

## **DIVISION 4**

### **BUSINESS TRUST**

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## **Chapter 1**

### **GENERAL**

- 1.01 This division shall apply to a prospectus prepared in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase of units of business trust.
- 1.02 Preparers of prospectuses must strictly observe any significant change or new matter arising that will affect the content of the prospectus and to update it via a supplementary prospectus or replacement prospectus where necessary.
- 1.03 *[Deleted]*

## Chapter 2

### DEFINITIONS

2.01 Unless provided for in this chapter, all the terms used in this division shall have the meanings as provided for in the law and the *Business Trust Guidelines*.

associated entity	in relation to a business trust, means—  An entity, including an unincorporated entity such as a partnership over which the business trust has significant influence and a joint venture which the business trust has an interest in.
business trust	has the same meaning as provided for under subsection 2(1) of the CMSA.
business trust group	means the business trust the business trust's subsidiary entities and associated entities.
deed	has the same meaning as provided for under section 256H of the CMSA.
director	has the same meaning as provided for under subsection 2(1) of the CMSA and includes a person who is a chief executive.
independent member	in relation to –  (a) the board of directors of a trustee-manager; (b) the audit committee; and (c) the Shariah adviser,  means a person who is free of any relationship with the –  (A) trustee-manager; (B) controlling shareholders or major shareholders of the trustee-manager; or (C) substantial unit holders of the business trust  In any case, a period of two years must lapse before a person who was previously connected to the trustee-manager, controlling shareholders/major shareholders or substantial unit holders of the business trust can be deemed to be independent.  A person would not be considered an independent member if, amongst others, the person:  (a) is an officer of the trustee-manager or any of its subsidiaries;  (b) is an officer of any body corporate or unincorporated body that has power to appoint or make recommendations towards the appointment of board of directors of the trustee-manager members of the audit committee and the Shariah adviser of the business trust;

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- (c) is related to an officer of the trustee-manager of the business trust;
- (d) represents or perceived to represent any body corporate or unincorporated body with a controlling shareholding in the trustee-manager;
- (e) represents or is seen to be representing any body corporate or unincorporated body with a business interest in the trustee-manager; or
- (f) within two years prior to his appointment as independent member, has derived any remuneration or benefit (other than retirement benefit) from the trustee-manager or any body corporate or unincorporated body that has power to appoint or make recommendations towards the appointment of members of the board of directors of the trustee-manager, members of the audit committee and the Shariah adviser of the business trust.

pre-emptive issues                      refers to the offerings made to the business trust's existing unit holders in order to allow the existing unit holders to maintain their pro-rata ownership in the business trust.

promoters                                      has the same meaning given in section 226 of the CMSA.

**Calculation of time period**

2.02      References to "days" in this division will be taken to mean calendar days unless otherwise stated. Furthermore, any time period stated in this division 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**

### **COVER PAGE**

The front cover should contain the following information and statements.

3.01 Particulars of the business trust, including:

- (a) Name;
- (b) Date of registration/recognition;
- (c) Country of constitution;
- (d) Regulatory authority which regulates the business trust, where relevant; and
- (e) Registration number, where relevant.

3.02 Particulars of the trustee-manager, including its:

- (a) Full name;
- (b) Registration number;
- (c) Date of incorporation;
- (d) Country of incorporation of the trustee-manager;
- (e) Statute under which it was incorporated; and
- (f) Regulatory authority which regulates the trustee-manager, where relevant.

3.03 The date of the prospectus.

3.04 Details of the offering, including—

- (a) number and type of units being issued/offered;
- (b) price of units being issued/offered; and
- (c) listing that is sought.

3.05 The name of the principal adviser/lead arranger and managing underwriter.

3.06 The following statement, to appear in bold:

**INVESTORS ARE ADVISED TO READ AND UNDERSTAND THE CONTENTS OF THE PROSPECTUS. IF IN DOUBT, PLEASE CONSULT A PROFESSIONAL ADVISER.**

**THERE ARE CERTAIN RISK FACTORS WHICH PROSPECTIVE INVESTORS SHOULD CONSIDER. TURN TO PAGE [ ] FOR “RISK FACTORS”.**

## Chapter 4

### INSIDE COVER/FIRST PAGE

- 4.01 There are certain types of information that are considered essential to identify a prospectus and the status of a prospectus. If not already disclosed on the front cover, the prospectus should contain the following statements on the inside cover or at the very least, on page 1.

#### Responsibility statements

- (a) “The directors of the trustee-manager of the business trust have seen and approved this prospectus. They collectively and individually accept full responsibility for the accuracy of the information. Having made all reasonable enquiries, and to the best of their knowledge and belief, they confirm there is no false or misleading statement or other facts which if omitted, would make any statement in the prospectus false or misleading.”
- (b) Where a forecast is provided:
- “The directors of the trustee-manager of the business trust accepts full responsibility for the profit and/or cash flow estimate/forecast and/or projections included in this prospectus and confirm that the profit and/or cash flow estimate/forecast and/or projections have been prepared based on assumptions made.”
- (c) “[Name of principal adviser/lead arranger], being the principal adviser/lead arranger, acknowledges that, based on all available information, and to the best of its knowledge and belief, this prospectus constitutes a full and true disclosure of all material facts concerning the public offering. It is satisfied that any profit and/or cash flow estimate/forecast and/or projections, prepared for inclusion in the prospectus have been stated by the directors of the trustee-manager of the business trust after due and careful enquiry and have been duly reviewed by the reporting accountants.”

#### Statements of disclaimer

- (d) “The Securities Commission Malaysia has approved the issue, offer or invitation for the offering (where applicable) and a copy of this prospectus has been registered with the Securities Commission Malaysia. The approval, and registration of this prospectus, should not be taken to indicate that the Securities Commission Malaysia recommends the offering or assumes responsibility for the correctness of any statement made or opinion or report expressed in this prospectus. The Securities Commission Malaysia has not, in any way, considered the merits of the securities being offered for investment.”
- (e) “The Securities Commission Malaysia is not liable for any non-disclosure on the part of the trustee-manager responsible for the business trust and takes no responsibility for the contents of this prospectus. The Securities Commission Malaysia makes no representation on the accuracy or completeness of this prospectus, and expressly disclaims any liability whatsoever arising from, or in reliance upon, the whole or any part of its contents.

**INVESTORS SHOULD RELY ON THEIR OWN EVALUATION TO ASSESS THE MERITS AND RISKS OF THE INVESTMENT. INVESTORS WHO ARE IN ANY DOUBT AS TO THE ACTION TO BE TAKEN SHOULD CONSULT THEIR STOCKBROKERS, BANK MANAGERS, SOLICITORS, ACCOUNTANTS, OR OTHER PROFESSIONAL ADVISERS IMMEDIATELY.”**

(f) Where applicable:

“The valuation utilised for the purpose of the proposal should not be construed as an endorsement by the Securities Commission Malaysia on the value of the assets.”

(g) “Approval has been or will be obtained from Bursa Malaysia Securities Berhad for the listing of and quotation for the units being offered. Admission to the Official List of Bursa Malaysia Securities Berhad is not to be taken as an indication of the merits of the invitation, business trust, or its units.”

#### Other statements

4.02 A prospectus should disclose the following:

(a) Where a prospectus states or implies that an application has been or will be made for the units offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia, any allotment made on an application to subscribe for units under the prospectus would be void–

- if the permission is not applied for before the third day on which the exchange is open after the date of issue of the prospectus; or
- the permission is not granted before the expiration of six weeks from the date of issue of the prospectus (or such longer period as may be specified by the SC); and

(b) If no permission has been applied for, or has not been granted by the exchange as mentioned above, the trustee-manager of the business trust will repay without interest all monies received from the applicants. If any such monies are not repaid within 14 days after the trustee-manager of the business trust becomes liable to repay it, the provision of sub-section 243(2) of the CMSA will apply accordingly.

4.03 The following additional statements must also be stated:

“Investors are advised to note that recourse for false or misleading statements or acts made in connection with the prospectus is directly available through sections 92A, 248, 249 and 357 of the *Capital Markets & Services Act 2007*.”

“Securities listed on Bursa Malaysia Securities Berhad are offered to the public premised on full and accurate disclosure of all material information concerning the issue for which any of the persons set out in section 236 of the *Capital Markets & Services Act 2007*, e.g. directors of the trustee-manager and principal adviser, are responsible.”

4.04 For an Islamic business trust, the following statement must be stated:

“The Islamic business trust named in this prospectus has been certified as being Shariah compliant by the Shariah adviser appointed for the Islamic business trust.”



## **Chapter 5**

### **TIMETABLE/DEFINITIONS/TABLE OF CONTENTS/CORPORATE DIRECTORY**

5.01 A prospectus should be properly structured, with the relevant sections and headings, for ease of reference and cross reference.

#### **Indicative timetable**

5.02 A prospectus should disclose the period during which the offering of units remains open after the publication of the prospectus. The offer period should be reasonable and inclusive of the date of issue of the prospectus.

5.03 A prospectus should set out the critical dates for the offering, including–

- (a) opening and closing dates of the issue and/or offer;
- (b) tentative dates of any special event, for example, date for the balloting of applications (day, month and year);
- (c) tentative date for allotment of units (day, month and year); and
- (d) tentative listing date (day, month and year).

5.04 A prospectus should state whether the directors of the trustee-manager reserve the right to extend the closing date.

5.05 A prospectus should disclose the method of informing the public if the closing date is extended.

#### **Definitions**

5.06 A glossary of abbreviations and technical terms should be provided.

#### **Table of contents**

5.07 There should be a table of contents, listing all sections and subsections of the prospectus.

#### **Corporate directory**

5.08 The directory should contain details of the following persons:

- (a) Name, address and telephone number of the registered office and business office of the trustee-manager and, the agents of the trustee-manager (if any), as well as the email address and website address (if any);
- (b) Name, nationality, address, and profession of all directors of the trustee-manager (to specify the independent director);

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- (c) Name of the audit committee members of the trustee-manager (to specify the independent member);
- (d) Name, nationality and profession of all key management of the trustee-manager;
- (e) Name, address, and membership number of the company secretary of the trustee-manager;
- (f) Name and address of the following parties in respect of the business trust (where applicable):
  - (i) Auditors;
  - (ii) Reporting accountants;
  - (iii) Tax consultants;
  - (iv) Solicitors;
  - (v) Principal bankers;
  - (vi) Issuing house;
  - (vii) Registrar;
  - (viii) Principal adviser and managing underwriter;
  - (ix) Underwriters;
  - (x) Placement agents;
  - (xi) Valuers; and
  - (xii) Shariah adviser/Shariah committee members (where applicable);
- (g) Name and address of experts whose prepared report or excerpt or summary are included or referred to in the prospectus; and
- (h) Name of stock exchange where units are already listed and/or the listing is sought in relation to the prospectus.

## **Chapter 6**

### **INFORMATION SUMMARY/INVESTOR WARNING**

#### **Information summary**

- 6.01 There must be an information summary near the front of the prospectus, which summarises key information about the offer/issue and business trust/business trust group.
- 6.02 The information summary should, where necessary, include cross references to specific sections and pages of the body of the prospectus which contain full details about the respective matters.
- 6.03 Detailed content of the information summary is to be determined by the trustee-manager. This may include, but is not limited to, the following:
- (a) Objective of the business trust including the core business of the business trust group;
  - (b) Units for distribution, offering price, and expected net proceeds;
  - (c) Use of proceeds for the business trust group;
  - (d) Risk factors in respect of the business trust group;
  - (e) Fees and expenses in respect of the business trust;
  - (f) Summary financial information of the business trust group; and
  - (g) A list of current deed and supplemental deed (if any) and their corresponding dates.
- 6.04 The information summary should generally not exceed 3,000 words.

#### **Investor warning**

- 6.05 There must be a warning in bold at the front of the information summary advising investors that the information summary is only a summary of the salient information about the business trust group and that investors should read and understand the whole prospectus prior to deciding on whether to invest.
- 6.06 The following warning statement must also be disclosed in bold:

**“There are fees and expenses involved and investors are advised to consider them before investing in the business trust.”**

## **Chapter 7**

### **DETAILS OF OFFERING**

#### **Offer and listing details**

- 7.01 The prospectus should contain full details of–
- (a) the purpose of the offering;
  - (b) the number and type of units to be issued/offered;
  - (c) classes of units and rights attached to the units regarding voting, distribution, liquidation and any special rights;
  - (d) the number and type of units proposed to be issued/offered to different groups of investors;
  - (e) where there is more than one class of units of the business trust in issue, similar particulars should be given for each additional class; and
  - (f) if, in conjunction with the offering, units of the same or another class are sold or subscribed privately, the nature of such sales or subscriptions and the number and characteristics of the issues concerned, including details of underwriting/undertaking arrangements, if any.
- 7.02 The prospectus should contain details about the pricing of units, including–
- (a) prices applied to different classes of investors; and
  - (b) bases for determination of the issue/offer price. Such bases should be clearly explained.
- 7.03 The prospectus should disclose the total market capitalisation of the business trust upon listing.

#### **History of market prices**

- 7.04 If the units are already listed on other stock exchange, information on the price history, if any, of the units to be offered or listed should be disclosed as follows:
- (a) For the three most recent full financial years, the annual highest and lowest market prices;
  - (b) For the two most recent full financial years and any subsequent period, the highest and lowest market prices for each full financial quarter;
  - (c) For the most recent six months, the highest and lowest market prices for each month; and
  - (d) For pre-emptive issues, the market prices for the first trading day in the most recent six months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to issuance of the prospectus.

Information should be given with respect to the market price in the host market and the principal trading market outside the host market.

- 7.05 If significant trading suspensions occurred in the three years preceding the latest practicable date, they should be disclosed. If the units are not regularly traded in an organised market, information should be given about any lack of liquidity.

### **Plan of distribution**

- 7.06 Where a trustee-manager intends to allocate units to:

- (a) Eligible shareholders, directors or employees of the trustee-manager;
- (b) Subsidiary entities of the business trust;
- (c) Unit holders of the business trust; or
- (d) Other persons,

under a preferential allocation scheme, the trustee-manager should disclose the following:

- (i) A brief description of the criteria of allocation of the units as approved by the board of directors of the trustee-manager;
- (ii) The total number of persons eligible for the allocation; and
- (iii) Where the directors of the trustee-manager and subsidiary entities of the business trust are eligible for the allocation scheme, the number of units to be allocated to each individual director.

- 7.07 The prospectus should disclose whether the amount of the offering could be increased, such as by exercise of an underwriter's over-allotment option or 'greenshoe', and state the exercise period and amount under such option.

- 7.08 If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain markets, the prospectus should provide information about the tranche and details of any other allocation arrangement.

### **Selling unit holders**

- 7.09 The following information on selling unit holders should be provided:

- (a) The name and address of the person or entity offering to sell the units, the nature of any position, office or other material relationship that the selling unit holder has had within the past three years with the trustee-manager or any of its predecessors, or the business trust group; and

- (b) The number and class of units being offered by each of the selling unit holders, and the percentage of the existing and the enlarged units in issue. The amount and percentage of the units for each particular type of units beneficially held by the selling unit holder as of the latest practicable date and immediately after the offering should be specified.

### **Dilution**

7.10 The following information should be provided:

- (a) A comparison of the public contribution in the proposed offering and the effective cash contributions where there is a substantial disparity between the offering price and the effective cash cost of units acquired in transactions during the past three years, or units of which there is a right to acquire, by the following persons:
  - (i) Directors, senior management or substantial shareholders of the trustee-manager;
  - (ii) Substantial unit holders of the business trust; or
  - (iii) Persons connected to the persons in (i) or (ii);
- (b) The amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per unit and the net asset value per unit for the equivalent class of unit, as of the date of the latest statement of financial position after adjusting for the effects of the offer, and any disposal or acquisition which occurred between the date of the latest statement of financial position and the date of the prospectus, on the net asset value per unit;
- (c) Whether the information on dilution has been prepared using certain assumptions and after making certain adjustments on a pro forma basis; and
- (d) The amount and percentage of immediate dilution in the case of a subscription offering to existing unit holders, if they do not subscribe to the new offering.

### **Use of proceeds**

7.11 Where applicable, the prospectus should contain full details of the following:

- (a) The minimum level of subscription to be raised in order to satisfy the objectives of the offering, including the basis for determining the minimum level based on factors such as the level of funding required by the trustee-manager on behalf of the business trust and the extent of the unit holding spread needed;
- (b) The estimated gross proceeds from the offering broken down into each principal intended use. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purposes should be given, as well as the amount and sources of other funds needed. Disclose also how the proceeds will be used pending their eventual utilisation for the proposed purposes;
- (c) If the trustee-manager for the business trust has no specific plans for the proceeds, it should discuss the principal reasons for the offering;

- (d) If the proceeds are being used directly or indirectly to acquire or refinance the acquisition of assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets has been or will be acquired from:
    - (i) The trustee-manager for the business trust;
    - (ii) A director or substantial shareholder of the trustee-manager;
    - (iii) Substantial unit holder of the business trust; or
    - (iv) Persons connected to the above,disclose the persons from whom they will be acquired and how the cost to the business trust will be determined;
  - (e) If the proceeds may or will be used to finance or refinance acquisitions of other business, give a brief description of such business and information on the status of the acquisition;
  - (f) If any material part of the proceeds is to be used to discharge, reduce or retire–
    - (i) the indebtedness of the trustee-manager arising from its acting on behalf of the business trust; or
    - (ii) in the case of a business trust group, the indebtedness of the trustee-manager arising from its acting on behalf of the business trust and the indebtedness of the business trust group,describe the interest rate and maturity of such indebtedness as well as the uses to which the proceeds of such indebtedness were put;
  - (g) If any material part of the proceeds is used for general working capital, briefly describe the items;
  - (h) A reasonably itemised statement of the major categories of expenses incurred in connection with the issuance and distribution of the units to be listed or offered and by whom the expenses are payable. If any of the units are to be offered for the account of a selling unit holder, indicate the portion of such expenses to be borne by such unit holder. Indicate the amount of any expense specifically charged to the subscriber or purchaser of the units being offered. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) should be given;
    - (i) Brokerage arrangements and commissions, including underwriting and placement fees;
    - (j) The time frame for full utilisation of the proceeds based on each category; and
    - (k) The financial impact on the business trust/business trust group from the utilisation of the proceeds, i.e. interest savings, etc.
- 7.12 The prospectus should contain details of underwriting agreements, including–
- (a) the level of underwriting that has been arranged, together with the justifications for the level arranged;

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- (b) name of the underwriters together with the amount of units underwritten by each underwriter;
- (c) amount of underwriting commissions; and
- (d) brief description of any provision which may allow the underwriters to withdraw from their obligations under the agreement after the opening of the offer.

If the offering is not underwritten, to give a clear statement of the fact and the justifications.



## **Chapter 8**

### **RISK FACTORS**

- 8.01 A prospectus should contain information about risk factors which are specific to the business trust group, its business and its industry, and to the units being offered. These are risk factors which had or could materially affect, directly or indirectly, the business, operating results, and financial condition of the business trust group, and the investments by unit holders in the business trust.
- 8.02 There should also be a disclosure highlighting difference between the risks of investing in a business trust, a unit trust scheme and a listed corporation.
- 8.03 The listing of risk factors in order of priority is encouraged.
- 8.04 Disclaimers on the risk factors should not be so wide that the risk disclosures are of little or no beneficial use to investors.

## Chapter 9

### INFORMATION ABOUT BUSINESS TRUST AND BUSINESS TRUST GROUP

#### Background

- 9.01 The following information about the background of the business trust and its subsidiary entities or associated entities should be disclosed:
- (a) History of the business from inception to date, including important events in the development of the business trust's business, for example—
    - (i) information concerning the nature and results of any material reclassification, merger or consolidation of the business or any entities within the business trust group;
    - (ii) acquisitions or disposals of material assets other than in the ordinary course of business;
    - (iii) any material changes in the mode of conducting the business;
    - (iv) core business activities and products or services including any material changes in the types of products produced or services rendered;
    - (v) name changes; or
    - (vi) the nature and results of any bankruptcy, receivership or similar proceedings with respect to any entities within the business trust group;
  - (b) In respect of the business trust:
    - (i) Date and place of establishment of the business trust, date of commencement of the business, and where the deed of the business trust provide that the business trust is to be wound up at a specified time, in specified circumstances or on the happening of a specified event, such specified time, circumstances or event;
    - (ii) Issued units in the business trust, and changes for the last three years (or such shorter period that the business trust has been in operation), including:
      - (A) date of allotment, number of units issued, consideration given (together with information regarding any discount, special term or installment payment term or a negative statement thereof), details of outstanding warrants, options and convertible units; and
      - (B) Reduction of the amount of issued units;
  - (c) In respect of a corporation in the business trust group:
    - (i) Date and place of incorporation together with the registration number, date of commencement of business and whether private or public corporation;

- (ii) Authorised, issued and paid-up capital, and changes for the last three years, including the date of allotment, number of shares allotted, consideration given (together with information regarding any discount, special term or installment payment term or a negative statement thereof) and cumulative issued and paid-up capital, nominal value, details of outstanding warrants, options, convertible securities and uncalled capital;
- (d) Business trust group structure (where applicable), including a list of subsidiary entities and associated entities, the percentage interest held, and a diagrammatic illustration of the business trust group;
- (e) A description, including the amount invested, of the business trust's material capital expenditures and divestitures (including interests in other corporations) by the trustee-manager acting on behalf of the business trust, since the beginning of the business trust's last three financial years to the date of the prospectus;
- (f) Information concerning the material capital expenditures and divestitures by the trustee-manager acting on behalf of the business trust currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external); and
- (g) Key achievements/milestones/awards of the business trust group.

## **Business**

- 9.02 Where applicable, in respect of the business trust there should be a description of and information on–
- (a) core business activities;
  - (b) type of products manufactured or services provided. Up to the latest practicable date, indicate significant new or proposed products/services introduced and give their status of development;
  - (c) principal markets for products and, if exported, the percentage and names of countries exported to;
  - (d) seasonality of the business;
  - (e) competitive strengths and advantages;
  - (f) types, sources and availability of raw materials/input, including a description of whether prices of principal raw materials are volatile;
  - (g) technology used or to be used;
  - (h) operating or trading mechanisms, including flow-charts of production or business processes;
  - (i) quality control procedures or quality management programmes;

- (j) marketing activities, including modes and location/network of marketing/distribution/sales;
- (k) approvals, major licences and permits obtained, conditions attached (if any) and status of compliance;
- (l) brand names, patents, trademarks, licences, technical assistance agreements, franchises and other intellectual property rights and salient terms of those rights. If intellectual property rights are licensed, to state the identity of the licensor and the relationship between the business trust/entities within the business trust group and the licensor, and provide a summary of the salient terms of the licence agreement;
- (m) salient terms of any contract/arrangement/document/other matter on which the business trust is highly dependent. This includes patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are material to the business trust's business or profitability;
- (n) research and development policies for the last three years. Where it is significant, include the amount spent on business trust-sponsored research and development activities (as a percentage of the net sales or revenue) for each of the last three financial years; and
- (o) any interruption in the business which had a significant effect on operations during the past 12 months.

### **Property, plant, and equipment**

- 9.03 The trustee-manager should provide information regarding material tangible fixed assets, including leased properties, and major encumbrances, of the business trust group, including–
- (a) a description of the location, size, and uses of the property;
  - (b) productive capacity and extent of utilisation of the facilities;
  - (c) how the assets are held;
  - (d) market value (where valuations have been carried out for inclusion in the prospectus) and/or net book value; and
  - (e) where valuations have been carried out for inclusion in the prospectus, details on whether the valuation surplus or deficit have been incorporated in the financial statements.
- 9.04 The prospectus should also describe any regulatory requirement and environmental issue which may materially affect the business trust group's operations and utilisation of assets.
- 9.05 On material plans to construct, expand or improve facilities, describe–
- (a) the nature and reason for the plan;
  - (b) an estimate of the amount of expenditures including the amount of expenditures already paid;

- (c) a description of the method of financing the activity;
- (d) the estimated dates of start and completion of the activity; and
- (e) the increase of production capacity anticipated after completion.

### **Major customers**

- 9.06 A prospectus should contain descriptions of major customers (i.e. those individually contributing 10% or more of revenue for each of the last three financial years and the latest financial period [if any]), level of sales, and whether or not the business trust group is dependent on the major customers for business.

### **Major suppliers**

- 9.07 A prospectus should contain descriptions of major suppliers (i.e. those individually contributing 10% or more of purchases for each of the last three financial years and the latest financial period [if any]), level of purchases, and whether or not the business trust group is dependent on the major suppliers.

### **Industry overview**

- 9.08 On the industry in which the business trust group operates, there should be a discussion of the following:
- (a) Description of the industry and its position within the industry;
  - (b) Differing segments/sectors;
  - (c) Past performance (if applicable);
  - (d) Future growth;
  - (e) Industry players and competition;
  - (f) The business trust's estimated market coverage, position and share (together with details on the bases) which are supported by any study and/or report (where applicable);
  - (g) Relevant laws and regulations governing the industry and peculiarities of the industry;
  - (h) Demand/supply conditions;
  - (i) Substitute products/services;
  - (j) Prospects and outlook of the industry; and
  - (k) Industry's reliance on and vulnerability to imports.

**Future plans, strategies, and prospects**

9.09 A prospectus should contain the following discussions:

- (a) Description of future plans of the business trust/business trust group and steps taken (including time frame) to realise the plans;
- (b) Strategies to be adopted to ensure growth; and
- (c) Prospects of the business trust/business trust group in light of the industry prospects/outlook/conditions, future plans/strategies, and competition.

**Islamic business trust**

9.10 For an Islamic business trust, the prospectus should also disclose

- (a) The methodology used in determining the Shariah-compliant status of the business trust, including principles used;
- (b) The basis and justifications of using such methodology;
- (c) The Shariah adviser's opinion and justifications; and
- (d) The Shariah governance framework of the business trust.

## **Chapter 10**

### **INFORMATION ABOUT THE TRUSTEE-MANAGER OF THE BUSINESS TRUST**

10.01 The following information about the background of the trustee-manager should be disclosed:

- (a) History of the trustee-manager from inception to date, where relevant; and
- (b) Key policies and practices of the trustee-manager to ensure–
  - (i) adherence with the objective of the business trust; and
  - (ii) interests of unit holders are protected.

10.02 There should be a disclosure on the management reporting structure of the trustee-manager.

### **Agent**

10.03 If the trustee-manager has appointed an agent, the following information on the agent should be disclosed:

- (a) A brief corporate information of the agent; and
- (b) Roles and duties of the agent.

### **Shariah adviser**

10.04 For an Islamic business trust, the following information on the Shariah adviser appointed for the business trust should be disclosed:

- (a) Names, relevant qualifications and experience of each member of the Shariah adviser;
- (b) Where the Shariah adviser is a company–
  - (i) the corporate information of the company;
  - (ii) experience relevant to its appointment as an adviser; and
  - (iii) number of business trusts in which it acts as adviser;
- (c) Roles and primary functions of the Shariah adviser; and
- (d) Frequency of review by the Shariah adviser of the assets of the Islamic business trust to ensure compliance with Shariah principles or any other relevant principle at all times.

## **CHAPTER 11**

### **INFORMATION ON SHAREHOLDERS/DIRECTORS/KEY MANAGEMENT OF THE TRUSTEE-MANAGER OF THE BUSINESS TRUST AND UNIT HOLDERS OF THE BUSINESS TRUST**

#### **Substantial shareholders of the trustee-manager and substantial unit holders of the business trust**

- 11.01 The following information should be provided on the substantial shareholders of the trustee-manager and substantial unit holders of the business trust:
- (a) Name and background information;
  - (b) Nationality/country of incorporation;
  - (c) Direct and indirect shareholding in the trustee-manager, and direct and indirect unit holding in the business trust (before and after the offering), and to state the ultimate beneficial ownership of shares in the trustee-manager or units of the business trust held under nominee or a corporation or trustee arrangement; and
  - (d) Any significant change in the direct or indirect shareholding in the trustee-manager, and in the direct or indirect unit holding in the business trust during the past three years.
- 11.02 To the extent known to the trustee-manager, there should be provided a description of the persons, who, directly or indirectly, jointly or severally, exercise control over the trustee-manager or the business trust. Particulars of the nature of such control, including the amount and proportion of the respective shares or units held, should also be given. Joint control means control exercised by two or more persons who have concluded an agreement which may lead them to adopt a common policy in respect of the trustee-manager or the business trust respectively.
- 11.03 In respect of the controlling shareholders of the trustee-manager, a prospectus should also disclose:
- (a) The relevant knowledge/experience of the controlling shareholders of the trustee-manager; and
  - (b) Whether the controlling shareholder has been involved in any of the events (whether in or outside Malaysia) as set out in paragraph 11.09.

#### **Directors and employees**

- 11.04 The following information should be provided on the directors of the trustee-manager:
- (a) Name, age, profession and qualification;
  - (b) Profile including business and management experience;
  - (c) Designation/functions (including executive/non-executive, independent);



- (d) Representation of corporate shareholders (where applicable);
  - (e) Direct and indirect shareholding in the trustee-manager and direct and indirect unit holding in the business trust (before and after the offering); and
  - (f) Principal business activities performed outside the trustee-manager (including other principal directorships at present and in the last five years).
- 11.05 A prospectus should disclose the remuneration and material benefits in-kind (on an individual basis) of the directors of the trustee-manager, for services in all capacities to the business trust group according to bands of RM50,000 for the last financial year and proposed for the current financial year. The remuneration and benefits should cover contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date.
- 11.06 Disclose also details on board practices, as follows:
- (a) For each director of the trustee-manager, state the date of expiration of the current term of office, where applicable, and the period for which the person has served in that office; and
  - (b) For the current financial year, provide details on the trustee-manager's audit, remuneration and nomination committees, including the names of committee members and a summary of the terms of reference of the committee.
- 11.07 For the key management and, where applicable, the key technical personnel of the trustee-manager and the business trust group, the following information should be provided:
- (a) Name, age and qualification;
  - (b) Profile including business and management or technical experience;
  - (c) Designation/functions; and
  - (d) Direct and indirect shareholding in the trustee-manager, and direct and indirect unit holding in the business trust (before and after the offering).
- 11.08 A prospectus should provide information on the extent of involvement of executive directors/key management of the trustee-manager in other principal business activities outside of the business trust group and whether such involvement affects their contribution to the business trust group, or an appropriate negative statement.
- 11.09 A prospectus should provide a statement as to whether or not any director, or key management personnel of the trustee-manager and, where applicable, its key technical personnel, is or has been involved in any of the following events (whether in or outside Malaysia):
- (a) A petition under any bankruptcy or insolvency laws was filed (and not struck out) against such person or any partnership in which he was a partner or any corporation of which he was a director or key personnel;
  - (b) Such person was disqualified from acting as a director of any corporation, or from taking part directly or indirectly in the management of any corporation;
  - (c) Such person was charged and/or convicted in a criminal proceeding or is a named subject

of a pending criminal proceeding;

- (d) Any unsatisfied judgment against such person;
  - (e) Any judgment was entered against such person involving a breach of any law or regulatory requirement that relates to the securities or futures industry;
  - (f) Such person was ever convicted of any offence in connection with the formation or management of any entity or business trust;
  - (g) Such person was the subject of any order, judgment or ruling of any court, government, or regulatory authority or body temporarily enjoining him from engaging in any type of business practice or activity; or
  - (h) Such person was ever subjected to any current or past investigation or disciplinary proceedings, or has been reprimanded or issued any warning, by the SC or any other regulatory authority, exchange, professional body or government agency.
- 11.10 A prospectus should disclose details of any family relationships or associations between the substantial shareholder, director, key management or key technical personnel of the trustee-manager, and substantial unit holder of the business trust.
- 11.11 A prospectus should contain information and details of amounts or benefits paid or intended to be paid or given to any director or substantial shareholder of the trustee-manager, and any substantial unit holder of the business trust within the two years preceding the date of the prospectus.
- 11.12 If there are any existing or proposed service agreements between the trustee-manager acting on behalf of the business trust group and the directors and key management or key technical personnel of the trustee-manager, salient details should be disclosed.
- 11.13 A prospectus should provide information regarding employees of the trustee-manager and business trust group, including–
- (a) the number of employees at the end of period or the average for the period for each of the past three financial years (and changes in such number, if material). If possible, to provide a breakdown of persons employed by main category of activity and geographical location. Also, to disclose any significant change in the number of employees;
  - (b) if the trustee-manager/business trust group employs a significant number of contractual/temporary employees, to disclose the number of contractual/temporary employees on average in the most recent year;
  - (c) training and development programmes undertaken and ongoing;
  - (d) whether employees of trustee-manager and business trust group are members of any union and, if so, to name the union; and
  - (e) labour relationship with unions and whether or not there has been any industrial dispute in the past.

## **Chapter 12**

### **FEES**

#### **Fees and expenses**

- 12.01 A prospectus must clearly disclose and explain the cost of investing in the business trust by investors.
- 12.02 The fees and expenses payable to the trustee-manager from the trust property of the business trust should be disclosed in a table, in the following order:
- (a) Management fee;
  - (b) Performance fee (if applicable); (c)  
Guarantee fee (if applicable); and
  - (d) Any other material fee or charge.
- 12.03 Where there is a provision for a maximum payable fee or charge, the maximum payable fee or charge should be stated.
- 12.04 Where the amount of fee or charge is currently indeterminable, this fact should be stated and the reason why it could not be determined be explained.

## **Chapter 13**

### **APPROVALS AND CONDITIONS**

13.01 A prospectus must disclose the following:

- (a) Details of approvals of all relevant authorities in conjunction with the offering including the dates of approvals, any condition attached and compliance thereof (where applicable).

For any specific relief obtained from compliance with this division, to state the specific paragraph of the division for which relief was sought and details of the approval;

- (b) Details of any moratorium on units of the business trust, such as–
  - (i) the authority which imposed the moratorium;
  - (ii) name of the unit holder of the business trust;
  - (iii) number of units of the business trust under moratorium;
  - (iv) commencement and expiry of the moratorium; and
  - (v) terms of the moratorium; and
- (c) Details of any profit-guarantee conditions (if any) and the salient features of the profit-guarantee agreement, which include, but are not limited to–
  - (i) amount and number of years;
  - (ii) guarantors;
  - (iii) details of security provided; and
  - (iv) rights to vary or terminate the agreement.

## **Chapter 14**

### **RELATED-PARTY TRANSACTIONS**

14.01 The following information should be disclosed for the three most recent financial years, and the subsequent financial period, if any, immediately preceding the date of the prospectus:

- (a) The nature and extent of any related-party transaction or presently proposed related-party transactions that:
  - (i) are material to the trustee-manager (acting in its capacity as trustee-manager of the business trust), an entity under the business trust group and its related party; or
  - (ii) is unusual in nature or conditions, involving goods, services, tangible or intangible assets, to which the trustee-manager (acting in its capacity as trustee-manager of the business trust) or an entity under the business trust group was a party; and
- (b) The amount of outstanding loans (including guarantees of any kind) made to or for the benefit of the related party, by:
  - (i) The trustee-manager (acting in its capacity as trustee-manager of the business trust); or
  - (ii) An entity under the business trust group.

14.02 The information under paragraph 14.01 above given should be classified into long term and short term.

All foreign outstanding loans are to be separately identified with the corresponding foreign currencies amount, the amount outstanding as of the latest practicable date, the nature of the loan, and the transaction in which it was incurred, and the interest rate on the loan, and when the loan is intended or required to be repaid.

14.03 For each transaction mentioned above, there should be a disclosure on whether the transaction was carried out in the best interest of the unit holders and the procedure undertaken or which will be undertaken to ensure that such a transaction will be in the best interest of the unit holders.

## **Chapter 15**

### **CONFLICT OF INTEREST**

15.01 A prospectus should disclose–

- (a) details of the direct and indirect interests of a director or substantial shareholder of the trustee-manager, or a substantial unit holder of the business trust in–
  - (i) other businesses, corporations and business trusts carrying on a similar trade as the business trust group; and
  - (ii) other businesses, corporations and business trusts which are the customers or suppliers of the business trust group;
- (b) whether the interests of such persons under subparagraph (a) would give rise to a situation of conflict of interest with the business trust group’s business and steps taken to address such conflicts; and
- (c) declaration of any expert’s existing and potential interests/conflicts of interest in an advisory capacity (if any) vis-à-vis the business trust group. If a conflict of interest exists, full disclosure of the nature of the conflict and the steps taken to address such conflicts should be provided.

## **Chapter 16**

### **FINANCIAL INFORMATION**

#### **General**

16.01 This chapter sets out the minimum financial information that a business trust/business trust group must include in a prospectus. All financial statements prepared in a currency other than RM must be translated into RM.

#### **Historical financial information**

16.02 A table of the statement of profit or loss and other comprehensive income of the business trust group (pro forma or actual) for the past three financial years (or such shorter period that the business trust group has been in operation) and latest financial period (where applicable) should be disclosed. The table should include, at the minimum, the following:

- (a) Revenue;
  - (b) Gross profit and gross profit margin;
  - (c) EBITDA – earnings before interest, taxation, depreciation and amortisation;
  - (d) Other comprehensive income;
  - (e) Finance costs;
  - (f) Share of profits and losses of associates and joint ventures;
  - (g) Profit or loss before tax and profit or loss before tax margin;
  - (h) Tax expense;
  - (i) Profit or loss for the year and profit or loss margin;
  - (j) Profit or loss attributable to minority interest and equity holders of the parent;
  - (k) Earnings per unit; and
  - (l) Discontinued operations.
- 16.03 Where the financial statements are prepared in a currency other than RM, a prospectus should disclose the exchange rate between the foreign currency and RM–
- (a) at the latest practicable date;
  - (b) the high and low exchange rates for each month during the previous six months; and
  - (c) for the three most recent financial years and any subsequent interim period for which financial statements are prepared, the average exchange rates for each period, calculated

by using the average of the exchange rates on the last day of each month during the period.

### **Unit holders' equity and indebtedness**

- 16.04 Provide a statement of unit holders' equity and indebtedness (distinguishing between guaranteed and unguaranteed, and secured and unsecured, indebtedness) as at the latest financial period showing the unit holders' equity on an actual basis and, if applicable, as adjusted to reflect the new units being issued and the intended application of the proceeds. Indebtedness also includes indirect and contingent liabilities.

### **Management's discussion and analysis of financial condition, results of operations and prospects**

- 16.05 To provide a detailed analysis of the business trust's business, financial condition, changes in financial condition, and results of operations for each year and interim period for which historical financial information is provided. Include the causes of material changes from year to year in financial statement line items, to the extent necessary, for an understanding of the business trust's business as a whole. Discuss also factors and trends that are anticipated to have a material effect on the business trust's financial condition and results of operations in future periods. Take into consideration the nature and conditions of the business in which the business trust is operating in, the risk factors of the business trust and its business operations, the prospects and outlook of the industry in which the business trust is operating in, the prevailing economic situation, and the future plans and strategies of the business trust.
- 16.06 Results of operations
- (a) Segmental analysis of revenue and profits/losses from operations, including, by subsidiary entities/associated entities of the business trust, products/services and markets/geographical location;
  - (b) Provide information regarding any significant factor, including unusual or infrequent events or new developments, materially affecting profits and to indicate the extent affecting the profits. Describe any other significant component of revenue or expenditure necessary to understand the business trust's results of operations;
  - (c) Where the financial statements disclose material changes in sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services between corresponding periods;
  - (d) If material, impact of foreign exchange, interest rates or commodity prices on the business trust, and the extent to which foreign currency exposure and investments are hedged by currency borrowings or other hedging instruments;
  - (e) If material, impact of inflation on the business trust. Where the currency in which financial statements are presented is of a country which has experienced hyperinflation (rapid inflation), the existence of such inflation, a three-year history of the annual rate of inflation, and a discussion of the impact of hyperinflation on the business trust's business should be disclosed; and



- (f) Provide information on any government, economic, fiscal or monetary policies or factors which have materially affected, or could materially affect the business trust's operations.

16.07 Liquidity and capital resources

- (a) To provide the following information regarding liquidity (both short and long term):
- (i) Identity and description of the material sources of liquidity, whether internal or external, and a brief discussion of any material unused sources of liquidity<sup>2</sup>;
- Include a statement by the directors of the trustee-manager as to whether, in their opinion, the working capital available to the business trust will be sufficient for a period of 12 months from the date of issue of prospectus. If not, how the additional working capital which is deemed to be necessary will be obtained;
- (ii) An evaluation of the material sources and amounts of cash flows from operating, investing and financing activities for the most recent financial year and/or latest audited financial period (where applicable). This includes the nature and extent of any legal, financial, or economic restriction on the ability of subsidiary entities to transfer funds to the business trust in the form of cash dividends, loans or advances, and the impact such restrictions have or are expected to have on the ability of the business trust to meet its cash obligations;
- (iii) A statement of total outstanding borrowings, classified into long term and short term, interest-bearing and non-interest bearing; and for all foreign borrowings, to be separately identified with the corresponding foreign currencies amount. Include a statement whether there has been any default on payments of either interest and/or principal sums for any borrowing throughout the past one financial year and the subsequent financial period, as at the latest practicable date. Also, to disclose gearing ratios for the period under review; and
- (iv) If the business trust or any of its subsidiary entity/associated entity in the business trust group is in breach of terms and conditions or covenants associated with credit arrangement or bank loan which can materially affect the business trust's financial position and results or business operations, or the investments by unit holders in the business trust, provide–
- a statement of that fact;
  - details of the credit arrangement or bank loan; and
  - any action taken or to be taken by the business trust or its subsidiary entity/associated entity in the business trust group, as the case may be, to rectify the situation (including status of any restructuring negotiations or agreement, if applicable);

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<sup>2</sup> Except where it is otherwise clear from the discussion, the business trust must identify those balance sheet or income or cash flow items that should be considered in assessing liquidity (the ability of the business trust to convert its assets into cash quickly).

- (b) To provide information (where applicable) regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. Discuss also funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of any financial instrument for hedging purposes;
- (c) To provide information on any material commitment for capital expenditures as at the latest practicable date and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments;
- (d) Full disclosure of all pending material litigation/arbitration proceedings and contingent liabilities as at the latest practicable date, including assessment and disclosure of specific impact on financial performance and position upon becoming enforceable; and
- (e) To provide and discuss relevant key financial ratios, including receivables and payables (incorporating ageing analysis) and stock turnover for the past three financial years and/or the latest financial period (where applicable).

16.08 Trend information

- (a) Discuss and analyse the business and financial prospects, most significant recent trends in production, sales and stocks, and costs and selling prices since the most recent financial year or period;
- (b) Discuss the state of the order book since the most recent financial year or period. If such information is not relevant to the business of the business trust, provide an appropriate statement to that effect and the reason for this; and
- (c) Discuss and analyse known factors which are likely to have a material effect on the financial condition and results of operations of the business trust or that would cause the historical financial statements to be not necessarily indicative of future financial performance. The discussion should include:
  - (i) Liquidity: Identify known factors which will result in or are reasonably likely to result in the business trust's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the business trust has taken or proposes to take to remedy the deficiency;
  - (ii) Capital resources: Describe known material factors, favourable or unfavourable, in the business trust's capital resources. Indicate any expected material changes in the mix and relative cost of such resources; and
  - (iii) Results of operations: Describe known factors that are likely to have a material impact on revenue or profits/losses.

16.09 Disclose in the prospectus, if the business trust is newly established and/or does not have any financial record.

**Interim financial information**

16.10 If the date of the prospectus issuance is later than six months after the end of the last financial year, interim audited financial statements must be provided.

- 16.11 Provide interim financial statements in the same format as the audited financial statements provided under paragraph 17.13 and/or pro forma financial statements under paragraph 16.16.
- 16.12 In addition, the interim financial statements should include–
- (a) comparative statements for the same period in the prior financial year for the statement of profit or loss and other comprehensive income. The comparative interim financial statements need not be audited; and
  - (b) selected note disclosures which explain events and changes significant to an understanding of the changes in financial position and performance of the business trust since the last annual reporting date.

**Pro forma financial information**

- 16.13 A pro forma consolidated statement of financial position for the most recent financial year and/or latest audited financial period, should be disclosed and adjusted for the following:

- (a) Any restructuring or acquisition connected with the proposed public-offering exercise; and
- (b) Proceeds of the proposed public-offering exercise and proposed utilisation of funds.

Details of such adjustments must be set out in the prospectus. Such a pro forma will assist investors or analysts determine the financial effects of the restructuring and the notional financial position of the business trust.

- 16.14 The following information should be included in the pro forma consolidated statement of financial position:

- (a) Net asset value per unit (or liabilities, as the case may be); and
- (b) Pro forma net asset value per unit (or liabilities, as the case may be).

- 16.15 For a group of business entities, constituted during the period under review, pro forma financial information must be compiled based on the audited results of the business entities. The pro forma financial information is presented for illustrative purpose only and on the assumption that the group structure had been in existence throughout the period under review.

- 16.16 The pro forma financial information provided under paragraph 16.15 must deal with the following:

- (a) The consolidated statement of profit or loss and other comprehensive income of the pro forma group for the last three financial years (or such shorter period that the businesses has been in operation) and the latest financial period (where applicable);
- (b) The consolidated statement of financial position of the pro forma group at the last date of the financial statements; and
- (c) The consolidated statement of cash flows of the pro forma group for the last financial year or latest financial period (where applicable) of the financial statements, where such date should not in any case be more than six months prior to the issue of the

prospectus.

- 16.17 For the pro forma financial information required under paragraphs 16.13 and 16.16, state–
- (a) the basis upon which the pro forma financial information is compiled;
  - (b) that the financial statements used in the compilation of the pro forma financial information were prepared in accordance with the approved accounting standards as defined in the *Financial Reporting Act 1997*, which include International Accounting Standards. Details of the auditor’s qualification to these underlying financial statements should also be disclosed if any;
  - (c) whether the pro forma financial information has been compiled in a manner consistent with the applicable financial reporting framework and the accounting policies of the business trust; and
  - (d) prominently, any adjustment dealt with when compiling the pro forma financial information.
- 16.18 The pro forma financial information should be accompanied by a reporting accountants’ assurance report stating–
- (a) whether the pro forma financial information has been properly compiled on the basis stated in paragraph 16.17(a); and
  - (b) that the engagement was performed in accordance with the relevant standard on assurance engagement approved for application in Malaysia.

In the case of a recognised business trust, the above assurance report should be provided by a professional accountant who is qualified under the *Accountants Act 1967* and from an international accounting firm.

### **Future financial information**

- 16.19 Where profit and cash flow estimates, forecasts and/or projections are provided in the prospectus, disclose whether the forecast is prepared on bases and accounting principles consistent with those previously adopted by the business trust, and is presented in accordance with the accounting standards adopted by the business trust in the preparation of its financial statements.
- 16.20 Disclose sufficient details on the bases and assumptions of the estimates, forecasts and/or projections to enable the investor to assess the reliability of the estimates, forecasts and/or projections and the effect of any change to the assumptions used.
- 16.21 The bases and assumptions stated on profit and cash flow estimates, forecasts and/or projections should–
- (a) provide useful information to assist investors in forming a view on the reasonableness and reliability of the estimates, forecasts and/or projections;

- (b) draw the investors' attention to, and where possible quantify, those uncertain factors which can materially affect the ultimate achievement of the estimates, forecasts and/or projections;
  - (c) be specific rather than vague;
  - (d) where possible, avoid generalisations and all-embracing assumptions and those relating to the general accuracy of the assumptions made in the estimates, forecasts and/or projections; and
  - (e) be clearly stated and reviewed for reasonableness by the directors of the trustee-manager who are responsible for the estimates, forecasts and/or projections and bases and assumptions.
- 16.22 The requirements for profit and cash flow estimates, forecasts and/or projections are as follows:
- (a) An estimate, forecast and/or projection must be realistic and achievable to provide investors with information on the business trust's prospects. An unrealistic estimate, forecast and/or projection, irrespective of whether it is too high or too low, may mislead investors into making investment decisions based on the information contained in the prospectus. An estimate, forecast and/or projection must be compiled with utmost care and objectivity; and
  - (b) Where the estimate, forecast and/or projection may be subject to a high probability of variation, a sensitivity analysis must be provided based on key variables, such as selling prices, volume of sales, production costs, production capacity, operating expenses and financing costs.
- 16.23 In addition to the above, owing to the specific nature of profit and cash flow projections, the business trust may take note of the following:
- (a) A projection, being a representation of financial information based on a set of assumptions which are uncertain and hypothetical, must be qualified by the directors of the trustee-manager as to its achievability;
  - (b) The qualification of projected financial information must draw attention to the fact that the presentation is based on hypothetical assumptions, and that actual events may differ from those assumed, and may materially affect the financial information projected; and
  - (c) Notwithstanding the uncertainties and hypothetical assumptions associated with projections, these should be prepared with care, skill and objectivity so as to represent the stated assumptions, and not to purport unreasonable hypotheses and assumptions.
- 16.24 A prospectus should also state the extent to which estimate and forecast revenues are based on secured contracts or orders and the reasons for expecting such revenues and profits to be achieved, and discuss the impact of any likely change in business and operating conditions on the estimate and forecast.
- 16.25 The accounting policies and calculations for the profit and cash flow estimates, forecasts and/or projections must be reviewed and reported by the reporting accountants. The report should state–
- (a) that the profit and cash flow estimate, forecast and/or projection have been reviewed

in accordance with the standard applicable to the review of the forecast;

- (b) whether the reporting accountant is of the opinion that the profit and cash flow estimate, forecast and/or projection are properly prepared based on the assumptions made by the directors of the trustee-manager and are presented in a manner consistent with both the format of the financial statements and the accounting policies of the business trust; and
- (c) that no matter has come to the reporting accountant's attention which gives him reason to believe that the assumptions do not provide reasonable grounds for the profit and cash flow estimate, forecast and/or projection.

In the case of a recognised business trust, the above report should be provided by a professional accountant who is qualified under *the Accountants Act 1967* and from an international accounting firm.

## Chapter 17

### ACCOUNTANTS' REPORT

- 17.01 A prospectus must contain a report in respect of the audited financial statements of the business trust provided in the prospectus prepared by a firm of public accountants registered in Malaysia. In the case of a recognized business trust, a professional accountant who is qualified under the *Accountants Act 1967* and from an international accounting firm must confirm that the business trust's financial statements comply with the approved accounting standards referred to in paragraph 17.03.
- 17.02 The report should state that it has been prepared by an approved company auditor and whether it was prepared for inclusion in the prospectus. The report should also be signed and dated.
- 17.03 The audited financial statements provided in the report must be prepared in accordance with the approved accounting standards as defined in the *Financial Reporting Act 1997*, which include International Accounting Standards, and in adherence to the relevant assurance engagement standards.
- 17.04 Where the audited financial statements are not prepared in accordance with the approved accounting standards referred to in paragraph 17.03–
- (a) they must be restated in accordance with paragraph 17.03; or
  - (b) if no material adjustments are required to restate the financial statements in accordance with paragraph 17.03, they must be accompanied by an opinion from the auditors that this is so.
- 17.05 The reporting accountants should disclose any restatement to the audited financial statements which have been dealt with in the report.
- 17.06 The report should–
- (a) provide the basis of accounting policies adopted in preparation of the report;
  - (b) state that the information presented in the report has been prepared in accordance with the approved accounting standards as defined in the *Financial Reporting Act 1997*, which include International Accounting Standards;
  - (c) provide disclosures on any material change in the accounting policies adopted, including a summary of such material change, the reason of such change and quantitative impact of such change on the financial results of the business trust; and
  - (d) highlight and provide the reasons for and details of any material qualification modification or disclaimer contained in the audited financial statements.
- 17.07 All material items in the audited financial statements should be adequately explained.
- 17.08 The auditors of the financial statements should be identified, especially where the

- audited financial statements for one or more financial years were audited by different auditors.
- 17.09 The reporting accountants should deal with and incorporate in the report subsequent events between the date of the last accounts used in the preparation of the report and the date of the report.
- 17.10 The audited financial statements in respect of paragraph 17.13 should be accompanied by the audit reports of those audited financial statements. Notes and schedules of the audited financial statements should also be disclosed.
- 17.11 Where applicable, the Accountants' Report should incorporate the interim financial statements in accordance with paragraphs 16.10 to 16.12.
- 17.12 All financial statements prepared in a currency other than RM must be translated into RM.

## **Contents**

- 17.13 The report should deal with the audited financial statements of the business trust referred to in a prospectus in accordance with the following:

(a) Business trust with no subsidiary entities

The report should deal with the audited statement of profit or loss and other comprehensive income, statement of financial position, statement of cash flows, and statement of changes in equity of the business trust referred to in a prospectus for each of the three financial years (or such shorter period that the business trust has been in operation) and latest financial period (where applicable) immediately preceding the last date of the business trust's accounts. Such date should not in any case be more than six months prior to the issue of the prospectus.

(b) Business trust with subsidiary entities

- (i) The report should deal with the audited consolidated financial statements of the business trust, as provided by paragraph 17.13(a); and
- (ii) Where the business trust has been in existence for less than the period under review–
- the audited consolidated financial statements for each financial year during which the business trust has been in existence should be provided; and
  - if the profit/loss before tax stated in the annual consolidated statement of profit or loss and other comprehensive income of a previous corporation/business entity accounted for 75% or more of the profit/loss before tax of the pro forma group referred to in paragraph 16.16(a), the audited consolidated financial statements of the previous corporation/business entity should be disclosed. It should exclude the financial statements for any financial year where the audited financial statements of the group have already been provided in the sub-paragraph immediately preceding, above.



The business trust may also disclose the audited statement of profit or loss and other comprehensive income and statement of financial position of each subsidiary entity individually.

- 17.14 The report should deal with rates of the distributions/dividends, if any, paid by the business trust/previous corporation for each class of units/shares during the period under review.

**Purchase of any business**

- 17.15 If the proceeds, or any part of the proceeds, of the issue of the units are to be utilised directly or indirectly for the purchase of any business, the report should deal with–
- (a) the statement of profit or loss and other comprehensive income of the business, for each of the three financial years immediately preceding the last date of the financial statements of the business; and
  - (b) the statement of financial position of the business for each of the past three financial years immediately preceding the last date of the financial statements of the business.

Such date should not, in any case, be more than six months prior to the issue of prospectus.

**Acquisition of another corporation**

- 17.16 If–
- (a) the proceeds, or any part of the proceeds, of the public offering of the units are to be applied directly or indirectly in any manner resulting in the acquisition by the trustee-manager (acting on behalf of the business trust) of any other corporation; and
  - (b) by reason of that acquisition, or anything to be done in consequence or in connection with it, that corporation will become a subsidiary entity of the business trust,

the report should deal with the statement of profit or loss and other comprehensive income and statement of financial position of that corporation in accordance with the relevant sections of paragraphs 16.16 and 17.13 respectively.

- 17.17 For the purposes of the above paragraph, the report should indicate how the statement of profit or loss and other comprehensive income of the other corporation and, where applicable, the consolidated statement of profit or loss and other comprehensive income of the other corporation and its subsidiaries dealt with by the report would have impacted on the unit holders of the business trust. Indicate also what allowance would have to be made, in the statement of financial position and consolidated statement of financial position, if the trustee-manager (acting on behalf of the business trust) had at all material times held the securities to be acquired.

## Chapter 18

### EXPERT'S REPORTS

- 18.01 A prospectus should contain excerpts from, or summaries of, opinion expressed and conclusion recorded in any expert's report included in the prospectus. The expert should state whether or not the report was prepared for inclusion in the prospectus. The expert's report should be signed and dated within a reasonable time of the issue of the prospectus to ensure that the contents are substantially relevant.
- 18.02 Where valuations of property assets have been carried out for inclusion in a prospectus, a summary of the valuation in the form of a valuation certificate that complies with the *Asset Valuation Guidelines* must be included in the prospectus.
- 18.03 For an Islamic business trust, excerpts from the Shariah adviser's report including Shariah justifications, should be disclosed in the prospectus.
- 18.04 If the expert becomes aware of significant changes affecting the content of his report, either—
- (a) between the date of the report and the issue of the prospectus; or
  - (b) after the issue of the prospectus and before the issue of the units,
- then he has an ongoing obligation to either cause his report to be updated for the changes and, where applicable, cause the trustee-manager to issue a supplementary prospectus or replacement prospectus, or withdraw his consent to the inclusion of the report in the prospectus. Failure to do so will result in the trustee-manager, promoter, and the expert being liable for any misleading statement or material omission in the outdated report.
- 18.05 Experts should take care in making disclaimers of responsibility in their reports. If the disclaimers are too wide, the report will be of little or no beneficial use to investors. The inclusion of such a report in such a prospectus may itself be misleading.

## **Chapter 19**

### **DIRECTORS' REPORT**

- 19.01 A prospectus must contain a report by the directors of the trustee-manager, for the period between the date to which the last audited financial statements of the business trust have been made up and a date not earlier than 14 market days before the date of issue of the prospectus, stating whether, after due enquiry by them–
- (a) the business of the business trust group has, in their opinion, been satisfactorily maintained;
  - (b) there have, in their opinion, arisen, since the last audited financial statements of the business trust, any circumstance which has adversely affected the trading or the value of the assets of the business trust group;
  - (c) the current assets of the business trust group appear in the books at values which are believed to be realisable in the ordinary course of business;
  - (d) there are any contingent liabilities by reason of any guarantee or indemnity given by the trustee-manager on behalf of the business trust or any entity in the business trust group;
  - (e) there have been, since the last audited consolidated financial statements of the business trust, any default or any known event that could give rise to a default situation, on payments of either interest and/or principal sums for any borrowing. This applies for all entities under the business trust group; and
  - (f) there have been, since the last audited financial statements of the business trust, no material change in the published reserves or any unusual factor affecting the profits of the business trust group; and where any report is required following this paragraph, the report should contain full details of all matters required to be dealt with in the report.

## **Chapter 20**

### **ADDITIONAL INFORMATION**

- 20.01 With respect to a recognised business trust, if the law applicable to the said business trust in its home country is significantly different from that in Malaysia, to state this fact and to explain how the difference in the law might affect the operation of the recognized business trust and the rights of investors.
- 20.02 For any unit of the business trust which is under option, or agreed conditionally or unconditionally to be put under option, the following should be disclosed:
- (a) The description and number of units covered by the option;
  - (b) The period during which the option is exercisable;
  - (c) The exercise price;
  - (d) The option purchase price (if any);
  - (e) The expiration date of the option; and
  - (f) The names of the grantees, provided that, where options have been granted or agreed to be granted to all unit holders of the business trust, shareholders of the trustee-manager, holders of debt securities, directors of the trustee-manager and employees of the trustee- manager under the unit option scheme, it should be sufficient to record that fact without giving the names of the grantees.
- 20.03 Details of any option scheme involving employees of the trustee-manager, or if any, employees of the business trust group.
- 20.04 Fully disclose all material contracts (including contracts not in writing), not being contracts in the ordinary course of business, entered into within two years preceding the date of the prospectus. The following particulars should be disclosed for each such contract:
- (a) Date;
  - (b) Parties;
  - (c) Subject matter;
  - (d) Consideration passing to or from the business trust/business trust group; and

(e) The mode of satisfaction of the consideration.

20.05 Fully disclose all current material litigation and arbitration, including those pending or threatened, and of any fact likely to give rise to any proceeding which may materially affect the business/financial position of the business trust or any of its subsidiary entities.

20.06 Describe any governmental law, decree, regulation or other requirement which may affect the repatriation of capital and the remittance of profit by or to the business trust. Also, explain how these would impact on the availability of cash and cash equivalents for use by the business trust, the remittance of distributions, interest or other payments to unit holders of the business trust.

20.07 There should be a statement as to whether any of the following has occurred during the last financial year and the current financial year:

(a) Public take-over offers by third parties for the units in the business trust; and

(b) Public take-over offers by the trustee-manager (acting in its capacity as trustee-manager of the business trust) in respect of the shares of a corporation or the units of another business trust.

If yes, state the price of the offer and its outcome.

20.08 Where the units are offered by way of rights or allotment to the holders of an existing listed unit, the pro-rata entitlement, the last date on which transfers were or will be accepted for registration for participation in the offering must be disclosed. A statement on the treatment of any fraction whether the offer is renounceable and whether approval has been obtained from the unit holders of the existing listed business trust.

20.09 If the prospectus or cover contains photographs or illustrations of properties or assets which do not belong to the business trust, the photographs or illustrations should be accompanied by a statement that the properties or assets depicted do not belong to the business trust.

20.10 Provide information regarding taxes (including withholding provisions) to which unit holders of the business trust may be subject. If the business trust is established outside Malaysia, the information shall include whether the trustee-manager (acting in its capacity as trustee-manager for the business trust) assumes responsibility for the withholding of tax at source and applicable provisions of any reciprocal tax treaties between the home country of the business trust and Malaysia, or a statement, if applicable, that there are no such treaties.

## **Chapter 21**

### **SALIENT TERMS OF DEED**

21.01 A prospectus should disclose salient terms of the deed, particularly provisions relating to–

- (a) rights and liabilities of investors, including voting rights on the units, and the procedures for changing such rights and liabilities;
- (b) any limitation and restrictions on the right to own units in the business trust or state that there are no limitations and restrictions if this is the case;
- (c) maximum fees permitted by the deed and payable by the investors;
- (d) increase in fees from the level disclosed in the prospectus and the maximum rate provided in the deed;
- (e) permitted expenses payable out of the trust property of the business trust;
- (f) circumstances under which the trustee-manager may be indemnified out of the trust property of the business trust;
- (g) any time limit after which a distribution entitlement will lapse and an indication of the party in whose favour this entitlement then operates;
- (h) removal, replacement and retirement of the trustee-manager;
- (i) removal, replacement and retirement of a director of the trustee-manager;
- (j) termination or winding up of the business trust;
- (k) general meeting of unit holders of the business trust; and
- (l) the borrowing powers exercisable by the trustee-manager (acting in its capacity as trustee- manager for the business trust) and how such borrowing powers may be varied.

## **Chapter 22**

### **CONSENTS**

- 22.01 A prospectus should contain statement of consent from relevant parties, such as Shariah advisers, principal advisers, reporting accountants, auditors, issuing houses, registrars, solicitors, valuers, underwriters, and experts for inclusion of their names and (where relevant) statements and reports in the form and context in which such statements and reports appear. A statement that they have not subsequently withdrawn such consents must also be disclosed.

## **Chapter 23**

### **DOCUMENTS AVAILABLE FOR INSPECTION**

23.01 Provide a statement that for a period of at least 12 months from the date of issue of the prospectus, the following documents (or copies thereof), where applicable, may be inspected at a specified place in Malaysia:

- (a) The deed/supplemental deed of the business trust;
- (b) Each material contract or document referred to in the prospectus and, in the case of contracts not in writing, a memorandum which gives full particulars of the contracts;
- (c) Directors' existing or proposed service contracts with the trustee-manager or any of the subsidiary entities of the business trust, excluding contracts expiring or determinable by the trustee-manager or the subsidiary entities without payments or compensation (other than statutory compensation) within one year;
- (d) All reports, letters or other documents, valuations and statements by any expert, any part of which is extracted or referred to in the prospectus. Where a summary expert's report is included in the prospectus, the corresponding full expert's report must be made available for inspection;
- (e) Each consent given by experts disclosed in the prospectus;
- (f) Any writ and relevant cause papers for all current material litigation and arbitration disclosed in the prospectus;
- (g) The audited financial statements of the business trust group for the last three financial years (or such shorter period that the business trust group has been in operation), preceding the date of prospectus; and
- (h) The latest audited financial statements of the business trust group for the current financial period (where applicable).



## **Chapter 24**

### **SPECIFIC REQUIREMENTS FOR INFRASTRUCTURE UNDERTAKING BUSINESS TRUSTS**

24.01 In addition to other information required to be disclosed in this division, where applicable, a prospectus of an infrastructure undertaking business trusts should disclose the following:

- (a) Concession/licence/basis of business
  - (i) Act/regulation under which the concession/licence is granted;
  - (ii) Nature of concession (e.g. build-operate-transfer/build-transfer-operate/ build-down-operate, etc.);
  - (iii) Life of concession/licence;
  - (iv) Exclusivity/non-exclusivity of concession/licence;
  - (v) Critical terms and conditions under concession/licence;
  - (vi) A business trust's rights, interests and major obligations under concession/licence;
  - (vii) Effect of failure to meet concession/licence terms;
  - (viii) Circumstances leading to termination provisions under concession agreement/licence;
  - (ix) Any restriction on changes in ownership of business trust;
  - (x) Major agreements underlying the basis of (e.g. power/assets purchase and other offtake agreements);
  - (xi) Obligations of public development authorities;
  - (xii) Any related land acquisition;
  - (xiii) List of material contracts; and
  - (xiv) Taxation;

- (b) Relationship with concession giver/licensor
  - (i) Description/constitution of concession giver/licensor;
  - (ii) Nature of relationship;
  - (iii) Licensor's obligations;
  - (iv) Revenue/profit-sharing agreements; and
  - (v) Impact on business/credit agreements if relationship changes;
- (c) Regulation
  - (i) Relevant regulatory authority(ies);
  - (ii) Environmental regulation/issues; and
  - (iii) Material penalties on breach of regulation;
- (d) Competition
  - (i) Description of the industry;
  - (ii) Analysis of competitors;
  - (iii) Assessment of effects of competition; and
  - (iv) Treatment of business of business trust under competition law (if a monopoly and if applicable);
- (e) Operations
  - (i) Special reliance on key operating and maintenance contractors or management personnel;
  - (ii) Major operating contracts;
  - (iii) Operating risk factors;
  - (iv) Strategy for marketing products;
  - (v) Obligations of main users; and
  - (vi) Economics of project;
- (f) Pricing of product;
- (g) Government pricing and terms on which price/rates may be varied;

- (h) Conflicts/dependence
  - (i) Related-party transactions including construction contracts;
  - (ii) Dependence on concession giver/licensor; and
  - (iii) Dependence on suppliers, customers, competitors, infrastructure providers;
- (i) Financing
  - (i) Total capital expenditure to-date and for the future;
  - (ii) Sources and uses of issue proceeds and bank loans;
  - (iii) Adequacy of funds for expected total cost of project and working capital;
  - (iv) Salient terms of bank financing and other credit/guarantee agreements including recourse/non-recourse nature of arrangement;
  - (v) Availability and terms of supplier credit;
  - (vi) Any security arrangement entered into with loan providers or other credit suppliers including assignments of assets;
  - (vii) Tax effects;
  - (viii) Other financial arrangements with concession giver/licensor/parent;
  - (ix) Statement of financial requirements for subsequent phases; and
  - (x) Availability of foreign currency during loan repayment period;
- (j) Other disclosures
  - (i) Unit holders' agreement;
  - (ii) Criteria for future investment in projects;
  - (iii) Insurance arrangements;
  - (iv) Business development strategy;
  - (v) Privileges of unit holders;
  - (vi) Underwriting arrangements in respect of the issue/offer of units;
  - (vii) Political risks if applicable; and
  - (viii) Other risks.

## **Chapter 25**

### **APPLICATION FOR UNITS**

- 25.01 A prospectus should contain instructions/procedures on how to apply for the units and how to complete applications. The instructions/procedures should contain terms and conditions for application, specific steps/measures to be complied with for the various modes of application for units, e.g. automated teller machines, Internet and/or physical applications, and any relevant statement of disclaimers.
- 25.02 Give the addresses to send completed applications and state to whom payments should be made.
- 25.03 Disclose the minimum number of units that can be applied for and the multiples of additional units.
- 25.04 Disclose whether directors of the trustee-manager reserve the right to extend the closing date.
- 25.05 An application form should be identifiable with the prospectus and warn investors against signing the form without having read and understood the prospectus.
- 25.06 Accordingly, the application form should contain the following statements:
- (a) The name and registration number of the business trust;
  - (b) The name and registration number of the trustee-manager;
  - (c) The date of the prospectus;
  - (d) The expiry date of the prospectus;
  - (e) A statement that, in accordance with the requirements of the CMSA, the application form should not be circulated unless accompanied by the prospectus; and
  - (f) A statement that investors should read and understand the prospectus before completing the application form.
- 25.07 The application form should not contain any investment information that is not also contained in the body of the prospectus.
- 25.08 Where applicable, the trustee-manager should allocate all excess units for any subscription on a fair and equitable basis. The prospectus should state that the allocation of the excess units will be made on a fair and equitable manner and a clear disclosure on the basis/methodology for the allocation must also be made.
- 25.09 With respect to paragraph 25.08, to state that if the trustee-manager is not able to distribute the excess units based on the disclosed basis/methodology, the trustee-manager will allocate on an alternative basis/methodology that will ensure allocation on a fair and equitable manner and such alternative basis/methodology should be made known through announcement on the exchange.