

## **Chapter 9**

### **OPERATIONAL MATTERS**

#### **Size of Funds**

9.01 In determining the size of a fund, which must be expressed in units, a management company must take into account its resources, expertise, experience and overall capability to carry out its duties in accordance with the securities laws, these Guidelines and the deed.

#### **Register of unit holders**

9.02 A management company must take reasonable steps to update the register upon receiving written notice of a change of name or address of any unit holder to ensure an up-to-date register of unit holders is maintained.

#### **Cooling-off right**

9.03 A cooling-off right must be given to an individual investor who is investing in any unit trust fund managed by a particular management company for the first time, except for where such investor is—

(a) A staff of that management company; or

(b) A person registered with a body approved by the SC to deal in unit trusts.

9.04 The cooling-off period must be not fewer than six business days commencing from the date of receipt of the application by the management company.

9.05 The refund pursuant to an exercise of a cooling-off right must be as follows:

- (a) If the original price of a unit is higher than the price of a unit at the point of exercise of the cooling-off right (“market price”), the market price at the point of cooling-off; or
  - (b) If the market price is higher than the original price, the original price at the point of cooling-off.
- 9.06 In addition to paragraph 9.05, the management company must also refund the charges imposed on the day the units were purchased.
- 9.07 Where the market price is higher than the original price paid by investor, the management company may agree to pay the investor the excess amount, provided that such amount is not paid out of the fund or the assets of the fund.
- 9.08 When an investor notifies the management company of his intention to exercise his cooling-off right, the management company must refund the investor in cash within seven business days of receiving such notification.

### **Distribution of income**

- 9.09 Any distribution of income can only be made from realised gains or realised income, after taking 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.
- 9.10 Notwithstanding paragraph 9.09, a variable price fund may declare distribution out of capital of the fund, provided that—

- (a) distribution out of capital is permitted under the deed and disclosed in the prospectus; and
  - (b) the composition of distribution payments sourced from income and capital are disclosed in the fund reports, both in terms of value and percentage.
- 9.11 There should be a distribution account to which the fund's income is transferred prior to the distribution to unit holders.
- 9.12 Where a distribution is made, the management company must 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 must also include the following information:
- (a) Total returns of the fund; and
  - (b) NAV per unit prior to, and subsequent to, the distribution.
- 9.13 For classes of units denominated in different currencies, distributions, if any, must be in the currencies in which those classes of units are denominated.
- 9.14 For interim distribution of funds, a management company may choose not to send the statement required under paragraph 9.12, if in its opinion the publication on its website is sufficient. In addition to the publication on its website, the management company may also publish the same information through an advertisement in at least one national Bahasa Malaysia newspaper and one national English newspaper.

### **Unit split**

- 9.15 A unit split exercise may only be conducted once in any financial year of the fund.
- 9.16 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 6-month period preceding the unit split exercise.

- 9.17 The management company must submit the trustee's verification on compliance with paragraph 9.16 to the SC within 14 days after the unit split exercise.
- 9.18 The management company must send to every unit holder a statement detailing the ratio of the split. The statement must also include the following information:
- (a) NAV per unit prior to and subsequent to, the unit split exercise; and
  - (b) Reasons for conducting the unit split exercise.
- 9.19 The management company may choose not to send the statement required under paragraph 9.18, if in its opinion the publication on its website is sufficient. In addition to the publication on its website, the management company may also publish the same information through an advertisement in at least one national Bahasa Malaysia newspaper and one English newspaper.

### **Rebates and soft commissions**

- 9.20 A management company, fund manager, trustee or trustee's delegate should not retain any rebate from, or otherwise share in any commission with, any broker or dealer in consideration for directing dealings in a fund's assets. Accordingly, any rebate or shared commission should be directed to the account of the fund concerned.
- 9.21 A management company or fund manager may retain goods and services (soft commissions) provided by any broker or dealer if the following conditions are met:

- (a) The soft commissions bring direct benefit or advantage to the management of the fund and may include research and advisory related services;
- (b) Any dealing with the broker or dealer is executed on terms which are the most favourable for the fund; and
- (c) The availability of soft commissions is not the sole or primary purpose to perform or arrange transactions with such broker or dealer, and the management company or fund manager must not enter into unnecessary trades in order to achieve a sufficient volume of transactions to qualify for soft commissions.

9.22 Where paragraph 9.21 applies, the compliance officer must verify and inform the management company's board of directors or the audit and compliance committee, if any, that the goods or services received by the management company or the fund manager comply with the requirements of these Guidelines.

### **Documents for inspection by unit holders**

9.23 A management company and a trustee must make available at their principal place of business the following documents for inspection by investors and unit holders at all times, without charge, during the ordinary business hours of the management company and the trustee:

- (a) The deed and the supplementary deed(s) of the fund, if any;
- (b) The current prospectus and supplementary or replacement prospectuses of the fund, if any;
- (c) The latest fund reports;
- (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) Where applicable, the audited financial statements of the management company and the fund for the current financial year, and for the last three financial years or if less than three years, from the date of incorporation or commencement; and
- (g) 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 in the prospectus is based.

### **Terminating a fund**

- 9.24 A fund must be terminated upon the occurrence of any of the following events:
- (a) The SC's authorisation is withdrawn;
  - (b) A special resolution is passed at a unit holders' meeting to terminate the fund;
  - (c) The fund has reached its maturity date as specified in the deed; and
  - (d) 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.
- 9.25 Notwithstanding paragraph 9.24, a fund may also be terminated without a special resolution being passed at a unit holders' meeting, provided that—
- (a) such circumstance of termination is in the best interest of unit holders; and

- (b) the event of an occurrence of specific termination circumstance without a special resolution being passed is permitted by the deed and disclosed in the prospectus.
- 9.26 In a termination other than as a result of an event under paragraph 9.24(d), the trustee must–
- (a) sell all the fund’s assets remaining in its hands;
  - (b) after paying or retaining adequate amount for all liabilities payable and cost of termination, distribute to unit holders the net cash proceeds available for the purpose of such distribution in proportion to the number of units held by the unit holders respectively; and
  - (c) in relation to any monies held by the trustee that remains unclaimed after 12 months, transfer of such monies to the *Registrar of Unclaimed Moneys*, in accordance with the requirements of the *Unclaimed Moneys Act 1965*.
- 9.27 Where a fund is being terminated, the management company must–
- (a) issue a notice to unit holders (“Termination Notice”) at least 30 days before the commencement date of a fund termination (“commencement date”), disclosing the following:
    - (i) The last date of application for redemption of units (“T-1 business day”) and commencement date (“T business day”);
    - (ii) Rationale for termination;
    - (iii) Options available to unit holders;
    - (iv) Date of expected completion;

- (v) Where the termination costs are to be borne by the management company, a statement to this effect. Where there are termination costs to be borne by the fund, to provide the estimates of such costs;
  - (b) within the period from the date of the Termination Notice until the commencement date, the fund must not accept any applications for the subscription of units;
  - (c) send a notice to the SC at least 14 days (“>T-14 days”) before the commencement date, enclosing the following:
    - (i) Termination Notice;
    - (ii) Information on the size of the fund and the number of unit holders remaining in the fund (as at the latest practicable date prior to the Termination Notice);
    - (iii) Information on the last date of sale of units; and
  - (d) within the period from the commencement date until the date of completion of termination (“completion date”), the fund must not accept any applications for the redemption of units.
- 9.28 The management company and trustee must notify the SC in writing whereupon the passing of a resolution to terminate the fund, or upon the court confirming the unit holders’ resolution to terminate the fund.
- 9.29 Where a fund is being terminated, the trustee must also arrange for the auditor of the fund to conduct a final review and audit of the fund’s accounts.
- 9.30 At the completion date, the trustee must notify the SC confirming the following:
- (a) The assets of the fund have been realised and distributed to unit holders; and



- (b) The management company has managed the fund as prescribed by the deed and relevant laws.

9.31 The management company or trustee must as soon as practicable after the completion date, inform unit holders of such termination.

***Accounting and reports during termination***

9.32 While a fund is being terminated –

- (a) the financial period continues to run; and
- (b) the annual report and semi-annual report continue to be required.

9.33 Where for any financial period, the management company, after consulting the auditor and the trustee, has taken reasonable care to determine that timely production of an annual or a semi-annual report is not required in the interests of unit holders, the immediate production of the report may be dispensed with.

9.34 The financial period in paragraph 9.33 must be reported together with the following period in the next report prepared for the purpose of paragraph 9.35. In such instance, the management company must notify the SC of the change to the timing of issuance of the annual report or semi-annual report, and the expected date of issuance of such report.

9.35 At the date of completion of the fund termination, the financial period then running is regarded as the final financial period for the fund. Within two months after the end of the financial period, the final report of the fund must be published and sent to each unit holder and the SC.

### **Termination a class of units**

- 9.36 A class of units may be terminated if a special resolution is passed at a meeting of unit holders of that class of units to terminate the class provided always that such termination does not prejudice the interests of any other class of units.
- 9.37 The management company or trustee must as soon as practicable after the termination of a class of units inform all unit holders of the fund of the termination of the class of units.
- 9.38 The management company and trustee must notify the SC in writing –
- (a) upon passing of a resolution to terminate a class of units; and
  - (b) upon the completion of the termination of a class of units.
- 9.39 Where a class of units is being terminated, the trustee must also arrange for the auditor of the fund to conduct a final review and audit of the fund's accounts in relation to that class of units.
- 9.40 For avoidance of doubt, where appropriate, the requirements in paragraphs 9.25 to 9.35 apply to the termination of a class of units.

### **Transfer Schemes**

- 9.41 A transfer scheme is an agreement to transfer the assets of the fund from a fund ("transferor fund") to another fund ("transferee fund").
- 9.42 A management company must ensure that the unit holders of the transferor fund do not become unit holders of a fund other than a fund authorised by the SC.

- 9.43 A transfer scheme must not be implemented without the sanction of special resolution of unit holders of both the transferor and transferee funds.
- 9.44 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 assets 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 effected without any breach of Chapter 6 of these Guidelines;

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

### **Meeting of unit holders**

- 9.45 A management company or trustee may convene a unit holders' meeting at any time, other than for the required circumstances provided for in the CMSA.

### **Notice of meetings**

- 9.46 Except where specifically provided for in the CMSA, when a management company or trustee convenes 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.

- 9.47 A copy of the notice of any unit holders' meeting, including those convened under section 305 of the CMSA, must be provided to the SC and the trustee.

**Chairman**

- 9.48 A unit holders' meeting must be chaired by–
- (a) where 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) where the meeting is called by the management company, a person appointed by the management company.

**Quorum**

- 9.49 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.
- 9.50 In the case of a fund or class of units having five or less unit holders, the quorum required for a meeting is two unit holders, whether present in person or by proxy, provided always that the quorum for a meeting which requires a special resolution is two unit holders holding in aggregate at least 25% of the units in issue at the time of the meeting.
- 9.51 In the case of a fund or class of units with one remaining unit holder, such unit holder, whether present in person or by proxy, at the meeting shall constitute as quorum.
- 9.52 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, must 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.

9.53 A management company must send a notice of an adjourned meeting to unit holders stating that notwithstanding the requirement in paragraphs 9.49 and 9.50, 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***

- 9.54 Except where a special resolution is specifically required or permitted, any resolution is passed by a simple majority.
- 9.55 A resolution passed at a meeting of unit holders binds 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.
- 9.56 A copy of the resolution must be provided by the management company to the SC and the trustee.

### ***Voting rights***

- 9.57 On a voting by show of hands, every unit holder who is present in person or by proxy has one vote.
- 9.58 A poll voting may be demanded on any resolution. On a voting by poll –

- (a) votes may be given either personally or by proxy; and
  - (b) the votes by every unit holder, who is present in person or by proxy, shall be proportionate to the number or to the value of units held by him.
- 9.59 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.
- 9.60 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.
- 9.61 Related parties who have interest in the outcome of the transaction tabled for approval and that interest is different from the interests of other unit holders, must not vote or be counted in the quorum at a meeting.

***Right to demand poll voting***

- 9.62 A resolution put to the vote at a unit holders' meeting must be determined by a show of hands unless a poll voting 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.

- 9.63 Unless a poll voting is demanded, a declaration by the chairman as to the result of the resolution is conclusive evidence of the fact.

***Proxies***

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

***Adjournment and minutes***

- 9.67 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.
- 9.68 A management company must ensure that –
- (a) minutes of all resolutions and proceedings at every unit holders' meeting are made and kept; and
  - (b) any minute made in paragraph 9.68(a) is signed by the chairman of the unit holders' meeting.

## **Notification to unit holders**

- 9.69 A management company must inform unit holders of any change made to the fund.
- 9.70 For the purpose of section 295(4) of the CMSA, the management company or trustee must convene a unit holders' meeting to obtain unit holders' approval where the interests of the unit holders may be materially prejudiced by any changes to the deed.
- 9.71 Where there is a change to the prospectus, the management company is required to undertake the following:
- (a) For a significant change which may affect the unit holders' decision to stay invested in the fund, the management company must give a written notice to unit holders, informing them—
    - (i) that a supplementary or replacement prospectus will be or has been registered by the SC;
    - (ii) of the significant change to the fund, highlighting the current and revised positions; and
    - (iii) of the effective date of the significant change.
  - (b) For any change other than a significant change under paragraph 9.71(a), the management company must notify unit holders via a semi-annual or an annual report, whichever is earlier, of the—
    - (i) change made to the fund, highlighting the current and revised positions; and
    - (ii) effective date of the change.



- 9.72 In relation to paragraph 9.71(a)(iii), the effective date of the significant change must not be less than 14 days from the date of such notice.
- 9.73 In relation to the obligation of a management company towards a fund applicant, where a supplementary or replacement prospectus is registered due to –
- (a) a new fund being added to a master prospectus; or
  - (b) a change in a fund, not being a fund invested by the fund applicant, in the master prospectus,

a management company is exempted from giving the fund applicant the right to withdraw pursuant to the SC's order which came into force on 15 August 2016 ("Exemption Order") in respect of the funds that are not affected by the change.