.07 A management company may keep a branch register of unit holders anywhere outside Malaysia which should be deemed to be part of the register of unit holders, as prescribed under section 312 of the CMSA.
- 11.08 A management company should notify the SC in writing of the location of the office where any branch register is kept.

### **Cooling-off Right**

- 11.09 A cooling-off right should be given to an investor who is investing in any unit trust fund managed by a particular management company for the first time.
- 11.10 Notwithstanding clause 11.09, a cooling-off right should not be given to–
- (a) a corporation or institution;
  - (b) a staff of that management company; and
  - (c) a person registered with a body approved by the SC to deal in unit trusts.
- 11.11 The cooling-off period should not be fewer than six business days commencing from the date of receipt of the application by the management company.
- 11.12 The refund for every unit held by the investor pursuant to the exercise of a cooling-off right should be the sum of–

- (a) the price of a unit on the day the units were purchased; and
  - (b) the charges imposed on the day the units were purchased.
- 11.13 When a unit holder exercises his cooling-off right, the money should be refunded in accordance with clause 10.17(a).

### **Distribution of Income**

- 11.14 Distribution of income should only be made from realised gains or realised income.
- 11.15 Distribution of income should be made after the management company has taken into consideration the following:
- (a) Total returns for the period;
  - (b) Income for the period;
  - (c) Cash flow for distribution;
  - (d) Stability and sustainability of distribution of income; and
  - (e) The investment objective and distribution policy of the fund.
- 11.16 A management company should ensure that all relevant deductions on any tax and/or duty are made prior to distribution to unit holders.
- 11.17 There should be a distribution account to which the fund's income is transferred prior to distribution to unit holders.
- 11.18 Where a distribution is made, the management company should send to every unit holder a statement detailing the nature (whether in the form of cash or units in lieu of cash) and the amount of income distributed. The statement should also include the following information:
- (a) Total returns of the fund; and
  - (b) NAV per unit prior to, and subsequent to, the distribution.

- 11.19 For interim distribution, a management company may, instead of sending a statement required under clause 11.18, choose to publish the same information in an advertisement in at least one national Bahasa Malaysia newspaper and one national English newspaper.
- 11.20 In any income distribution statement, the distribution should, in addition to any other expression, be expressed in sen per unit.

## **Unit Split**

- 11.21 A unit split exercise may only be conducted once in any financial year of the fund.
- 11.22 A unit split exercise may only be conducted when the monthly average NAV per unit of the fund has shown a sustainable appreciation over a six-month period preceding the unit split exercise.

### **Guidance**

Sustainable appreciation means the monthly average NAV per unit of a fund increases from one month to another over the six-month period.

- 11.23 The management company must submit the trustee's verification on compliance with clause 11.22 to the SC within 14 days after the unit split exercise.
- 11.24 The management company should send to every unit holder a statement detailing the ratio of the split. The statement should also include the following information:
- (a) NAV per unit prior and subsequent to the unit split exercise; and
  - (b) Reasons for conducting the unit split exercise.
- 11.25 A management company may, instead of sending a statement required under clause 11.24, choose to publish the same information in an advertisement in at least one national Bahasa Malaysia newspaper and one national English newspaper.

## **Conflict of Interest**

- 11.26 A management company, a trustee and any delegate or service provider should avoid conflicts of interest arising, or if conflicts arise, should ensure that the fund is not disadvantaged by the transaction concerned.
- 11.27 Any related party transaction, dealing, investment and appointments involving parties to a fund must be made on terms which are the best available for the fund and which are no less favourable to the fund than an arm's length transaction between independent parties.
- 11.28 The appointment or renewal of appointment of any delegate or service provider who is a related party of the management company must be approved by the independent directors of the management company.

## **Use of Brokers/Dealers**

- 11.29 Every broker/dealer used for dealings in the fund's property, either directly by the management company or fund management delegate, should be approved by the investment committee of the fund.
- 11.30 In approving a broker/dealer, the investment committee—
  - (a) should be satisfied that the dealings in the fund's property will be effected by the broker/dealer on terms which are the best available for the fund ("best execution" basis); and
  - (b) should prescribe a limit in terms of proportion of dealings (in percentage) executed with each broker/dealer.
- 11.31 In determining the limit under clause 11.30(b), the investment committee should consider—
  - (a) the capability and services of the broker/dealer concerned; and
  - (b) the desirability of keeping a good spread of brokers/dealers for the fund.
- 11.32 Notwithstanding clauses 11.30(b) and 11.31, the use of any broker/dealer for a fund should not exceed 50% of the fund's dealings in value in any one financial year of the fund.

## Rebates and Soft Commissions

- 11.33 A management company, a trustee or its delegate should not retain any rebate from, or otherwise share in any commission with, any broker/dealer in consideration for directing dealings in a fund's property. Accordingly, any rebate or shared commission should be directed to the account of the fund concerned.
- 11.34 Notwithstanding clause 11.33, goods and services ("soft commissions") provided by any broker/dealer may be retained by a management company or its delegate, but only if the goods and services are of demonstrable benefit to unit holders and—
- (a) dealings with the broker/dealer are executed on terms which are the best available for the fund; and
  - (b) the management company's or delegate's soft commission practices are adequately disclosed in the prospectus and fund reports (including a description of the goods and services received by the management company or delegate).

### Guidance

Soft commissions which are not allowed include, among others, entertainment allowance, travel, accommodation and membership fee.

- 11.35 Where clause 11.34 applies, the compliance officer should verify and inform the management company's board of directors (or audit and compliance committee, if any) that any good or service received by the management company or its delegate, comply with the guidelines' requirements.

## Documents for Inspection by Unit Holders

- 11.36 A management company and a trustee should make available at their principal place of business the following documents:
- (a) The deed and the supplementary deed(s) of the fund (if any);

- (b) The current prospectus and supplementary/replacement prospectuses of the fund (if any);
- (c) The latest annual and interim reports of the fund;
- (d) Each material contract or document referred to in the prospectus;
- (e) All reports, letters or other documents, valuations and statements by any expert, any part of which is extracted or referred to in the prospectus;
- (f) The audited accounts of the management company and the fund for the last three financial years or from the date of incorporation/commencement (if less than three years);
- (g) Latest audited accounts of the management company and the fund for the current financial year (where applicable); and
- (h) Any consent given by experts or persons named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based,

for inspection by investors and unit holders at all times (without charge) during the ordinary business hours of the management company and the trustee.

### **Terminating/Winding Up a Fund**

11.37 A fund may be terminated or wound up upon the occurrence of any of the following events:

- (a) The SC's approval is revoked under section 212(7)(A) of the CMSA;
- (b) A special resolution is passed at a unit holders' meeting to terminate or wind up the fund, following occurrence of events stipulated under section 301(1) of the CMSA and the court has confirmed the resolution, as required under section 301(2) of the CMSA;

- (c) A special resolution is passed at a unit holders' meeting to terminate or wind up the fund;
- (d) The fund has reached its maturity date as specified in the deed; and
- (e) The effective date of an approved transfer scheme has resulted in the fund, which is the subject of the transfer scheme, being left with no asset/property.

11.38 Upon the occurrence of any of the events under clause 11.37–

- (a) Chapter 10 (Dealing, Valuation and Pricing) and Chapter 8 (Investments of the Fund) cease to apply to the fund;
- (b) the trustee should cease to create and cancel units;
- (c) the management company should cease to deal in units; and
- (d) the trustee should proceed to wind up the fund in accordance with clauses 11.39 and 11.40.

11.39 If an event under clause 11.37(e) occurs, the trustee should proceed to wind up the fund in accordance with the approved transfer scheme.

11.40 In any other event under clause 11.37, the trustee should–

- (a) sell all the fund's property remaining in its hands;
- (b) after paying or retaining adequate amount for all liabilities payable and cost of winding up, distribute to unit holders the net cash proceeds available for the purpose of such distribution in proportion to the number of units held by unit holders respectively; and
- (c) pay any unclaimed net proceed or other cash held by the trustee that remains unclaimed after 12 months from the date on which it became payable to the Registrar of Unclaimed Monies, in accordance with the provisions of the *Unclaimed Monies Act 1965*.

- 11.41 The management company or trustee should as soon as practicable after the termination or winding up of the fund–
- (a) (where unit holders' resolution for the termination/winding up is not obtained) inform unit holders of the termination or winding up of the fund; and
  - (b) publish a notice on the termination or winding up of the fund in one national Bahasa Malaysia newspaper and one national English newspaper.
- 11.42 The management company and trustee should notify the SC in writing–
- (a) upon the passing of a resolution to terminate or wind up the fund, or upon the court confirming the unit holders' resolution to terminate or wind up the fund; and
  - (b) upon the completion of the termination and winding up of the fund.
- 11.43 Where a fund is being terminated or wound up, the trustee must also arrange for the auditor of the fund to conduct a final review and audit of the fund's accounts.

### ***Accounting and Reports During Termination/Winding Up***

- 11.44 While a fund is being terminated/wound up–
- (a) the accounting period continues to run; and
  - (b) annual and interim reports continue to be required, unless after consulting the auditor and the SC, the management company has taken reasonable care to determine that timely production of an annual or interim report is not required in the interests of unit holders.

### **Transfer Schemes**

- 11.45 A transfer scheme is an arrangement to transfer fund property from a fund (transferor fund) to another fund (transferee fund).

- 11.46 A management company should ensure that the unit holders of the transferor fund do not become unit holders of a fund other than a fund approved by the SC.
- 11.47 A transfer scheme should not be implemented without the sanction of—
- (a) a special resolution of unit holders of the transferor fund; and
  - (b) a special resolution of unit holders of the transferee fund.
- 11.48 If the management company and trustee or other persons providing oversight functions for the transferee fund or the auditor of the transferee fund agree that the receipt of the property concerned for the account of the transferee fund—
- (a) is not likely to result in any material prejudice to the interest of unit holders of the transferee fund;
  - (b) is consistent with the investment objective of the transferee fund; and
  - (c) could be affected without any breach of Chapter 8 (Investments of the Fund);

then, the transfer scheme may be implemented and the issue of units in exchange for the transferor fund's property may be undertaken.

### **Meeting of Unit Holders**

- 11.49 A management company or trustee may convene a meeting of unit holders at any time.
- 11.50 Section 305(1) of the CMSA further provides that a management company must call for a meeting of unit holders upon the written request of not less than 50 unit holders or one-tenth of all unit holders; the request is given at the management company's registered office; and for specific purposes stipulated under the same section of the CMSA.

### **Notice of Meetings**

- 11.51 Where a management company or trustee decides to convene a unit holders' meeting, it must–
- (a) give at least 14 days' written notice to unit holders; and
  - (b) specify in the notice, the place, time and terms of the resolutions to be proposed.
- 11.52 Where a meeting is requested by unit holders under section 305(1) of CMSA, the management company must–
- (a) call the meeting within 21 days after receiving the request from unit holders;
  - (b) give notice to unit holders in accordance with section 305(3) of the CMSA; and
  - (c) specify in the notice, the place, time and terms of the resolutions to be proposed.
- 11.53 A copy of the notice referred to under clause 11.51(a) and 11.52(b) must be delivered to the SC and the trustee.

### **Chairman**

- 11.54 A unit holders' meeting should be chaired by–
- (a) (if the meeting is requested by the unit holders or trustee) a person appointed on their behalf by unit holders who are present at the meeting or (where no such appointment is made) by a nominee of the trustee; or
  - (b) (if the meeting is called by the management company) a person appointed by the management company.

### **Quorum**

- 11.55 The quorum required for a meeting is five unit holders, whether present in person or by proxy, provided always that the quorum for a meeting which requires a special resolution is five unit holders holding in

aggregate at least 25% of the units in issue at the time of the meeting.

- 11.56 If after a reasonable time from the start of the meeting, a quorum is not present, the meeting–
- (a) (if convened on the request of the unit holders) should be dissolved; and
  - (b) (in any other case) should stand adjourned to–
    - (i) a day and time which is seven or more days after the day and time of the meeting; and
    - (ii) a place appointed by the chairman.
- 11.57 Notice of an adjourned meeting should be given to unit holders, stating that while five unit holders present in person or by proxy, and holding the minimum aggregate number of units (as the case may be) are required to constitute a quorum at the adjourned meeting, whatever the number of unit holders or number of units held (as the case may be) present in person or by proxy at the adjourned meeting will form a quorum after a reasonable time has passed from the convening of the meeting.

### ***Resolutions***

- 11.58 Except where a special resolution is specifically required or permitted, any resolution is passed by a simple majority.
- 11.59 Resolutions passed at a meeting of unit holders bind all unit holders, whether or not they were present at the meeting. No objection may be made as to any vote cast unless such objection is made at the meeting.
- 11.60 A copy of the resolution should be delivered to the SC and trustee.

### ***Voting Rights***

- 11.61 On a show of hands, every unit holder who is present in person or by proxy has one vote.

- 11.62 A poll may be demanded on any resolution. On a poll–
- (a) votes may be given either personally or by proxy; and
  - (b) every unit holder who is present in person or by proxy has one vote.
- 11.63 In the case of joint unit holders, any one of such joint unit holders may vote either personally or by proxy, but if the joint unit holders are present at the meeting either personally or by proxy, only the vote of the first named in the register of unit holders can be taken.
- 11.64 A management company must not exercise the voting rights for the units it or its nominees hold in any unit holders' meeting, regardless of the party who requested for the meeting and the matters that are laid before the meeting.
- 11.65 Related parties to the management company who have interest in the outcome of the transaction tabled for approval and that interest is different from the interests of other unit holders, should not vote or be counted in the quorum at a meeting.

***Right to Demand Poll***

- 11.66 A resolution put to the vote at a unit holders' meeting should be determined by a show of hands unless a poll is demanded (before or immediately after any question is put to the show of hands) by–
- (a) the chairman;
  - (b) the trustee;
  - (c) the management company; or
  - (d) unit holders present (or represented by proxy) who hold between them not less than one-tenth of the total number of units in issue.
- 11.67 Unless a poll is demanded, a declaration by the chairman as to the result of the resolution is conclusive evidence of the fact.

### **Proxies**

- 11.68 A unit holder may appoint another person to attend a unit holders' meeting and vote in the unit holder's place.
- 11.69 Every notice calling a unit holders' meeting should contain a statement that a unit holder is entitled to attend and vote, or may appoint a proxy.
- 11.70 The document appointing a proxy should be deposited at the office of the management company not less than 48 hours before the meeting or adjourned meeting.

### **Adjournment and Minutes**

- 11.71 The chairman—
- (a) may, with the consent of any meeting of unit holders at which a quorum is present; and
  - (b) should, if so directed by the meeting;
- adjourn the meeting.
- 11.72 A management company should ensure that—
- (a) minutes of all resolutions and proceedings at every unit holders' meeting are made and kept; and
  - (b) any minute made in (a) is signed by the chairman of the unit holders' meeting.

### **Training Requirements**

- 11.73 A management company and a trustee should provide training to its officers to improve and upgrade their skills and expertise.
- 11.74 In particular, a management company should allocate and spend at least 3% per annum of its gross salary expense on training its officers.

## Chapter 12

### REPORTING AND AUDIT

#### Reporting Requirements

- 12.01 A management company should prepare an annual and an interim report of the fund to provide all necessary information to enable unit holders to evaluate the performance of the fund.
- 12.02 For a new fund, where the first accounting period is less than 12 months, an interim report need not be prepared.
- 12.03 If a management company intends to change the fund's annual or interim financial period, the management company should obtain—
- (a) a written confirmation from the fund's auditor that the change would not result in any significant distortion of the financial position of the fund; and
  - (b) the SC's prior consent before implementing the change.

#### ***Content of Fund Reports***

- 12.04 An annual report of a fund should contain at least the following:
- (a) Fund information;
  - (b) Report on fund performance;
  - (c) Manager's report;
  - (d) Trustee's report;
  - (e) Shariah adviser's/panel of advisers' report (where applicable);
  - (f) Audited financial statements for the accounting period; and
  - (g) Auditor's report.

- 12.05 An interim report of a fund should contain at least the following:
- (a) Fund information;
  - (b) Report on fund performance;
  - (c) Manager's report;
  - (d) Trustee's report;
  - (e) Shariah adviser's/panel of advisers' interim review report (where applicable); and
  - (f) Financial statements for the interim accounting period.
- 12.06 The minimum and detailed information to be included in the fund's reports are stipulated in Schedule D of these guidelines.

### ***Publication of Reports***

- 12.07 A management company should—
- (a) prepare and publish the annual and interim reports of the fund;
  - (b) send the annual report without charge to unit holders;
  - (c) send the interim report without charge to unit holders; and
  - (d) lodge the annual report and deliver the interim report to the SC;
- within two months after the end of the financial period the report covers.
- 12.08 Notwithstanding clause 12.07(c), a management company may choose to send a short interim report to unit holders.

- 12.09 A short interim report should contain at least the following:
- (a) Report on fund performance;

- (b) Manager's report; and
- (c) A statement that states that the interim report is available upon request and without charge (to appear in bold and in a prominent position).

## **Audit**

- 12.10 A management company and trustee should ensure that the financial statements of the fund are audited annually by an auditor appointed under clause 12.11.
- 12.11 A trustee must appoint an auditor for the fund that is independent of the management company and the trustee.
- 12.12 Where the SC is of the opinion that the auditor appointed by the trustee is not suitable, or where an auditor has not been appointed, the SC may direct the trustee to replace or appoint an auditor to the fund in accordance with the requirements of this chapter.
- 12.13 A trustee may, from time to time, if it deems appropriate, remove the auditor of the fund and appoint another in its place. In addition, unit holders may by way of an ordinary resolution request the trustee to replace the auditor.

## ***Co-operation with Auditors***

- 12.14 A management company should take reasonable steps to ensure that its employees–
  - (a) provide such assistance as the auditor reasonably requires to discharge its duties;
  - (b) give the auditor right of access at all reasonable times to relevant records and information;
  - (c) do not interfere with the auditor's ability to discharge its duties;
  - (d) do not provide false or misleading information to the auditor; and

- (e) report to the auditor any matter which may significantly affect the financial position of the fund.
- 12.15 A management company should, in writing, require any person to whom the management company has delegated or outsourced any functions to co-operate with the fund's auditor in accordance with the provisions specified in clause 12.14.

## Chapter 13

### APPLICATIONS, NOTIFICATIONS AND REPORTING TO THE SECURITIES COMMISSION

#### Application for SC Approval

- 13.01 The CMSA requires that the SC's approval be obtained for the following proposals:
- (a) Issuance or offer of units of a unit trust fund;
  - (b) A company to act as management company for a fund; and
  - (c) A company to act as trustee for a fund.
- 13.02 The SC may—
- (a) approve proposals subject to certain terms and conditions as it deems fit;
  - (b) approve proposals with revisions and subject to certain terms and conditions as it deems fit; or
  - (c) reject proposals.
- 13.03 In addition to clause 13.01, the following proposals are required to be submitted for SC's approval:
- (a) Exemption or variation from provisions in these guidelines;
  - (b) Extension of time to comply with the requirements of these guidelines and terms and conditions of approval;
  - (c) Appointment of a delegate that is not a holder of a Capital Markets Services Licence;
  - (d) Appointment of a trustee under section 290(1) of the CMSA; and
  - (e) Notices to be issued or published before the registration of a prospectus, pursuant to section 241(4) of the CMSA.

### **Application for SC Registration**

13.04 The following proposals are required to be submitted for SC's registration:

- (a) Registration of a trustee for a unit trust fund; and
- (b) Renewal of a trustee's registration.

### **Application to Register and Lodge Documents with SC**

13.05 Pursuant to sections 232(1), 238(2), 293(1) and 295(1) of the CMSA, the following documents must be registered with the SC:

- (a) Deed and supplementary deed of the fund; and
- (b) Prospectus and supplementary/replacement prospectus of the fund.

13.06 The documents referred to in clause 13.05 must, subsequent to registration, be lodged with the SC as required under sections 234, 238(3) and 296 of the CMSA.

### **Submission of Applications to SC**

13.07 Applications must be submitted in accordance with the requirements stipulated under Schedule E of these guidelines.

13.08 Submission of applications should be addressed to:

Pengerusi  
Suruhanjaya Sekuriti  
3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur

## **Notifications to SC**

- 13.09 A management company must notify the SC of, among others, the following:
- (a) Appointment and resignation of chief executive officer;
  - (b) Appointment and resignation of an investment committee member;
  - (c) Appointment and resignation of the Shariah adviser;
  - (d) Appointment and resignation of a member of the panel of advisers;
  - (e) Appointment of a delegate that is a holder of a Capital Markets Services Licence;
  - (f) Foreign markets in which the fund invest in;
  - (g) A resolution passed (and court confirming where applicable) to terminate/wind up a fund;
  - (h) Completion of the termination/winding up of a fund; and
  - (i) A unit split exercise.

## **Documents Required to Be Lodged/Delivered/Deposited to SC**

- 13.10 Pursuant to sections 298(1) and 229(4) of the CMSA, a management company must–
- (a) lodge the annual report of the fund and the management company;
  - (b) deliver the interim report of the fund;
  - (c) deliver notices issued or published after the registration of a prospectus; and
  - (d) deposit an information memorandum of a wholesale fund.

### **Submission of Notifications/Documents to SC**

- 13.11 Notifications and documents referred to in clauses 13.09 and 13.10 must be submitted in accordance with the requirements stipulated under Schedule E of these guidelines (where applicable).
- 13.12 Submission of notifications and documents should be addressed to:

Ketua Jabatan  
Jabatan Tabung Amanah dan Pengurusan Pelaburan  
Terbitan Sekuriti dan Pelaburan  
Suruhanjaya Sekuriti  
3 Persiaran Bukit Kiara  
Bukit Kiara 50490 Kuala Lumpur

### **Reporting to SC**

- 13.13 Pursuant to section 298(1)(b) of the CMSA, a management company is required to submit a Statistical Return and Compliance Return of the fund to the SC.
- 13.14 The fund's Statistical Return and Compliance Return should be submitted on a monthly basis in accordance with the requirements set out under Schedule F of these guidelines, unless otherwise specified.

# SCHEDULES

## SCHEDULE A

### INVESTMENT RESTRICTIONS AND LIMITS – CORE REQUIREMENTS

#### General

- (1) The requirements herein apply to non-specialised funds. For specialised funds, the requirements are stipulated in the respective appendices of this schedule.
- (2) The investment limits and restrictions must be read together with the general requirements and prohibitions set out in Chapter 8 of these guidelines.

#### Exposure Limit

- (3) The value of a fund's investments in unlisted securities must not exceed 10% of the fund's NAV.

#### Investment Spread Limits

- (4) The value of a fund's investments in ordinary shares issued by any single issuer must not exceed 10% of the fund's NAV.
- (5) The value of a fund's investments in transferable securities and money market instruments issued by any single issuer must not exceed 15% of the fund's NAV.
- (6) The value of a fund's placement in deposits with any single institution must not exceed 20% of the fund's NAV.
- (7) For investments in derivatives–
  - (a) the exposure to the underlying assets must not exceed the investment spread limits stipulated in this schedule; and
  - (b) the value of a fund's over-the-counter (OTC) derivative transaction with any single counter-party must not exceed 10% of the fund's NAV.

- (8) The value of a fund's investments in structured products issued by a single counter-party must not exceed 15% of the fund's NAV.
- (9) The aggregate value of a fund's investments in transferable securities, money market instruments, deposits, OTC derivatives and structured products issued by or placed with (as the case may be) any single issuer/institution must not exceed 25% of the fund's NAV.
- (10) The value of a fund's investments in units/shares of any collective investment scheme must not exceed 20% of the fund's NAV.
- (11) The value of a fund's investments in transferable securities and money market instruments issued by any group of companies must not exceed 20% of the fund's NAV.

## **Exceptions to Investment Spread Limits**

### ***Structured Products***

- (12) The single counter-party limit in (8) is entirely waived if–
  - (a) the counter-party has a minimum long-term rating by any domestic or global rating agency that indicates very strong capacity for timely payment of financial obligations provided; and
  - (b) the structured product has a capital protection feature.
- (13) Where (12) applies, calculation of the aggregate value to determine compliance with (9) should exclude the value of investments in structured products.

### ***Bond/Fixed Income Funds***

- (14) The single issuer limit in (5) and single group limit in (11) do not apply to a bond/fixed income fund.
- (15) The value of a bond/fixed income fund's investments in debentures issued by any single issuer must not exceed 20% of the fund's NAV.

- (16) The single issuer limit in (15) may be increased to 30% if the debentures are rated by any domestic or global rating agency to be of the best quality and offer highest safety for timely payment of interest and principal.
- (17) The value of a bond/fixed income fund's investments in debentures issued by any one group of companies must not exceed 30% of the fund's NAV.

**Index Funds**

- (18) For a fund whose principal objective is to track or replicate an index, the single issuer limit in (4) and single group limit in (11) may be exceeded provided that the investment in any component securities does not exceed its respective weightings in the underlying index.
- (19) The weightings may be based either on the entire component securities, or a representative sample, of the underlying index.
- (20) The underlying index should–
  - (a) have a clearly defined objective;
  - (b) appropriately reflect the characteristics of the market or sector;
  - (c) be able to reflect price movements of its component securities, and change the composition and weightings of the component securities;
  - (d) be broadly based;
  - (e) be sufficiently liquid; and
  - (f) be transparent and published in an appropriate manner.

**Investment Concentration Limits**

- (21) A fund's investments in transferable securities (other than debentures) must not exceed 10% of the securities issued by any single issuer.

- (22) A fund's investments in debentures must not exceed 20% of the debentures issued by any single issuer.
- (23) A fund's investments in money market instruments must not exceed 10% of the instruments issued by any single issuer.
- (24) A fund's investments in collective investment schemes must not exceed 25% of the units/shares in any one collective investment scheme.

## Schedule A – Appendix I

### MONEY MARKET FUND

#### General

- (1) A money market fund is one which invests primarily in short-term debentures, short-term money market instruments and placement in short-term deposits.
- (2) Only funds that comply with the restrictions and limits of this appendix can hold itself out as a money market fund.
- (3) The investment limits and restrictions in this appendix does not apply to a fund that invest in debentures and/or money market instruments as part of a diversified portfolio, or a fund whose investment objective is to invest predominantly in long-term debentures or money market instruments.
- (4) The fund's property should only consist of "permitted investments". For the purpose of this appendix, "permitted investments" are–
  - (a) debentures;
  - (b) money market instruments; and
  - (c) placement in deposits.

#### Exposure Limits

- (5) The value of a fund's investments in permitted investments must not be less than 90% of the fund's NAV.
- (6) The value of a fund's investments in permitted investments which have a remaining maturity period of not more than 365 days must not be less than 90% of the fund's NAV.
- (7) The value of a fund's investments in permitted investments which have a remaining maturity period of more than 365 days but fewer than 732 days must not exceed 10% of the fund's NAV.

### **Investment Spread Limits**

- (8) The value of a fund's investments in debentures and money market instruments issued by any single issuer must not exceed 20% of the fund's NAV.
- (9) The single issuer limit in (8) may be increased to 30% if the debentures are rated by any domestic or global rating agency to be of the best quality and offer highest safety for timely payment of interest and principal.
- (10) The value of a fund's placement in deposits with any single licensed institution must not exceed 20% of the fund's NAV.
- (11) The value of a fund's investments in debentures and money market instruments issued by any group of companies must not exceed 30% of the fund's NAV.
- (12) Where applicable, the core requirements for non-specialised funds shall apply for any other type of investments.

### **Investment Concentration Limits**

- (13) A fund's investments in debentures must not exceed 20% of the securities issued by any single issuer.
- (14) A fund's investments in money market instruments must not exceed 20% of the instruments issued by any single issuer.
- (15) A fund's investments in collective investment schemes must not exceed 25% of the units/shares in any collective investment scheme.

## Schedule A – Appendix II

### FUND-OF-FUNDS

#### General

- (1) A Fund-of-Funds is one which invests all its assets in other collective investment schemes.
- (2) The fund's property should only consist of units/shares in other collective investment schemes.
- (3) Only funds which comply with the restrictions and limits of this appendix can hold itself out as a Fund-of-Funds.
- (4) A management company, or its fund management delegate, must ensure that the investments in other collective investment schemes comply with the general requirements set out in Chapter 8 "Investments in Collective Investment Schemes" of these guidelines.
- (5) A Fund-of-Funds must not invest in–
  - (a) a Fund-of-Funds;
  - (b) a Feeder Fund; and
  - (c) any sub-fund of an umbrella scheme which is a Fund-of-Funds or a Feeder Fund.
- (6) For a Fund-of-Funds that invests in a sub-fund of an umbrella scheme, the sub-fund of the umbrella scheme should be treated as if it is a separate collective investment scheme.

#### Investment Spread Limits

- (7) A Fund-of-Funds must invest in at least five collective investment schemes at all times.
- (8) The value of a fund's investments in units/shares of any collective investment scheme must not exceed 30% of the fund's NAV.

**Investment Concentration Limit**

- (9) A fund's investments in collective investment schemes must not exceed 25% of the units/shares in any collective investment scheme.

## Schedule A – Appendix III

### FEEDER FUND

#### General

- (1) A Feeder Fund is one which invests all its assets in a single collective investment scheme.
- (2) The fund's property should only consist of units/shares of a single collective investment scheme.
- (3) Only funds which comply with the restrictions and limits of this appendix can hold itself out as a Feeder Fund.
- (4) A management company, or its fund management delegate, must ensure that–
  - (a) investments in the other collective investment scheme comply with the general requirements set out in Chapter 8 "Investments in Collective Investment Schemes" of these guidelines; and
  - (b) the collective investment scheme is managed by another management company or a foreign operator.
- (5) "Foreign operator" in (4)(b) means a foreign-incorporated entity responsible for the management of assets held for or within a collective investment scheme, or who otherwise operates a collective investment scheme, and on whose behalf issue and offer units/shares of the collective investment scheme.
- (6) A Feeder Fund must not invest in–
  - (a) a Fund-of-Funds;
  - (b) a Feeder Fund; and
  - (c) any sub-fund of an umbrella scheme which is a Fund-of-Funds or a Feeder Fund.

- (7) For a Feeder Fund that invests in a sub-fund of an umbrella scheme, the sub-fund of the umbrella scheme should be treated as if it is a separate collective investment scheme.

## **SCHEDULE A – Appendix IV**

### **UMBRELLA FUND**

#### **General**

- (1) An umbrella fund is one which comprises at least two sub-funds.
- (2) An umbrella fund must provide favourable switching facilities between its sub-funds, compared with switching facility involving other funds under the same management company.
- (3) A sub-fund's property must not consist of units/shares of another sub-fund within the same umbrella fund.

#### **Investment Restrictions**

- (4) Each sub-fund of an umbrella fund is subject to the investment restrictions and spread limits within which it is categorised under, and will be treated as a single fund.
- (5) Notwithstanding (4), the investment concentration limits will apply at the level of the umbrella fund.

## SCHEDULE A – Appendix V

### CAPITAL PROTECTED FUND

#### General

- (1) A capital protected fund is one whose primary objective is to protect and return investors' capital at a pre-determined date in the future, with some returns (if any).
- (2) The word "protected" must appear in the fund's name. Where a fund does not comply with the requirements in this appendix, it must not use the word "protected" or any other name that implies some form of capital protection, in its name or in its promotional materials. Such a fund is prohibited from holding itself out as a capital protected fund.
- (3) To ensure the fund's objective is met, the fund's property must primarily consist of debentures and money market instruments that—
  - (a) (for debentures) have a minimum short-term rating by a global or domestic rating agency which indicates strong ability for timely payment of obligations, or a minimum long-term rating by a global or domestic rating agency which indicates high safety for timely payment of interest and principal; and
  - (b) (for money market instruments) are issued by a licensed institution with a minimum short-term rating by any global or domestic rating agency which indicates strong capacity for timely payment of obligations, or a minimum long-term rating by a global or domestic rating agency which indicates high safety for timely payment of financial obligations.

#### Guidance

The minimum-ratings in (3) are not applicable to debentures issued by, or backed by, the Malaysian government or Bank Negara Malaysia.

### **Exposure Limits**

- (4) The value of a fund's investments in debentures and money market instruments which meet the minimum rating in (3) must not be less than 85% of the fund's NAV.
- (5) The value of a fund's investments in unlisted securities must not exceed 10% of the fund's NAV.

### **Investment Spread Limits**

- (6) The value of a fund's investments in debentures and money market instruments issued by any single issuer must not exceed 20% of the fund's NAV.
- (7) The value of a fund's investments in debentures and money market instruments issued by any group of companies must not exceed 30% of the fund's NAV.
- (8) Where applicable, the investment limits and restrictions for non-specialised funds should apply for any other type of investments.

### **Investment Concentration Limits**

- (9) A fund's investments in debentures must not exceed 20% of the debentures issued by any single issuer.
- (10) A fund's investments in money market instruments must not exceed 20% of the instruments issued by any single issuer.
- (11) A fund's investments in collective investment schemes must not exceed 25% of the units/shares in any collective investment scheme.

## SCHEDULE A – Appendix VI

### GUARANTEED FUND

#### General

- (1) A guaranteed fund is one which guarantees investors will get back the capital invested, with some returns (if any), or guarantees investors a certain investment return payable at a pre-determined date in the future.
- (2) The word “guarantee” must appear in the fund’s name. Where a fund does not comply with the requirements in this appendix, it must not use the word “guarantee”, or any other name which may imply some form of guarantee, in its name or in its promotional materials. Such a fund is prohibited from holding itself out as a guaranteed fund.

#### Guarantor

- (3) A guarantor must be appointed to provide a guarantee for the fund.
- (4) A guarantor must be a licensed bank, licensed merchant bank or an Islamic bank.
- (5) A guarantor must have a minimum long-term rating that indicates adequate safety for timely payments of financial obligations and have adequate credit profile by any global or domestic rating agency.
- (6) Where a guarantor’s rating falls below the minimum required under (5), or the guarantor ceases to be rated, the management company should, within six months or sooner, and if the trustee considers it to be in the best interest of unit holders, enter into a new agreement with a new guarantor that satisfies (4) and (5).

#### Guarantee

- (7) The trustee must enter into a written agreement with the guarantor and must ensure there is a guarantee at all times.
- (8) The guarantee must be legally enforceable against the guarantor by the trustee, on behalf of unit holders.

- (9) For a capital guaranteed fund, the guarantee must cover no less than 100% of the capital invested by a unit holder (i.e. excluding sales charge or front-end loads).
- (10) No variation or modification to the guarantee agreement is permitted, unless the trustee's consent has been obtained. Notwithstanding, where the trustee is of the opinion that the variations or modifications are material, such variations or modifications can only be made with unit holders' prior approval.
- (11) The guarantee may be terminated under the following circumstances:
  - (a) The trustee may terminate the guarantee if the guarantor is in liquidation or ceases to carry on business (excluding for the purpose of reconstruction or amalgamation);
  - (b) The trustee and guarantor may terminate the guarantee if any law is passed which renders the agreement illegal or null and void; and
  - (c) The trustee and the guarantor may terminate the guarantee if the fund is terminated voluntarily.

### **Investment Spread and Concentration Limits**

- (12) Depending on the nature and underlying investments of the fund, the respective investment limits and restrictions for non-specialised and specialised funds should apply to a guaranteed fund.

**Schedule B****VALUATION**

<b>Investment Instruments</b>	<b>Valuation Basis</b>
Securities listed on any exchange	<p>Market price.</p> <p>However, if–</p> <p>(a) a valuation based on the market price does not represent the fair value of the securities, for example during abnormal market conditions; or</p> <p>(b) no market price is available, including in the event of a suspension in the quotation of the securities for a period exceeding 14 days, or such shorter period as agreed by the trustee,</p> <p>then the securities should be valued at fair value, as determined in good faith by the management company or its fund management delegate, based on the methods or bases approved by the trustee after appropriate technical consultation.</p>
Unlisted bonds denominated in ringgit Malaysia	<p>Price quoted by a bond pricing agency (BPA) registered with the SC.</p> <p>Where a management company is of the view that the price quoted by BPA for a specific bond differs from the “market price” by more than 20 basis points, the management company or</p>

Investment Instruments	Valuation Basis
	<p>its fund management delegate may use the "market price", provided that the management company or its fund management delegate—</p> <ul style="list-style-type: none"> <li>(a) records its basis for using a non-BPA price;</li> <li>(b) obtains necessary internal approvals to use the non-BPA price; and</li> <li>(c) keeps an audit trail of all decisions and basis for adopting the "market yield".</li> </ul>
Other unlisted bonds	Fair value by reference to the average indicative yield quoted by three independent and reputable institutions.
Unlisted collective investment schemes	Last published repurchase price.
Any other investment	Fair value as determined in good faith by the management company or its fund management delegate, on methods or bases which have been verified by the auditor of the fund and approved by the trustee, and adequately disclosed in the prospectus of the fund.

## SCHEDULE C

### DEED OF A UNIT TRUST FUND

- (1) Under section 294 of the CMSA, a deed must contain such provisions, covenants, requirements, information and particulars specified by the SC.
- (2) The requirements stipulated in this schedule are in addition to requirements imposed on a management company and trustee under the law. The contents of this schedule are in addition to and not in derogation of any other duty imposed by any other law.
- (3) A management company, or its adviser, should submit an application to register and lodge the deeds in accordance with the requirements and procedures set out in Appendix III of Schedule E.

### Minimum Contents for a Deed

#### *Covenants of the Management Company*

- (4) A deed of a unit trust fund should contain duties of a management company which are prescribed under the CMSA and also include, but not limited to, the following covenants:
  - (a) It should ensure that the unit trust fund has, at all times, an appointed trustee;
  - (b) It should pay to the trustee, within 10 days after receipt by the management company, any money which, under the deed, is payable to the trustee;
  - (c) It should not sell any unit of the unit trust fund to which the deed relates, other than at a price calculated in accordance with the deed;
  - (d) It should, at the request of the unit holder, purchase units held by the unit holder, and the purchase price will be a price calculated in accordance with the deed;

- (e) It should make available, or ensure that there is made available, to the trustee such information as the trustee requires on all matters relating to the unit trust fund to which the deed relates;
- (f) It should not exercise the voting rights with respect to the units it holds in any unit holders' meeting, regardless of the party who requested for and called the meeting and the matter or matters that are laid before unit holders; and
- (g) It should attach the trustee's report together with the annual report required under section 298(3) of the CMSA to be sent to unit holders.

### ***Covenants of the Trustee***

- (5) A deed of a unit trust fund should contain duties of a trustee which are prescribed under the CMSA and also include, but not be limited to, the following covenants:
  - (a) It should ensure that the unit trust fund has, at all times, an appointed management company;
  - (b) It should exercise all due diligence and vigilance in carrying out its functions and duties and in safeguarding the rights and interests of unit holders to which the deed relates;
  - (c) It should ensure that the management company does not use its position improperly in managing the unit trust fund to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such a unit trust fund;
  - (d) It should keep or cause to be kept proper books of account for all investments and properties of the unit trust fund;
  - (e) It should ensure that proper records are kept of all transactions, dividends, interests and income received and distributed for the unit trust fund to which the deed relates; and

- (f) It should cause the accounts referred to in (5)(e) to be audited at the end of each financial year by an auditor appointed by the trustee.

***Joint Covenants of the Management Company and Trustee***

- (6) A deed of a unit trust fund should contain covenants of the management company and trustee including, but not be limited to, the following:
  - (a) The management company and the trustee should safeguard the interests of unit holders;
  - (b) The management company and the trustee should ensure that for the duration of the unit trust fund, there is a registered deed in force at all times; and
  - (c) The management company or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution.

***Other Provisions***

- (7) A deed of a unit trust fund should also contain provisions for the following:
  - (a) Creation of the fund or declaration of trust, which also sets out full particulars of the trust, including precise information as to the circumstances in which the money, securities, investments and properties subject to the fund are or will be vested in that trustee, and the duties and obligations of the trustee towards;
  - (b) That the deed–
    - (i) is binding on each unit holder as if it had been a party to it and that it is bound by its provisions;

- (ii) authorises and requires the management company and the trustee to do the things required or permitted of them by the terms of the deed; and
  - (iii) is made and governed under the laws of Malaysia;
- (c) Appointment of a trustee to the unit trust fund to which the deed relates;
- (d) Full particulars of the unit trust fund including, but not limited to—
  - (i) name of the fund;
  - (ii) investment objective of the fund;
  - (iii) permitted investments, limits and restrictions;
  - (iv) basis for the valuation and the pricing policy for the fund;
  - (v) if the fund has a limited duration, a statement to that effect;
  - (vi) distribution policy, including the basis for the distribution or reinvestment of income;
  - (vii) accounting period of the fund; and
  - (viii) if classes of units are issued, a provision specifying the classes, differences between the classes and rights attached to each class;
- (e) Full particulars on circumstances in which, and methods by which, all or any of the investments may be varied;
- (f) Full particulars on the provision to be made for investments in property which depreciates in value, including the source from which the replacement is to be made or from which the cost of replacement is to be met. If no provision is made, a statement to that fact must be clearly stated;

- (g) Full particulars on the circumstances in which the management company may be required to repurchase from a unit holder any unit for which the unit holder has purchased, and the method of calculation of the repurchase price of the unit;
- (h) Full particulars on the conditions governing the transfer of any unit to which the deed relates;
- (i) Full particulars on the remuneration of the management company and trustee, respectively, including dealing charges (if any) and expenses which are allowed to be paid out of the fund;
- (j) Where the deed requires, or confers a right on, unit holders to enter into an agreement in connection with the unit trust fund, a provision incorporating, the terms and conditions of that agreement;
- (k) A declaration that unless the conditions of issue of any unit expressly provide that a certificate not be issued, a certificate should be issued by the trustee to a purchaser of any unit purchased or subscribed for, not more than two months after the issue of the unit;
- (l) Circumstances under which the dealing in units can be deferred or suspended;
- (m) Circumstances, procedures and processes for termination or winding up of the fund;
- (n) Circumstances, procedures and processes for convening of meetings of unit holders, including the manner in which votes may be given at a meeting of unit holders;
- (o) Circumstances, procedures and processes for retirement, removal and replacement of the management company and the trustee;
- (p) Circumstances, procedures and processes for the appointment, retirement, removal and replacement of the auditor for the fund;

- (q) Specific provisions whereby the management company undertakes to keep and maintain an up-to-date register of unit holders and to make that register available for inspection, free of charge, to any unit holder at any time during ordinary business hours of the management company;
- (r) The extent of the indemnity provided by the management company;
- (s) The extent of the liability of unit holders of the unit trust fund; and
- (t) Provisions governing the modification of the deed.

## Schedule D

### CONTENTS OF A FUND'S REPORT

- (1) The purpose of a fund's report is to provide information to enable unit holders evaluate the performance of a fund.
- (2) The information required by the SC under this schedule is the minimum that must be included in a fund's report.
- (3) A fund's report need not adopt the terms used under this schedule. Where possible, the report should avoid unnecessary jargon and use terms which are easily understood by unit holders.
- (4) For umbrella funds, a report should be prepared for each sub-fund.

### Fund Information

- (5) This section should disclose the following information:
  - (a) Name, type and category of the fund;
  - (b) The fund's investment objective;
  - (c) Duration of the fund and its termination date (where applicable);
  - (d) The fund's performance benchmark;
  - (e) The fund's distribution policy; and
  - (f) Breakdown of unit holdings by size:
    - (i) 5,000 and below;
    - (ii) 5,001 to 10,000;
    - (iii) 10,001 to 50,000;
    - (iv) 50,001 to 500,000; and

- (v) 500,001 and above.

## **Fund Performance**

- (6) The following information should be disclosed in this section:
  - (a) A comparative table covering the last three financial years, or since inception if shorter, showing for the end of each financial year—
    - (i) portfolio composition of the fund, e.g. distribution among industry sectors, markets and category of investments;
    - (ii) NAV of the fund;
    - (iii) NAV per unit and the number of units in circulation as at the end of each year;
    - (iv) highest/lowest NAV per unit;

*(The above figures referred to in (ii) to (iv) should be shown as ex-distribution.)*

  - (v) total return of the fund, and the breakdown into capital growth and income distribution;
  - (vi) distribution per unit (gross and net) for interim and final distribution (if any), and any other forms of distribution made and proposed during the period. The date of each distribution and the effects of the income and additional distribution in terms of NAV per unit before and after distribution should be disclosed;
  - (vii) management expense ratio (MER) of the fund and an explanation for the difference in MER, if applicable; and
  - (viii) portfolio turnover ratio (PTR) of the fund and an explanation for the difference in PTR, if applicable;

- (b) Average total return of the fund measured over the following periods, to the date of the report:
    - (i) One year, or since inception if shorter;
    - (ii) Three years; and
    - (iii) Five years; and
  - (c) Annual total return of the fund for each of the last five financial years, or since inception if shorter.
- (7) A fund's report may include other performance data for any other period aside from those mentioned in (6) above. However, all performance data presented must comply with the following requirements:
- (a) The bases of calculation and any assumption made should be consistently applied, adequately disclosed and independently verified; or
  - (b) The data used should be obtained from independent sources.
- (8) There should be a warning statement that past performance is not necessarily indicative of future performance and that unit prices and investment returns may go down, as well as up.

### **Manager's Report**

- (9) A management company must prepare a report containing an operational review of the fund, the result of those operations and details of significant changes in the state of affairs of the fund during the financial period.
- (10) In selecting a format for the presentation of the report, consideration should be given, not only to the completeness and accuracy of the data, but also to the clarity of the overall presentation.

- (11) A fund's report should include the following:
- (a) Explanation on whether the fund has achieved its investment objective. The explanation should be stated upfront and clearly, but this is not compulsory for interim report;
  - (b) Comparison between the fund's performance during the period and the performance of the benchmark disclosed in the prospectus. This should cover the last five financial years, or since inception if shorter, and should be illustrated in graphical form;
  - (c) Description of the strategies and policies employed during the period under review. To state any change in strategy adopted which was not in line with the strategy disclosed in the prospectus;
  - (d) (If applicable) An explanation on the differences in portfolio composition between the current and previous year;
  - (e) A write-up of the analysis of the fund's performance based on NAV per unit (to adjust for income distribution, if any) since the last review period or since commencement (in the case of newly launched funds);
  - (f) Review of the market(s) (including foreign markets) in which the fund invests in during the period. Information on returns on investments in each market(s) is encouraged. Focus should be given on instruments comprising major asset allocation, e.g. equity-general, equity-small cap;
  - (g) Details of any unit split exercise carried out during the period. State clearly effects on NAV per unit before and after the unit split exercise;
  - (h) Description and explanation of significant changes in the state of affairs of the fund during the period and up to the date of manager's report, not otherwise disclosed in the financial statements;
  - (i) Circumstances which materially affect any interest of unit holders;

- (j) A statement whether any soft commission has or has not been received by the management company and/or its delegate for the period under review from its broker(s)/dealer(s) by virtue of transactions conducted by the fund. If any soft commission (i.e. goods and services) is received, the following should be disclosed:
  - (i) Identification of the goods/services received; and
  - (ii) Manner in which the goods/services received were utilised.

***For Index Funds Only***

- (k) The characteristics and general composition of the index and, where applicable, concentration in any economic sector and/or issuer; and
- (l) Comparison and explanation of the fund's performance, and the actual underlying index's performance over the relevant period.

**Trustee's Report**

- (12) A trustee should prepare a report stating its opinion whether the management company has operated and managed the fund in accordance with the following:
  - (a) Limitations imposed on the investment powers of the management company and the trustee under the deed, these guidelines, CMSA and other applicable laws;
  - (b) Valuation/pricing is carried out in accordance with the deed and any regulatory requirement; and
  - (c) Creation and cancellation of units are carried out in accordance with the deed and any regulatory requirement.

- (13) If the trustee is of the opinion that the management company has not done so, the trustee should disclose the shortcoming(s) which may have an impact on the decision of existing or potential unit holders to remain invested or to invest in the fund. The trustee should also highlight steps taken to address the shortcoming(s) and/or to prevent the recurrence of the shortcoming(s).
- (14) The report prepared by a trustee under (12) should include a further statement stating its opinion whether the distribution of returns by the fund is relevant and reflects the investment objective(s) of the fund.

### **Shariah Adviser/Panel of Advisers' Report**

- (15) The Shariah adviser/panel of advisers should prepare a report stating its opinion whether the fund has been operated and managed in accordance with the specific principles set out for the fund. If it has not been operated and managed according to the specific principles, then the steps taken to address the situation and/or to prevent the recurrence of the situation should be highlighted.
- (16) For a Shariah-compliant fund, the report by the Shariah adviser must also include–
  - (a) its opinion whether the fund has been managed in accordance with applicable guidelines, ruling or decision issued by the SC pertaining to Shariah matters; and
  - (b) a statement to the effect that the investment portfolio of the fund comprises securities which has been classified as Shariah compliant by the Shariah Advisory Council (SAC) of the SC. For securities not certified by the SAC of the SC, a statement stating that the status of the securities has been determined in accordance with the ruling issued by the Shariah adviser.

### **Auditor's Report**

- (17) An annual report should be accompanied by an auditor's report.
- (18) An auditor's report should state an opinion on the accounts of the fund. Where the auditor's report is qualified, details of the qualification should be noted in the comment section.

## **Financial Statements**

- (19) The financial statements should give a true and fair view of the fund, and should be prepared in accordance with applicable approved accounting standards, applicable statutory requirements, the deed and any regulatory requirement. The disclosure requirements set out for financial statements in this schedule must be complied with unless superseded by approved accounting standards.
- (20) For interim reports, it should be clearly stated whether the financial statements in the interim report are audited or unaudited.
- (21) For the purpose of (20) where unaudited financial statements are used, the financial statements should include a declaration by the director(s) of the management company that the financial statements give a true and fair view of the fund. A signed copy of the declaration, which should be identical to the declaration printed in the report, must be submitted to the SC.
- (22) Additional Disclosure Requirements in Financial Statements

### **A Balance Sheet**

- (a) NAV of the fund;
- (b) Number of units in circulation;
- (c) NAV per unit (ex-distribution, where applicable); and
- (d) Net assets/liabilities attributable to unit holders.

### **B Classification of Investments**

- (a) Investment (including cash and cash equivalents) should not be classified as current or non-current, but should be presented in an order that reflects each category's relative liquidity; and
- (b) The carrying amount of investments (where applicable) to be categorised as follows:

- (i) Fixed income and other debt securities;
- (ii) Quoted and unquoted equity securities;
- (iii) Derivatives (e.g. futures, options);
- (iv) Other collective investment schemes;
- (v) All foreign investments;
- (vi) Any other investment, with significant items to be disclosed separately;
- (vii) Cash and cash equivalents; and
- (viii) Significant items included in other assets, disclosed separately.

**C      *Income Statement***

- (a) Income, by category:
  - (i) Interest income;
  - (ii) Dividend income;
  - (iii) Net realised gains or losses on sale of investments;
  - (iv) Net realised gain on sale of instrument in non-permissible securities (for Shariah funds);
  - (v) Dividend income from non-permissible securities (for Shariah funds); and
  - (vi) Other significant income items;
- (b) Expenses, by category:
  - (i) Fees and charges paid to management company, with each type of fee and charge shown separately;

- (ii) Trustee's fees and any requirement of trustee's expenses, including the basis for the fees charged by the trustee;
  - (iii) Auditor's fees;
  - (iv) Tax agent's fee;
  - (v) Administrative fees and expenses;
  - (vi) Payment made to charitable bodies (for Shariah funds); and
  - (vii) Other significant expenses items;
- (c) Net income before and after taxation;
  - (d) For net income after tax, the break down into "realised" and "unrealised" portions; and
  - (e) Total amount for distribution (net) and distribution per unit (gross and net) for the interim and final distribution, including the date for each distribution.

**D** ***Statement of Changes in NAV***

Movement in the NAV of the fund during the period, separately categorising those changes arising from investment and those arising from transactions with unit holders. The following (where applicable) should be shown separately under the appropriate categories:

- (a) NAV at the beginning and end of the period;
- (b) Net income for the period;
- (c) Amounts received from units created;
- (d) Amounts paid for units cancelled;
- (e) Distributions to unit holders; and

- (f) Changes in unrealised reserves.

**E Cash Flow Statement**

**F Notes to the Financial Statements**

- (a) The basis of income recognition;
- (b) The basis for fees and charges paid to the management company;
- (c) The basis for fees and charges paid to the trustee;
- (d) Movements in the number of units with the following items to be shown separately:
  - (i) Maximum issuable under the provisions of the deed and any subsequent increase as approved by the SC; and
  - (ii) Units created/cancelled during the period, highlighting the number of units created as additional distribution, if any;
- (e) Transactions with the top 10 brokers/dealers disclosed as follows:
  - (i) Broker/dealer transactions by value of trade and percentage;
  - (ii) The aggregate amount of brokerage fees/commissions paid by the fund, as well as the amount of fees/commissions paid to each broker/dealer expressed in both value and percentage; and
  - (iii) Parties related to the management company and/or its delegate should be highlighted; and

- (iv) Statement as to whether dealings with related parties have been transacted at an arm's length basis.

**Guidance**

For all funds other than money market funds, only new placement for depository facilities is considered as a transaction. Renewals of depository facilities are not to be reported as transactions.

- (f) The total number and value of units held by the management company and its related parties and whether the units are held legally or beneficially;
- (g) The composition of the investment portfolio of the fund as at the date of the financial report should be disclosed. It must be grouped appropriately, based on categories (e.g. sector, market) that would facilitate a meaningful analysis. For each category, the following must be stated:
  - (i) Quantity held;
  - (ii) Cost of the investment;
  - (iii) Market value of the investment; and
  - (iv) Market value of each holding as a percentage of NAV.

A list of suspended counters (including valuation method) and non-approved securities (for Shariah-based funds) must be separately identified. Action(s) to be taken by the managers on these suspended counters must be disclosed;

- (h) Auditor's verification on management expense ratio and portfolio turnover ratio (applicable only for annual report);

(i) Sources of distribution

Distribution to unit holders is from the following sources (where applicable):

	20X8 RM'000	20X7 RM'000
Dividend income	XX	XX
Interest income	XX	XX
Profit sharing from Islamic debt securities	XX	XX
Realised gains [less losses] on sale of investments	XX	XX
Previous year/period's realised gains	XX	XX
Other income	XX	XX
	<hr/>	<hr/>
	XXX	XXX
Less:		
Expenses	XX	XX
Taxation	XX	XX
	<hr/>	<hr/>
	XXX	XXX
Gross distribution per unit (sen)	XX	XX
Net distribution per unit (sen)	XX	XX

(j) Additional statements on distributions are required, when—

- (i) there are unrealised losses (be they arising during the year/period or brought forward from previous year/period) within the fund; and
- (ii) distributions are made from previous year's realised gains.

## SCHEDULE E

### SUBMISSION OF APPLICATIONS, NOTIFICATIONS AND DOCUMENTS

#### General

- (1) Applications may only be submitted to the SC by the following:
  - (a) A management company;
  - (b) A trustee (where the application relates to registration or renewal of registration of the trustee and appointment of a company to act as a trustee); or
  - (c) Adviser.
- (2) Applications should be submitted in accordance with the requirements set out under this schedule, unless otherwise specified. Submission of applications which do not comply with the requirements or which are unsatisfactory will be returned.
- (3) The submitting party has a duty of care to ensure that all SC requirements pertaining to submission of applications/proposals are met and is responsible for dealing with the SC on all matters in connection with the applications.
- (4) The applicant (including directors and/or promoters), advisers, experts and any other person accepting responsibility for all or part of the information and documents submitted to the SC should exercise due diligence for all or any part of the information submitted relating to, or in connection with the proposal. The parties to the submission of a proposal should comply with the relevant guidelines issued by the SC in this regard.
- (5) The information provided in the submission should be correct as at the latest practicable date.<sup>1</sup>

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<sup>1</sup> "Latest practicable date" is a date whereby the information disclosed shall remain relevant and current as at the date of issue of the prospectus.

- (6) The SC may, at its discretion, request for additional information and documents not specified in this schedule.
- (7) The SC should be immediately informed of–
  - (a) any material change in circumstances that would affect the SC's consideration of the proposal; and/or
  - (b) any material change/development in circumstances relating to the proposal, occurring subsequent to the SC's approval.
- (8) If certain circumstances are made known to the SC after the proposal has been considered, and the circumstances would have affected the decision made had the SC known about them, the SC may review its decision.
- (9) Any person who is aggrieved by the SC's decision may, within 30 days after the aggrieved person is notified of such decision, make an application to the SC for a review of its decision, which will then be final.
- (10) An application for a revision to the terms and conditions of an SC approval is not subjected to any time limit. The principles adopted by the SC for such applications are as follows:
  - (a) Such applications should be supported by evidence of justifiable grounds or developments beyond the control of the relevant parties; and
  - (b) Such applications which do not comply with (a) above may be considered by the SC at its discretion based on exceptional reasons.

### **Application for the Establishment of a Unit Trust Fund**

- (11) Submission to the SC for the establishment of a new unit trust fund should comprise the following:
  - (a) Application to issue or offer units of the fund;

- (b) Application for a company to act as management company for the fund;
  - (c) Application for a company to act as trustee for the fund;
  - (d) Application to register the deed of the fund;
  - (e) Application to register the prospectus of the fund (not applicable to a wholesale fund); and
  - (f) Any other relevant application.
- (12) The SC would inform the applicant/submitting party of its decision within 21 days (excluding public holidays) after receiving a complete submission.
- (13) The SC may require an extension of up to 30 days (in addition to the 21 days in (12) above) if the proposed new fund–
- (a) does not fall within the categories/types stipulated under these guidelines;
  - (b) has special/unique features that could have a material impact on investors; or
  - (c) comes together with proposed exemptions/variations from these guidelines which do not have any precedent case.

The SC would inform the applicant/submitting party if an extension is required.

- (14) To minimise any extension, applicants are advised to consult the SC before submitting any proposed fund which may fall within the categories set out in (13).

### **Application for an Increase in Approved Fund Size**

- (15) Where–
- (a) a fund's units in circulation has exceeded 50% of the approved fund size; and

- (b) the proposed increase in fund size is not more than 50% of the current approved fund size (in units),

an application made to the SC for an increase in fund size is “deemed approved”.

- (16) The new fund size will be effective upon the SC receiving a complete submission of an application.
- (17) Where the criteria in (15) are not met, an application will be considered by the SC based on a merit assessment.

### **Application for an Extension of Time/Renewal of Trustee’s Registration**

- (18) An application for an extension of time and renewal of trustee’s registration must be submitted to the SC at least 30 days before the stipulated expiry date.
- (19) Where an application is submitted less than 30 days before the expiry date, the SC will not be responsible for any delay in considering the application.

### **Fees**

- (20) All applications should be accompanied with the appropriate fee (where applicable). An application is deemed incomplete if the appropriate fee is not submitted.
- (21) The details of fees payable to the SC for the various types of applications are set out in the Securities Commission (Fees) (Amendment) Regulation 2004.
- (22) Payment should be made in the form of a crossed cheque/draft order made in favour of “Suruhanjaya Sekuriti” or “Securities Commission”.

## Schedule E – Appendix I(a)

### SUBMISSION OF APPLICATIONS FOR APPROVAL/REGISTRATION

#### Application for SC Approval

- (1) An application submitted for SC approval should comprise the following:
  - (a) Cover letter, specifying–
    - (i) the approval sought, including particulars of the proposal(s); and
    - (ii) other approvals or clearance obtained/pending (if applicable);

#### Guidance

For an application to establish a new unit trust fund, one cover letter will be accepted for multiple proposals in a single application. For an application to establish more than one unit trust fund (except an umbrella fund), a separate application must be submitted for each fund.

- (b) A declaration letter in the form provided in Appendix II of this schedule;

#### Guidance

For multiple applications, a declaration must be submitted by the relevant applicant responsible for all or any part of the information submitted in respect of the application to which it is seeking an approval.

- (c) Supporting documents required for each type of application as follows (application forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my)):

***Application to Establish a New Unit Trust Fund***

Appendix	Form	Title/Remarks
I	SC/UTF-NEW	Application for the establishment of a unit trust fund.

***Application to Act as Management Company of a Unit Trust Fund***

Appendix	Form	Title/Remarks
I	SC/UTMC	Application for the appointment of a company to act as a management company to a unit trust fund.
II		Statutory declaration from the applicant stating that it is independent of the trustee.  Note: This does not apply if the applicant is related to the trustee.

***Application to Act as Trustee to a Unit Trust Fund***

Appendix	Form	Title/Remarks
I	SC/TRUSTEE	Application for the appointment of a company to act as a trustee to a unit trust fund.
II		Statutory declaration from the applicant stating that it is independent of the management company.  Note: This does not apply if the applicant is related to the trustee.

**Application to Appoint a Delegate Not Licensed by the SC**

Appendix	Form	Title/Remarks
I	SC/UTMC-DELEGATE	Application for the appointment of a delegate not licensed by the SC.
II		An undertaking that the applicant will take responsibility for the actions and omissions of any delegate as though they were its own actions and omissions.
III		<p>A declaration by the applicant that it–</p> <ul style="list-style-type: none"> <li>• has adequate procedures to monitor the conduct of the delegate to ensure that the delegated function is performed in a proper and efficient manner;</li> <li>• has conducted a review of the operations of the delegate, and is satisfied that the delegate has the capabilities, capacity and suitability to undertake the delegated function; and</li> <li>• is satisfied that the delegate will be able to fulfil its duties and responsibilities for the delegated function in a proper and efficient manner.</li> </ul>

### ***Application to Increase the Approved Fund Size***

Appendix	Form	Title/Remarks
I	SC/UTF-INCREASE	Application for an increase in the approved fund size.
II		Statement from the management company on compliance with the criteria stipulated under 15(a) and 15(b) of Schedule E (where applicable).
III		Statement from the trustee on compliance with the criteria stipulated under 15(a) and 15(b) of Schedule E (where applicable).

### ***Application for an Exemption/Variation/Extension of Time***

Appendix	Form	Title/Remarks
I		Justification or rationale for proposal.
II		Statement from the trustee of the fund that the exemption/variation/extension of time does not jeopardise unit holders' interest.
III		Approval or clearance letter from other authorities (where applicable).

### **Application to Register with the SC**

- (2) An application submitted to the SC should comprise the following:
- (a) Cover letter, specifying–
    - (i) the registration/renewal sought; and

- (ii) other approvals or clearance obtained/pending (if applicable); and
- (b) Supporting documents as follows (application forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my)):

***Application to Register/Renew Registration for a Trustee***

Appendix	Form	Title/Remarks
I	SC/TRUSTEE-REGISTRATION	Application for registration/renewal of registration for trustee to a unit trust fund.
II		An undertaking by the applicant that it will comply with the trustee requirements under the Guidelines on Unit Trust Funds before commencing unit trust fund-related business.

**Application to Register and Lodge Documents with the SC**

***Deed***

- (3) An application to register and lodge a fund's deed must be made in accordance with the requirements set out in Appendix III of this schedule.

***Prospectus***

- (4) An application to register and lodge a fund's prospectus must be made in accordance with the requirements set out in the *Prospectus Guidelines for Collective Investment Schemes*.

## Schedule E – Appendix I(b)

### NOTIFICATION AND SUBMISSION OF DOCUMENTS

#### Notification to SC

- (1) A notification to the SC should comprise the following:
  - (i) Notification letter (with details of notification); and
  - (ii) Notification forms (where applicable).
- (2) The notification forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my).

#### Lodgement of Documents with SC

- (3) Under section 298(1)(a)(i) of the CMSA, the annual report of a fund must be lodged with the SC.
- (4) The submission should comprise a cover letter specifying the documents lodged, three printed copies of the annual report, minimum content checklist<sup>1</sup> and a CD-ROM containing the annual report in “pdf” format.

#### Delivery/Deposit of Documents

- (5) Pursuant to section 298(1)(b) of the CMSA, the SC requires that the interim report of a fund be delivered to the SC. The submission should comprise a cover letter specifying the documents delivered, three printed copies of the interim report, minimum content checklist<sup>1a</sup> and a CD-ROM containing the interim report in “pdf” format.
- (6) Under sections 229(4) and 230(4) of the CMSA, an information memorandum of a fund (i.e. a wholesale fund) must be deposited with the SC. The submission should comprise a cover letter specifying the documents deposited, two printed copies of the information memorandum and be deposited with the SC within seven days after it is first issued.

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1, 1a The checklist is available at [www.sc.com.my](http://www.sc.com.my)

## Schedule E – Appendix II(a)

### DECLARATION BY THE APPLICANT

Chairman  
Securities Commission

Dear Sir

**APPLICANT** (*name of management company/trustee*)

#### **Declaration**

We, ....(*name of applicant*)...., are proposing to undertake the following proposals:

- a. ....
- b. ....
- c. ....

(hereafter referred to as “the Proposal”).

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information which is provided to the advisers or to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.

3. We declare that we are satisfied after having made all reasonable inquiries that the Proposals is in full compliance with the following:

- (i) The *Guidelines on Unit Trust Funds*;\* and
- (ii) Other requirements under the *Capital Markets and Services Act 2007* as may be applicable.

4. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC on the Proposal.

5. We undertake to provide to the SC all information SC may require on the Proposal.

This declaration has been signed by me as .....(*designation of director*)..... of ..... (*the applicant*).... pursuant to authority granted to me by a resolution of the Board of Directors on .....(*date of resolution*)....

Yours faithfully

.....

Signature

Name:

Name of applicant:

Date:

Note

- \* Applicable only to proposals falling under the *Guidelines on Unit Trust Funds*. Where an application for exemption is being sought, to insert the words "except clause(s) ....(refer to clause where exemption is being sought).... where exemption(s) is/are being sought as part of the submission to the SC."

**Schedule E – Appendix II(b)**

**DECLARATION BY THE ADVISER**

Chairman  
Securities Commission

Dear Sir

**APPLICANT** (*name of management company/trustee*)

**Declaration**

....(*Name of applicant*).... is proposing to undertake the following proposals:

- (a) .....
- (b) .....
- (c) .....

(hereafter referred to as “the Proposal”).

We, ....(*name of adviser*)...., are advising ....(*name of applicant*).... on the Proposal.

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information which is provided to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.

3. We declare that we are satisfied after having made all reasonable inquiries that the Proposal is in full compliance with the following:

- (i) The *Guidelines on Unit Trust Funds*;<sup>\*</sup> and
- (ii) Other requirements under the *Capital Markets and Services Act 2007*, as may be applicable.

4. We undertake to immediately inform the SC if it has come to our knowledge that the Applicant has breached or failed to comply with such requirements, after submission of this declaration for the Proposal until the implementation of the Proposal.

5. We undertake to provide to the SC all information SC may require on the Proposal.

Yours faithfully

.....  
Signature

Name of Authorised Signatory:

Designation:

Name of Adviser:

Date:

Note

\* Applicable only to proposals falling under the *Guidelines on Unit Trust Funds*. Where an application for exemption is being sought, to insert the words "except clause(s) ....(refer to clause where exemption is being sought).... where exemption(s) is/are being sought as part of the submission to the SC."

## Schedule E – Appendix III

### REGISTRATION AND LODGEMENT OF A DEED

#### General

- (1) A deed of a unit trust fund must be submitted for registration and lodgement according to the requirements under this appendix.
- (2) The SC will not register a deed unless the submission is complete and accompanied by all required materials/documents. The SC reserves the right to refuse registration and return the application if the contents of the deed are inadequate and unsuitable, or if the submission is incomplete, as the case may be.
- (3) As prescribed under section 293(1) of the CMSA, a fund's deed shall not have effect unless it is registered with the SC.
- (4) An application to register a deed of a unit trust fund proposed to be established should be submitted together with the application to establish a new unit trust fund.
- (5) An application to register a supplementary deed should be submitted immediately upon the execution of the deed.
- (6) As prescribed under section 296 of the CMSA, a fund's deed should be lodged with the SC within seven days after the deed has been registered by the SC.

#### Submission of Application

##### *Registration of Deed*

- (7) An application to register a deed should comprise the following:
  - (a) Cover letter, specifying the following:
    - (i) Application to register a deed;
    - (ii) A confirmation that the accompanying documents are complete, signed and dated; and

- (iii) A declaration stating that–
  - the deed complies with the requirements of the CMSA and the Minimum Contents Requirement for Deed stipulated under these guidelines; or
  - the deed complies with the contents of the Standard Deed issued by a body approved by the SC;
- (b) Executed and stamped copy of the deed (two copies);
- (c) (For supplementary deed) A unit holders' resolution sanctioning the modification to the deed, or a statement from the trustee and the management company, as prescribed under section 295(4)(b) of the CMSA;
- (d) (For supplementary deed) A list highlighting the original provisions from the principal deed and the amended provisions;
- (e) (For a deed that is not based on the Standard Deed) Checklist for Minimum Contents for Deeds of Unit Trust Funds;
- (f) Registration Checklist;<sup>2</sup> and
- (g) Registration fee and Fee Checklist.<sup>2a</sup>

### **Lodgement of Deeds**

- (8) An application to lodge a deed should comprise the following:
  - (a) Cover letter signed by at least one of the directors of the management company, specifying the following:
    - (i) Application to lodge the deed;

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<sup>2, 2a</sup> The checklists are available at [www.sc.com.my](http://www.sc.com.my)

- (ii) A declaration that the copy of the deed lodged with the SC is identical to the deed registered by the SC; and
  - (iii) A declaration that the copy of the deed in CD-ROM is identical to the printed deed.
- (b) Printed copies of the deed (two copies);
- (c) A CD-ROM containing the deed in “pdf” format. The CD-ROM should be labelled with a description of the content and the date of lodgement;
- (d) Lodgement Checklist;<sup>3</sup> and
- (e) Lodgement fee and Fee Checklist.<sup>3a</sup>

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<sup>3, 3a</sup> The checklists are available at [www.sc.com.my](http://www.sc.com.my)

## Schedule F

### REPORTING TO SC

#### General

- (1) For the purpose of reporting to the SC, a management company must submit a Statistical Return and Compliance Return (collectively referred to as "UTF Returns") of the fund. The UTF Returns must be submitted on a monthly basis, via the Trusts and Investment Management Electronic Reporting System (TIM-ERS).
- (2) The reporting period should cover the period starting from the first day until the last day of the respective month. For information required at a certain cut-off, it must be as at the last day of the month.
- (3) For a newly-established unit trust fund, the UTF Returns should commence from the month in which the fund's initial offer period ends. For example, if a fund was launched on 28 June and the initial offer period ends on 18 July, the first UTF Returns should be submitted for the month of July. In this instance, the UTF Returns will consist of data for more than one month, i.e. from 28 June to 31 July.
- (4) A management company must take all necessary precautions to ensure that the information provided in the UTF Returns is accurate.
- (5) The chief executive officer is ultimately responsible for all information entered into TIM-ERS. The chief executive officer is expected to ensure that the necessary policies and procedures are in place and the information submitted to the SC via TIM-ERS is true and accurate.
- (6) The Compliance Return should be submitted to the trustee for verification that it is complete, true and accurate to the best of the trustee's knowledge and belief.
- (7) A management company should keep a printed copy of the UTF Returns at the business address of the management company or a designated place approved by the SC at all times for a period of seven years from the date of submission.
- (8) A management company should ensure that the particulars in the printed copy of the UTF Returns and that submitted to the SC via TIM-ERS are identical.

- (9) The SC reserves the right to conduct an examination at the business address or at the designated place to ensure compliance with (7) and (8).
- (10) For guidance on use of TIM-ERS, a management company may refer to the TIM-ERS user manual which is available at TIM-ERS website at <https://ers.seccom.com.my/tims>.

### **Access to TIM-ERS**

- (11) A new management company should, within 30 days of the launch of its maiden fund, apply to the SC for access to TIM-ERS to ensure compliance with (3).
- (12) For application to access TIM-ERS, the management company must submit the External User ID Request Form. The management company must also submit the Terms and Conditions of Use of TIM-ERS, evidencing the company's agreement to be bound by them.<sup>1</sup>

### **Submission of UTF Returns**

- (13) The UTF Returns should be submitted to the SC within seven business days (by 5.00 pm on a weekday) of the month following the month of reporting.
- (14) The UTF Returns should only be submitted to the SC only after the trustee has verified the Compliance Returns.
- (15) The SC considers the UTF Returns submitted via TIM-ERS as final.
- (16) Should there be errors and/or omissions discovered after the submission has been made, the management company should immediately make the rectification and submit the amended UTF Returns to SC via TIM-ERS.

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<sup>1</sup> The External User ID Request Form and Terms and Conditions of Use of TIM-ERS are available at TIM-ERS website.

### **Submission of UTF Returns During Termination/Winding Up**

- (17) While a fund is being terminated/wound up, a management company should continue to submit UTF Returns until the termination/winding up is complete.

### **Submission of Compliance Review Report**

- (18) Where there is a notification of non-compliance upon the submission of the UTF Returns via TIM-ERS, the management company must provide an explanation for the non-compliance and the action to be taken to rectify the matter in a Compliance Review Report.
- (19) The Compliance Review Report should be submitted to the SC via TIM-ERS not later than seven business days from the date of submission of the UTF Returns.