

SECURITIES COMMISSION ACT 1993

SECURITIES COMMISSION (UNIT TRUST SCHEME) REGULATIONS 1996

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SECURITIES COMMISSION ACT 1993

SECURITIES COMMISSION (UNIT TRUST SCHEME) REGULATIONS 1996

Act 498.

IN exercise of the powers conferred by subsections 44(2) and 44(3) of the Securities Commission Act 1993, the Securities Commission, with the approval of the Minister, makes the following regulations:

PART I

PRELIMINARY

Citation and
commencement.

1. These regulations may be cited as the **Securities Commission (Unit Trust Scheme) Regulations 1996** and shall come into force on 30 August 1996.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

Act 125.

“approved company auditor” has the same meaning as is assigned to that expression in section 4 of the Companies Act 1965;

Act 280.

“associated person” means the person within the meaning of section 3 of the Securities Industry Act 1983;

“deed” means an instrument having the effect of a deed, and where applicable includes a supplementary deed;

“exempt dealer” has the same meaning as is assigned to that expression in section 2 of the Securities Industry Act 1983;

“expert” has the same meaning as is assigned to that expression under section 32 of the Act;

“licensed person” means a person licensed under Part IV of the Securities Industry Act 1983;

“management company” means a company by which or on whose behalf the unit has been or is proposed to be issued and includes any person for the time being exercising the functions of the management company;

“member company” has the same meaning as is assigned to that expression in section 2 of the Securities Industry Act 1983;

“official list” in relation to a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock exchange;

“person responsible for the prospectus” means—

(a) promoter of the unit trust scheme;

(b) the management company of the unit trust scheme;

(c) the trustee of the unit trust scheme;

(d) a director of—

(i) the promoter, if it is a corporation;

(ii) the management company; and

(iii) the trustee, if it is a corporation,

of the unit trust scheme;

(e) an expert who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for the prospectus or supplementary prospectus or any part of the prospectus or supplementary prospectus; or

(f) a person not falling within any of the foregoing paragraphs who has authorised the contents of the prospectus or supplementary prospectus or any part of the prospectus or supplementary prospectus;

“promoter” means a person who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include a person merely by reason of the person acting in the proper performance of the functions attaching to that person’s professional capacity or attaching to that person’s business relationship with the first mentioned person;

“prospectus” means any notice, circular, advertisement or invitation—

(a) offering or inviting applications or offers to subscribe for or purchase; or

(b) offering for subscription or purchase,

any unit, and where applicable includes a supplementary prospectus;

“related corporation” has the same meaning as is assigned to that expression under section 6 of the Companies Act 1965;

Act 125.

“sub-unit” means a fraction of a unit;

“unit” means a unit of a unit trust scheme, and where applicable includes a sub-unit.

PART II

RESTRICTIONS ON MANAGEMENT COMPANY, TRUSTEE AND ISSUANCE OF UNITS

3. (1) No person shall act as a management company or trustee in relation to a unit trust scheme unless it or he is approved under subregulation (3).

Approval of
management
company and
trustee.

(2) An application for approval under subregulation (3) shall be made to the Commission in accordance with the First Schedule.

(3) The Commission may, subject to such terms and conditions as it thinks fit, approve—

(a) a company to act as the management company of the unit trust scheme; and

(b) a person to act as the trustee of the unit trust scheme.

(4) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or a breach of these Regulations or any securities laws, revoke an approval granted under this regulation.

(5) Without prejudice to subregulation (3), the Commission may impose other terms and conditions as it thinks fit while the approval is in force, but if the terms and conditions proposed to be imposed are likely to prejudice the interest of the management company or trustee, as the case may be, the Commission shall give the management company or trustee an opportunity of being heard.

Units to be issued
by management
company only.

4. No person except a management company, or an agent of the management company authorised in that behalf under the seal of the management company, shall—

(a) issue or offer for subscription or purchase; or

(b) invite any person to subscribe for or purchase,

any unit.

Unit may only be
issued when there
is a registered
prospectus and
deed.

5. No person shall issue, make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, any unit unless, at the time of the issue, offer or invitation, there is in force, in relation to the unit, a prospectus and a deed that have been registered by the Commission under these Regulations.

Registration of
prospectus.

6. (1) The Commission shall refuse to register a prospectus if—

(a) it appears to the Commission that the prospectus does not comply with the requirements of these Regulations;

(b) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that there is any statement or information from which there is a material omission; or

(c) the making available of, the offer for subscription or purchase of, or the invitation to subscribe for or purchase, the unit to which the prospectus relates has not been approved by the Commission under section 32 of the Act.

(2) Subject to subregulation (1), the Commission shall register a prospectus that is lodged with the Commission for registration if it is lodged together with—

- (a) a written application for its registration; and
- (b) copies of all material contracts as may be specified by the Commission and referred to in the prospectus or, in the case of a contract not reduced in writing, a memorandum giving full particulars of that contract verified by an expert.

(3) Within seven days after registration of the prospectus, the management company which lodged that prospectus shall cause a true copy, verified by an expert, of—

- (a) every material contract as may be specified by the Commission and referred to in the prospectus; or
- (b) in the case of a contract that is not reduced into writing, a memorandum, verified by an expert, giving full particulars of the contract,

to be deposited at the registered office in Malaysia of the trustee and management company.

(4) Any person who contravenes subregulation (3) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit.

7. (1) The Commission shall refuse to register a deed or supplementary deed if—

Registration of deed.

- (a) it appears to the Commission that the deed or supplementary deed does not comply with the requirements of these Regulations; or
- (b) the making available of, the offer for subscription or purchase of, or the invitation to subscribe for or purchase, the unit to which the deed relates has not been approved by the Commission under section 32 of the Act.

(2) Subject to subregulation (1), the Commission shall register a deed or supplementary deed lodged with the Commission for registration together with a written application for its registration.

8. No person shall issue, circulate or distribute—

Requirement to issue prospectuses in relation to unit trust schemes.

- (a) any form of application for the issue of; or
- (b) any invitation to subscribe for or purchase,

any unit unless the form or invitation is accompanied by a copy of a prospectus which has been registered by the Commission.

PART III
PROSPECTUS

Information to be
included in the
prospectus.

9. (1) A prospectus shall contain all such information as investor and their advisers would reasonably require, and reasonably expect to find, in the prospectus or for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses and prospects of the unit trust scheme;
- (b) the rights attaching to the unit; and
- (c) the merits of participating in the unit trust scheme and the extent of risks involved in the participation.

(2) The information required by subregulation (1) to be included in a prospectus is information—

- (a) which is within the knowledge of any person responsible for the prospectus; or
- (b) which that person would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) In determining what information is required to be included in a prospectus by virtue of this regulation, regard shall be had to—

- (a) the nature of—
 - (i) the unit;
 - (ii) the unit trust scheme; and
 - (iii) the management company and trustee of the unit trust scheme;
- (b) the persons likely to consider acquiring any unit;
- (c) the fact that certain matters may reasonably be expected to be known to any adviser whom the persons referred to in paragraph (b) may reasonably be expected to consult.

(4) Without prejudice to subregulations (1), (2) and (3), a prospectus—

- (a) shall be printed in type of a size not less than the type known as eight point Times unless the Commission, before the publication of the prospectus in Malaysia, certifies in writing that the type and size of letters are legible and satisfactory;
- (b) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;

(c) shall state that—

- (i) the prospectus has been registered by the Commission; and
- (ii) the registration of the prospectus shall not be taken to indicate that the Commission recommends the unit;

(d) shall, in the case of a prospectus—

- (i) inviting applications to subscribe for, or offering for subscription; or
- (ii) inviting offers to purchase, or offering for purchase,

of any unit, contain a statement that no unit will be issued or sold on the basis of the prospectus later than one year after the date of issue of the prospectus;

(e) shall, if it contains any statement made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(f) shall not contain the name of any person as a person responsible for the prospectus, a member company, an underwriter or a principal adviser in relation to the unit trust scheme or proposed unit trust scheme or for or in relation to the issue or proposed issue of any unit unless that person has—

- (i) consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus; and

(ii) that consent has been lodged with the Commission;

(g) shall, where the prospectus offers any units which have been specified by a stock exchange as prescribed securities under section 14 of the Securities Industry (Central Depositories) Act 1991, state that such units have been so prescribed and that applicants are required to have securities accounts when making their applications; and

Act 453.

(h) shall set out such matters and reports as set out in the Second Schedule.

10. (1) Where a prospectus relating to a unit has been registered and the management company becomes aware that—

Supplementary prospectus.

(a) a significant new matter has arisen and information in respect of that matter would have been required by regulation 9, or by any requirements or guidelines of any authority,

to be included in the prospectus if the matter had arisen when the prospectus was prepared;

- (b) there has been a significant change affecting a matter disclosed in the prospectus;
- (c) the prospectus contains a statement or an information that is false or misleading; or
- (d) there is a statement or an information from which there is a material omission,

the management company shall lodge with the Commission a supplementary prospectus that contains information relating to the new matter or the change or that corrects the false or misleading statement or omission, as the case requires.

(2) For the purposes of subregulation (1) a matter is significant if it is an information that is required to be included by regulation 9 and that information would influence a reasonable investor in making a decision, or that investor's adviser in advising, whether to subscribe for or purchase the unit to which the prospectus relates.

(3) Where the management company is not a person responsible for the prospectus at the time of its issue and is not aware of the change or new matter in question it shall not be under any duty to comply with subregulation (1) unless it is notified by a person responsible for the prospectus; and a person responsible for the prospectus who is aware of such matter shall be under a duty to give the management company notice of such matter.

(4) Subregulation (3) shall not apply to a person who becomes aware of a change or new matter by reason only of his acting in another capacity in connection with which he is under a duty of confidentiality or obligation owed to another person, other than the management company or a person responsible for the prospectus, not to disclose the change or new matter.

(5) Subregulation (1) shall also apply with respect to matters contained in a supplementary prospectus previously registered under this regulation in respect of the unit in question.

(6) A supplementary prospectus shall clearly identify the prospectus to which it relates and shall contain a clear statement in bold or coloured print that it is a supplementary prospectus to be read in conjunction with the prospectus.

(7) A supplementary prospectus shall be deemed to be part of the prospectus to which it relates and these Regulations and any other law relating to liability in respect of statements and non-disclosures in prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and have effect accordingly.

(8) Subject to subregulation (9), where a supplementary prospectus has been lodged with the Commission, every copy of the prospectus to which it relates that is issued after the lodgement of the supplementary prospectus shall be accompanied by a copy of the supplementary prospectus.

(9) Where a supplementary prospectus that is lodged with the Commission is intended to replace entirely an earlier supplementary prospectus lodged with the Commission, subregulation (8) shall not apply to the earlier supplementary prospectus.

11. (1) This regulation shall apply where—

Consequences of
lodging a
supplementary
prospectus.

- (a) a person ("applicant") applies for the issue or purchase of any unit pursuant to a prospectus; and
- (b) before the issue, or formation of the contract for the purchase of the unit, the management company lodges with the Commission a supplementary prospectus that relates to the prospectus.

(2) As soon as practicable after a supplementary prospectus is lodged, the management company shall—

(a) give to the applicant a written notice—

- (i) that advises the applicant that a supplementary prospectus has been lodged with the Commission; and
- (ii) that is accompanied by a copy of the supplementary prospectus; and

(b) gives the applicant not less than ten days from the receipt of the notice an opportunity to withdraw his application.

(3) If the applicant withdraws his application pursuant to paragraph (2)(b), the management company shall immediately pay to the applicant any money the applicant has paid to the management company on account of the application.

12. (1) No person shall publish a notice that—

Restrictions in
advertising.

- (a) offers for subscription or purchase any unit or any unit of a proposed unit trust scheme;
- (b) issues invitations to subscribe for or purchase any unit or any unit of a proposed unit trust scheme; or
- (c) refers or calls attention, whether directly or indirectly, to—
 - (i) a prospectus in relation to any unit inviting applications to subscribe for or purchase, or offering for subscription or purchase, any unit;

- (ii) an offer or intended offer for subscription or purchase of any unit;
- (iii) an invitation or intended invitation to subscribe for or purchase any unit; or
- (iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus in relation to any unit or such an offer, intended offer, invitation or intended invitation.

(2) Subregulation (1) shall not apply to a notice that refers or calls attention, directly or indirectly, to a notice—

(a) by a unit trust scheme that has been approved under section 32 of the Act and is published before the registration of a prospectus—

- (i) with the consent of the Commission and subject to any requirements it imposes; and
- (ii) which does not contain any information or matter other than the following:
 - (A) the name of the unit trust scheme proposing to make available, offer for subscription or purchase, or issue invitations to subscribe for or purchase, any unit;
 - (B) the name of the unit trust scheme and the names of the trustee and the management company, in relation to the unit trust scheme;
 - (C) a concise statement of the investment objectives and policies of the unit trust scheme;
 - (D) the names, addresses and, where appropriate, occupations of the directors or proposed directors of the trustee or management company;
 - (E) the names, addresses of the member companies, underwriters and principal advisers to the proposed offer or issue or the prospectus;
 - (F) a brief description of the present listing of the unit trust scheme on any stock exchange or other similar exchange outside Malaysia or a statement that it is intended to apply for permission to list but no assurance can be given that the unit trust scheme will be listed;

(G) the fact that a prospectus is in the course of preparation and that an offer or issue is proposed, together with a brief indication of the nature and number of units it intends to offer and of the possible timing of the issue of the prospectus;

(H) information or matter to which the Commission consents in writing; and

(I) description of the persons from whom the unit is available for purchase or subscription;

(b) by a unit trust scheme that has been approved under section 32 of the Act, being a report that relates to the affairs of a unit trust scheme that is included in the official list of a stock exchange which—

(i) is published only to that stock exchange by or on behalf of the management company or unit trust scheme, as the case may be; or

(ii) has been so published;

(c) by a unit trust scheme that has been approved under section 32 of the Act, being a notice that is published or issued only to a licensed person or an exempt dealer provided that the publication to those persons shall not be taken to permit them to publish information or material contained in the notice other than by issuing the prospectus after it has been registered by the Commission;

(d) by a unit trust scheme that has been approved under section 32 of the Act, being a notice published after the registration of a prospectus by the Commission, by a licensed person or an exempt dealer that—

(i) states that a prospectus in relation to any unit of the unit trust scheme has been registered;

(ii) specifies the date of the prospectus;

(iii) states where a copy of the prospectus can be obtained;

(iv) states that issue of any unit to which the prospectus relates will only be made on receipt of a form of application accompanying a copy of the prospectus; and

(v) contains any other information which is not false or misleading;

(e) by a unit trust scheme that has been approved under section 32 of the Act, being a published notice that is genuine comment on a prospectus that has been registered by the Commission, or on the offer or issue to which the prospectus relates, if none of the following persons instigates, induces or is responsible, in whole or in part, for the publishing of the notice:

(i) the person responsible for the prospectus; and

(ii) any person who receives or is entitled to receive any benefit in connection with, or has any interest in the success of, the offer or issue to which the prospectus relates; or

(f) that is a notice published or issued with the written consent of the Commission.

(3) A notice that is referred to in subregulation (2) shall not constitute a prospectus.

(4) A person who publishes a notice relating to a unit trust scheme or proposed unit trust scheme that—

(a) specifies the names of two directors of the management company or two proposed directors of the proposed management company and is signed by those directors or proposed directors; and

(b) is to effect that, because of subregulation (2), subregulation (1) does not apply to the notice,

after receiving a certificate does not contravene subregulation (1).

(5) Where a notice to which a certificate under subregulation (4) relates is published, each director or proposed director who signs that certificate shall, for the purposes of this regulation, be responsible for the publication of the notice.

(6) A person who publishes a notice to which a certificate under subregulation (4) relates shall, if the Commission requires the person to do so, deliver the certificate to the Commission as soon as practicable.

(7) Any person who contravenes subregulation (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

(8) Nothing in this regulation limits or diminishes the liability that a person may incur under any other law.

(9) Where it appears to the Commission that a notice—

- (a) contravenes subregulation (1) or (6);
- (b) contains any statement or information that is false or misleading;
- (c) contains any statement or information from which there is a material omission; or
- (d) contains a material misrepresentation,

the Commission may by order in writing served on the person who publishes or issues the notice, direct that the person cease publishing or disseminating the notice.

(10) In this regulation, "notice" includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.

13. (1) Where a person issues or agrees to issue to any person any units with a view to all or any of them being offered for subscription or purchase, any document by which the units are so offered shall for all purposes be deemed to be a prospectus, and all laws regulating the contents of prospectuses and providing for liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any unit were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

Document containing offer for subscription or purchase deemed to be prospectus.

(2) Subregulation (1) shall not apply in relation to an offer made in the ordinary course of trading on the stock market of a stock exchange.

(3) For the purposes of this regulation it shall, unless the contrary is proved, be evidence that an issue or an agreement to issue, any unit was made with a view to the unit being offered for subscription or purchase if it is shown that—

- (a) an offer was made within one year after the issue or agreement to issue; or
- (b) on the date when the offer was made the whole consideration to be received in respect of the unit had not been received.

(4) The requirements of these Regulations as to prospectuses shall have effect as though the person making an offer to which this regulation relates is a person responsible for the prospectus.

(5) In addition to complying with the other requirements of these Regulations the document making the offer shall state—

- (a) the net amount of the consideration received or to be received in respect of each unit to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the unit has been or is to be issued may be inspected.

(6) Where an offer to which this regulation relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subregulation (1) is signed on behalf of the corporation or the firm by two directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorised in writing.

(7) For the purposes of this regulation (other than subregulation (2)), an invitation to make offers to purchase any unit shall be deemed to constitute an offer of the unit, and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer that is deemed to be constituted by the invitation.

(8) For the purpose of this regulation, "offer" includes making available, or issuing an invitation, for the subscription or purchase of any unit.

Issue of unit where prospectus implies that application for permission to list on stock exchange has been made.

14. (1) Where a prospectus states or implies that an application has been or will be made for permission for the unit offered thereby to be listed for quotation on the official list of any stock exchange, any issue made on an application to subscribe for or purchase any unit in pursuance of the prospectus shall, subject to subregulation (3), whenever made, be void if—

- (a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the stock exchange is open after the date of issue of the prospectus; or
- (b) the permission is not granted before the expiration of a period of six weeks from the date of the issue of the prospectus or such longer period not exceeding twelve weeks from the date of the issue of the prospectus as is, within the period of six weeks, notified to the applicant by or on behalf of the stock exchange.

(2) Where the permission has not been applied for, or has not been granted as mentioned in subregulation (1), the management company shall, subject to subregulation (3), within a period of fourteen days from the date the issue of the units becomes void, repay without interest all money received from applicants in pursuance of the prospectus, and if any such money is not repaid within that

period then, in addition to the liability of the management company, the officers of the management company shall be jointly and severally liable to repay that money with interest at the rate of ten per centum per annum from the expiration of that period.

(3) Where in relation to any unit—

(a) permission is not applied for as specified in paragraph (1)(a); or

(b) permission is not granted as specified in paragraph (1)(b),

the Commission may by notice in writing, on the application of the management company made before any unit is purported to be issued, exempt the management company from the operation of subregulation (1) or (2).

(4) An officer of the management company shall not be liable under subregulation (2) if he proves that the default in the repayment of the money was committed without his consent, where required, or connivance and he exercised all due diligence to prevent the commission of the offence.

(5) Any condition requiring or binding any applicant for any unit to waive compliance with this regulation or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this regulation shall have effect—

(a) in relation to any unit agreed to be taken by a person underwriting an offer thereof or an invitation relating thereto contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus making available, offering or issuing an invitation to subscribe or purchase any unit, as if—

(i) a reference to sale were substituted for a reference to issue;

(ii) the persons by whom the offer is made, and not the management company or officer of the management company, were liable under subregulation (2) to repay money received from applicants, and references to the management company or directors of the management company liability under that subregulation shall be construed accordingly; and

(iii) for the reference in subregulation (7) to the management company and every officer of the management company who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly authorises or permits the default.

(7) All money received from applicants shall be kept by the management company in a separate bank account so long as the management company or any of its officers may become liable to repay it under subregulation (2); and if default is made in complying with this subregulation, the management company and every officer of the management company who is in default shall be guilty of an offence.

(8) Where the stock exchange has within the time specified in paragraph (1)(b) granted permission subject to compliance with any requirements specified by the stock exchange, permission will be deemed to have been granted by the stock exchange if the trustee or the directors of the management company have given the stock exchange an undertaking in writing to comply with the requirements of the stock exchange, but if any such undertaking is not complied with the trustee or each director, as the case may be, who is in default shall be guilty of an offence.

(9) No person shall issue a prospectus in relation to any unit if it includes—

- (a) any false statement that permission has been granted for that unit to be dealt in or quoted or listed on any stock exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to the dealing in, or quoting or listing of, the unit on any stock exchange, or to any requirements of a stock exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the stock exchange within three days of the issue of the prospectus or the statement has been approved by the Commission for inclusion in the prospectus.

(10) Where a prospectus contains a statement to the effect that the deed complies with or have been drawn so as to comply with the requirements of any stock exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this regulation to imply that application has been, or will be, made for permission for the units offered by the prospectus to be listed for quotation on the official list of the stock exchange.

(11) In this regulation—

- (a) "offer" shall have the meaning assigned to it in subregulation 13(8);
- (b) "officer" in relation to a management company means a director, a secretary or an executive officer of the management company.

15. (1) A prospectus that includes a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless—

Expert's consent
to the issue of
prospectus
containing his
statements.

- (a) he has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that he has given and has not withdrawn his consent.

(2) Every person who is knowingly a party to the issue of any prospectus containing a statement which does not comply with paragraph (1)(a) or (1)(b) shall be guilty of an offence.

16. (1) Where it appears to the Commission that—

Order to stop
issue of unit.

- (a) a prospectus lodged in relation to any unit contravenes any of the requirements of these Regulations;
- (b) the prospectus contains a statement or information that is false or misleading;
- (c) the prospectus contains a statement or information from which there is a material omission; or
- (d) the prospectus contains a material misrepresentation,

the Commission may, by order in writing served on the trustees and management company, direct that no further unit to which the prospectus relates be issued or sold, as the case requires.

(2) Subject to subregulations (3) and (5), the Commission shall not make an order under subregulation (1) unless the Commission has held a hearing and given a reasonable opportunity to any interested persons to make oral or written submissions to the Commission on the question whether such an order should be made.

(3) If the Commission considers that any delay in making an order under subregulation (1) pending the holding of a hearing would be prejudicial to public interest, the Commission may make an interim order or interim orders under that subregulation without holding a hearing.

(4) Subject to subregulation (5), an interim order, unless sooner revoked, has effect until the end of twenty-one days after the day on which it is made.

(5) At any time during the hearing, the Commission may make an interim order under subregulation (1) that is expressed to have effect until the Commission makes a final order after the conclusion of the hearing or until the interim order is revoked, whichever first happens.

(6) While an order is in force under this regulation—

- (a) these Regulations shall apply as if the prospectus had not been lodged; and
- (b) a person is not entitled to lodge a further prospectus in relation to the units, other than a supplementary prospectus.

(7) If, while an order is in force under this regulation, the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exist, the Commission may, by further order in writing, revoke the first-mentioned order.

(8) A person who breaches an order made under subregulation (1) shall be guilty of an offence.

Criminal liability
for statement in
prospectus.

17. (1) No person shall authorise or cause the issue of a prospectus which contains—

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

F.M.S. Cap. 45.

(2) No person shall abet or engage in a criminal conspiracy (as those terms are defined in the Penal Code) to issue or cause to be issued a prospectus that he knows to be misleading or is likely to mislead.

(3) It shall be a defence to a prosecution for a contravention of subregulation (1) or (2) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time he makes the statement or provides the information or engages in the conduct referred to in subregulation (2) believe that—

- (a) the statement or information was true and not misleading;
- (b) the omission was not material;
- (c) there was no material omission; or
- (d) the conduct in question was not misleading.

(4) For the purpose of subregulation (1), "prospectus" includes supplementary prospectus.

Publishers not
liable.

18. In a prosecution for the publication of a prospectus in contravention of regulation 17, it is a defence if it is proved that the defendant is a person whose business it is to publish, or arrange for the publication of, prospectuses, and that the person received the prospectus for publication in the ordinary course of business and did not know and had no reason to believe that its publication would amount to a contravention of that regulation.

19. Where the defendant is—

Non-consenting
persons not liable.

- (a) a director of a management company;
- (b) a person who authorised or caused himself to be named, and is named in the prospectus as a director or as having agreed to become a director of a management company; or
- (c) a director of a corporation or a member of a firm referred to in regulation 13,

it is a defence to a prosecution for the contravention of regulation 17, if the defendant proves that—

- (aa) having consented to become a director of the management company or corporation, or member of the firm, as the case may be, the defendant withdrew his consent before the issue of the prospectus;
- (bb) the prospectus was issued without the defendant's authority, knowledge or consent;
- (cc) as soon as practicable—
 - (i) after the defendant became aware of the issue of the prospectus; or
 - (ii) after the prospectus was issued, as the case may be, the defendant gave notice to the public in a manner approved by the Commission that the prospectus was issued without the defendant's consent; and
- (dd) after the issue of the prospectus and before any issue or sale under the prospectus, the defendant, on becoming aware of any false or misleading statement in, or any omission from, the prospectus, withdrew the defendant's consent to the issue of the prospectus and gave notice to the public of the withdrawal and of the reason for the withdrawal in a manner approved by the Commission.

20. (1) It is a defence to a prosecution for the contravention of subregulation 17(1) if the false or misleading statement or material omission from a statement is or is based on, a statement made by an expert, which is contained in a copy of, or extract from, a report or valuation of an expert, and it is proved by the defendant that—

Reliance on
experts's
statement.

- (a) the statement accurately represented the statement made by the expert, or the copy or extract was a correct copy, or extract from, the report or valuation, as the case may be; and
- (b) the defendant, after making such enquiries as were reasonable in the circumstances, had reasonable grounds to believe,

and did believe until the time of the issue or sale of the unit, that the expert who made the statement, report or valuation, as the case may be—

- (i) was competent to make it;
- (ii) had given the consent required by regulation 15 to the issue of the prospectus; and
- (iii) had not withdrawn that consent.

(2) It is a defence to a prosecution for a contravention of subregulation 17(2) in respect of conduct that is misleading or is likely to mislead if the conduct consists of a representation made in reliance on a statement made by an expert or contained in a report or valuation of an expert and it is proved by the defendant that—

- (a) the representation accurately represented the statement made by the expert or contained in the report or valuation of the expert, as the case may be; and
- (b) the defendant, after making such inquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did believe until the time of the issue or sale of the units, that the expert who made the statement, report or valuation, as the case may be—

- (i) was competent to make it;
- (ii) had given the consent required by regulation 15 to the issue of the prospectus; and
- (iii) had not withdrawn that consent.

21. (1) It is a defence to a prosecution for the contravention of subregulation 17(1) if the false or misleading statement or material omission from a statement in a prospectus is or is based on a statement made by a public officer in the course of his duties, or is contained in a copy of, or an extract from, a report or valuation of a public officer made in the course of his duties, and it is proved by the defendant that—

- (a) the statement accurately represented the statement made by the public officer including the context and form in which it was originally made, or the copy or extract was a correct copy of, or extract from the document, as the case may be; and
- (b) the defendant had reasonable grounds to believe, and did believe until the time of the issue or sale of the units, that the statement was true and not misleading and that there was no material omission from the statement, as the case may be.

(2) It is a defence to a prosecution for the contravention of subregulation 17(2), in respect of conduct that is misleading or is likely to mislead if the conduct consists of a representation made in reliance on a statement made by a public officer or contained in a document made by a public officer, and it is proved by the defendant that—

- (a) the statement accurately represented the statement made by the public officer including the context and form in which it was originally made, or was contained in a document made by the public officer, as the case may be; and
- (b) the defendant had reasonable grounds to believe, and did believe until the time of the issue or sale of the units, that the representation was not misleading or likely to mislead.

(3) In this regulation, “public officer” includes—

- (a) a member of the administration as defined in Article 160 of the Federal Constitution;
- (b) a member, an officer, an employee or a servant of any body, corporate or unincorporate, having the power—
 - (i) to act under and for the purpose of any written law in force in Malaysia or any part thereof relating to local government, public health or undertakings of public utility; or
 - (ii) to administer funds belonging to the Government of Malaysia or any State Government or money raised by rates, taxes or charges in pursuance of any written law in force in Malaysia or any part thereof.

22. (1) It is a defence to his prosecution for the contravention of regulation 17 if an expert who consented to the issue of the prospectus or to act in the relevant capacity proves that immediately after he becomes aware of any contravention of regulation 17—

Liability of
experts.

- (a) he withdrew the consent in writing;
- (b) he gave notice to the public of the withdrawal and of the reasons for the withdrawal in a manner approved by the Commission; and
- (c) he lodged a notice of the withdrawal with the Commission.

(2) Notwithstanding subregulation (1), an expert shall remain liable for any offence committed prior to the lodgement of the notice referred to in that subregulation.

23. An expert who is involved in the preparation of part only of the prospectus shall not be liable for the contravention of subregulation 17(1) in respect of a false or misleading statement in, or a material omission from, the prospectus if he proves that there is an express statement in the prospectus that the expert was involved only in the preparation of that part and—

- (a) the false or misleading statement was not included in, or the matter was not omitted from, that part of the prospectus; or
- (b) in the case of a false or misleading statement, the statement made by the expert was not included in, or substantially in, the form and context that the expert had agreed to.

PART IV

DEED

24. (1) A deed shall contain covenants to the following effect, namely:

- (a) the management company shall carry on and conduct its business in a proper and efficient manner and ensure that any unit trust scheme to which the deed relates is carried on and conducted in a proper and efficient manner;
- (b) the management company shall pay to the trustee, within fourteen days after their receipt by the company, any moneys that, under the deed, are payable by the company to the trustee;
- (c) the management company shall not sell any unit of the unit trust scheme to which the deed relates otherwise than at a price calculated in accordance with the deed;
- (d) the management company shall, at the request of the unitholder, purchase from the unitholder the unit held by the unitholder, and the purchase price will be a price calculated in accordance with the deed;
- (e) to the same extent as if the trustee were the director of the management company—
 - (i) the management company shall make available to the trustee, or to any approved company auditor appointed by the trustee, for inspection the whole of the books of the company wherever kept;
 - (ii) the management company shall give to the trustee or such auditor such oral or written information as it or he requires with respect to all matters relating to the unit trust scheme or any investment or

property (whether acquired before or after the date of the deed) of the unit trust scheme or otherwise relating to the affairs thereof;

- (f) the management company shall make available, or ensure that there is made available, to the trustee such information as the trustee requires with respect to all matters relating to the unit trust scheme to which the deed relates;
- (g) the management company shall not exercise the voting rights with respect to the units it holds in any unitholders' meeting, regardless of the party who requested for and called the meeting and the matter or matters that are laid before the unitholders;
- (h) the trustee shall exercise all due diligence and vigilance in carrying out its functions and duties and in safeguarding the rights and interests of the unitholders to which the deed relates;
- (i) the trustee shall keep or cause to be kept proper books of account in relation to the investments and properties of the unit trust scheme;
- (j) the trustee shall ensure that proper records are kept of all transactions, dividends, interests and income received and distributed in respect of the unit trust scheme to which the deed relates;
- (k) the trustee shall cause the accounts referred to in paragraph (i) to be audited at the end of each financial year by an approved company auditor appointed by the trustee;
- (l) the trustee shall send or cause to be sent by post a statement of the accounts with the report of the auditor thereon within two months of the end of the financial year, to each unitholder;
- (m) the trustee shall attach together, with the statement of accounts as required under paragraph (l) the annual report of the trustee to the unitholders, stating whether, in the trustee's opinion the management company has managed the scheme in that period—
 - (i) in accordance with the limitations imposed on the investment powers of the management company and the trustee under the deed; and
 - (ii) in accordance with the provisions of the deed, these Regulations and securities laws,

and, if it has not done so, the respects in which the management company has not done so and the steps which the trustee has taken in respect thereof;

- (n) the management company and the trustee shall safeguard the interests of the unitholders;
- (o) the management company and the trustee shall ensure that no money available for investment under the deed will be invested in or lent to the management company, or the trustee or any related corporation of the management company or of the trustee;
- (p) the management company and the trustee shall ensure that for the duration of the unit trust scheme, there is a registered deed in force at all times;
- (q) the management company and the trustee shall ensure that investments are not made such that any related corporation or associated person, as the case may be, of the management company or trustee gains, directly or indirectly, any advantage;
- (r) the management company or the trustee shall not exercise the right to vote in respect of any shares forming part of the investments of the unit trust scheme to which the deed relates which is held by the trustee at any election for the appointment of any director of a corporation whose shares are so held, without the consent of the majority of the unitholders to which the deed relates voting at a meeting of those unitholders summoned in the manner provided for in paragraph (s) for the purpose of authorising the exercise of the right to vote at the next general meeting of the corporation;
- (s) the management company shall within twenty-one days after an application is delivered to the management company at its registered office, being an application by not less than fifty, or one-tenth in number, whichever is less, of the unitholders to which the deed relates summon a meeting of the unitholders—

- (i) by sending a notice by post of the proposed meeting at least seven days before the proposed meeting to each of those unitholders at his last known address or in the case of joint unitholder to the joint unitholder whose name stands first in the management company's records; and

- (ii) by publishing at least fourteen days before the proposed meeting an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia, and in one other newspaper as may be approved by the Commission,

for the purpose of laying before the meeting the accounts and balance sheet which were laid before the last preceding

annual general meeting of the management company or the last audited statement of accounts of the trustee, or for the purpose of giving to the trustee such directions as the meeting thinks proper;

- (t) the management company shall, unless otherwise specified in writing by the Commission, ensure that the unit trust scheme has at all times an appointed trustee; and
- (u) the trustee shall, unless otherwise specified in writing by the Commission, ensure that the unit trust scheme has at all times an appointed management company.

(2) A meeting summoned for the purpose of a covenant contained in the deed in pursuance of paragraph (1)(r) or (1)(s) shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice, chaired by—

- (a) such a person as is appointed in that behalf by the unitholders to which the deed relates present at the meeting; or
- (b) where no such appointment is made, a nominee of the trustee approved by the Commission,

and shall be conducted in accordance with the deed or, if the deed makes no provision, as directed by the chairman of the meeting.

(3) Notwithstanding anything to the contrary contained in a deed, the unit trust scheme to which the deed relates may continue in operation or existence, if it appears to be in the interest of the unitholders to which the deed relates that it so continues, during such period as is or such periods as are agreed upon by the trustee and the management company.

(4) Where a direction is given to the trustee at a meeting summoned pursuant to a covenant complying with paragraphs (1)(r) and (1)(s), the trustee—

- (a) shall comply with the direction unless it is inconsistent with the deed, these Regulations and securities laws; and
- (b) shall not be liable for anything done or omitted to be done by reason of the trustee following that direction.

(5) Where the trustee is of the opinion that any direction given under subregulation (4) is inconsistent with the deed, these Regulations or securities laws, the trustee may apply to the Court for an order confirming, setting aside or varying the direction and the Court may make such order as it thinks fit.

25. A deed shall also contain the following matters:

- (a) such particulars as are sufficient to disclose the nature of the unit trust scheme, and the nature of the unit, to which the deed relates;
- (b) a provision expressly appointing a trustee as the trustee of the unit trust scheme to which the deed relates;
- (c) a provision creating a trust, or containing a declaration of trust, and setting out full particulars of the trust, including precise information as to the circumstances in which the money, securities, investments and properties subject to the trust are or will be vested in the trustee, and the duties and obligations of the trustee towards the unitholders in regard to those properties;
- (d) a provision for, and full particulars with respect to—
 - (i) the retirement, removal and replacement of the trustee;
 - (ii) the retirement, removal and replacement of the management company or, if the management company is not liable to be removed by the trustee or by the unitholders, a statement of that fact;
 - (iii) the appointment, retirement, removal and replacement of the approved company auditor of the accounts relating to investments and properties of the unit trust scheme;
 - (iv) the duration, if ascertainable, of the unit trust scheme or, if the duration is not ascertainable, a statement of that fact; and
 - (v) the termination or winding up of the unit trust scheme;
- (e) where any unit to which the deed relates consists of rights or interests in or arising out of an investment relating to property that tends to depreciate in value through use or effluxion of time, particulars of the provision made or to be made for the replacement of that property and the source or sources from which replacement is to be made or from which the cost of the replacement is to be met or, if no provision is made, a statement of that fact;
- (f) full particulars of—
 - (i) the method of calculation of the price at which a unit may be issued by the management company;

- (ii) the circumstances in which the management company or any other person may be required to purchase from the unitholder any unit for which the unitholder has subscribed or which he has acquired, and the method of calculation of the purchase price of the unit;
 - (iii) the circumstances in which, and methods by which, all or any of the investments or other properties which an interest to which the deed relates comprises or which form part of that interest may be varied;
 - (iv) the conditions governing the transfer of any unit to which the deed relates;
 - (v) the conditions governing the distribution of income to the unitholders; and
 - (vi) the remuneration of the trustee and of the management company, respectively, including the charges (if any) that will be made by way of that remuneration upon the subscription for or sale of a unit and upon the distribution of income and capital or otherwise in connection with the unit trust scheme;
- (g) specific provisions relating to the convening of meetings of unitholders;
- (h) specific provisions whereby the management company undertakes to keep and maintain an up-to-date register of unitholders and to make that register available for inspection, free of charge, to any unitholder at any time when the management company's office is required by these Regulations to be accessible to the public;
- (i) where the deed is capable of modification, provisions governing the modification of the deed;
-
- (j) a declaration—
- (i) that no unit shall be issued by the management company later than one year after the date of the prospectus;
 - (ii) unless the conditions of issue of any unit expressly provide that a certificate be not issued, that a certificate shall be issued by the trustee to a purchaser of or a subscriber for any unit purchased or subscribed for in pursuance of the prospectus not more than two months after the issue of the unit or any sub-unit; and

- (k) where the deed requires, or confers a right on, unitholders to enter into an agreement in connection with the unit trust scheme, a provision incorporating, whether by way of annexure or otherwise, the terms and conditions of that agreement.

Modification of deed through supplementary deed.

26. (1) A modification may be made to the deed only by a deed, expressed to be supplementary to the principal deed, entered into by the management company and the trustee and lodged by the management company with the Commission for registration.

(2) The supplementary deed lodged for registration must be accompanied by—

(a) a resolution of not less than two-thirds of all unitholders at a unitholders' meeting duly convened and held according to the provisions of the deed sanctioning the proposed modification to the deed; or

(b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unitholders and does not operate to release the trustee or the management company from any responsibility to the unitholders.

(3) Notwithstanding paragraph (2)(b), the Commission may require the management company in any application for registration of a supplementary deed to obtain a resolution under paragraph (2)(a).

(4) A supplementary deed proposing modification, alteration or addition to the deed which—

(a) affects any express restriction imposed by the deed on the powers which the management company and the trustee or either of them would otherwise be able to exercise within these Regulations;

(b) would increase the maximum service charge and annual management fee payable to the management company, whether payment is out of the property of the unit trust scheme or otherwise; or

(c) would increase the payment from the property of the unit trust scheme to the trustee by way of remuneration for the trustee's services,

shall be submitted for registration accompanied by a resolution under paragraph (2)(a).

(5) A supplementary deed shall be deemed to be part of the deed to which it relates for the purposes of these Regulations.

PART V

DUTIES

27. (1) The management company and the trustee shall each make available without charge a copy of the prospectus, supplementary prospectus, deed and supplementary deed for inspection to any member of the public.

Public availability of prospectus and deed.

(2) The copies of documents referred to in subregulation (1), shall be made available at all times for inspection during ordinary business hours at the principal place of business where—

(a) the management company carries on the business of managing; and

(b) the trustee carries on the business of acting as trustee of, the unit trust scheme to which the deed relates.

(3) Copies of documents referred to in subregulation (1) shall be made obtainable by any member of the public at all times upon payment of a reasonable fee.

(4) Any person who contravenes this regulation shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit and shall be liable to a further fine not exceeding one thousand ringgit for every day during which the offence continues after conviction, except that the maximum fine shall not exceed twenty-five thousand ringgit.

28. (1) A management company shall manage the unit trust scheme in accordance with—

Duties of the management company.

(a) the provisions of the deed, these Regulations and securities laws; and

(b) acceptable and efficacious business practice in the unit trust industry.

(2) The management company and its related corporations may not act as principals in the sale and purchase of investments and properties to and from the unit trust scheme.

(3) The management company shall only transact in investments and properties on behalf of the unit trust scheme it manages and not on behalf of any other person or its own behalf.

(4) A management company shall not in any manner make any inequitable or illegal profit from its fiduciary position.

29. (1) The trustee shall take custody or under his control, all the investments and properties of the unit trust scheme and hold them in trust for the unitholders in accordance with the provisions of the deed, these Regulations and securities laws.

Duties of the trustees.

(2) A trustee shall—

- (a) act in accordance with the provisions of the trust deed, these Regulations and securities laws;
- (b) ensure that the management company manages the unit trust scheme in accordance with the provisions of the deed, these Regulations and securities laws; and
- (c) immediately notify the Commission of any irregularity, any breach of any provision of the deed, these Regulations or securities laws and any other matters which in the trustee's opinion may indicate that interests of the unitholders are not being served.

Duties of the management company and trustee under other laws.

30. The duties of the management company and the trustee imposed on them by these Regulations and the deed are in addition to and not in derogation from the duties which are otherwise imposed on them by any other laws.

Returns, information, etc.

31. (1) Where a deed is or has at any time been a registered deed, the management company shall, so long as the deed or any supplementary deed remains in force, lodge with the Commission, within two months after the end of each financial year applicable to the unit trust scheme to which the deed relates—

(a) a summary of—

- (i) all purchases and sales of any investment, property, land and securities affecting the interests of the unitholders during the financial year;
 - (ii) all other investments and properties affecting the interests of the unitholders made during the financial year, showing the description and quantities of those investments and properties;
- (b) a statement of the total amount of brokerage affecting the interests of the unitholders paid or charged by the management company during the financial year and the proportion thereof paid to any member company, or any agent, employee or nominee of a member company and the proportion retained by the management company;
- (c) a list of all parcels of land and securities, and other investments and properties, held by the trustee in relation to the deed as at the end of the financial year, showing the value of the land, securities or other investments and properties and the basis of the valuations;
- (d) the annual reports of—
- (i) the unit trust scheme;
 - (ii) the management company; and

- (e) such other statements, documents, books and other particulars as may be required by the Commission.

(2) Any document required to be lodged with the Commission by the management company under subregulation (1) shall be signed by at least one of the directors of the management company.

(3) A management company shall, if so requested by any unitholder within a period of one month after the end of the financial year, send by post or cause to be sent by post to the unitholder, within two months after the end of the financial year, a copy of the documents specified in paragraphs (1)(a) to (1)(d) which the management company is required to lodge with the Commission.

32. (1) Where the management company under the deed is in liquidation or where, in the opinion of the trustee, the management company has ceased to carry on business or has, to the prejudice of the unitholders, failed to comply with the deed, the trustee shall summon a meeting of the unitholders—

Winding-up of schemes, etc.

- (a) by sending by post notice of the proposed meeting at least twenty-one days before the proposed meeting to each unitholder at his last known address, or, in the case of joint unitholders, to the joint unitholder whose name stands first in the management company's records; and
- (b) by publishing, at least twenty-one days before the proposed meeting, an advertisement giving notice of the meeting in a national language newspaper published daily and circulating generally throughout Malaysia and in one other newspaper approved by the Commission.

(2) Subregulation 24(2) shall apply to a meeting summoned under subregulation (1) as if the meeting were a meeting summoned under subregulation 24(1).

(3) If at any meeting summoned under subregulation (1) a resolution is passed by a majority in number representing three-fourths in value of the unitholders voting at the meeting that the unit trust scheme be wound up, the trustee shall apply to the Court for an order confirming the resolution.

(4) On an application by the trustee, the Court may, if it is satisfied that it is in the interest of the unitholders, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding-up of the unit trust scheme.

33. (1) Subject to subregulation (2), any provision contained in a deed or in any contract with the unitholders shall be void so far as it would have the effect of exempting a trustee under the deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to show the degree of care, due diligence and vigilance required of a trustee.

Liability of trustee.

(2) Subregulation (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths of the unitholders of units voting at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

PART VI

REGISTER

Register of
unitholders.

34. (1) Every management company shall keep a register of unitholders and enter therein—

Act 78.

- (a) in the case of a unitholder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959, if any, and the nationality of that individual; or
- (b) in the case of a unitholder who is a corporation, the name, registered address and registration number of that corporation.

(2) The management company shall also enter in the register—

- (a) the extent of each unitholder's holdings, distinguishing each unit by its number (if any) or by the number (if any) of the certificate as paid on the units of each unitholder and any other relevant information and particulars of the unitholder;
- (b) the date on which the name of each person was entered in the register as a unitholder; and
- (c) the date on which any person ceases to be a unitholder,

within the previous seven years.

(3) Notwithstanding anything in subregulations (1) and (2), a management company may keep the names and particulars relating to persons who have ceased to be unitholders of the unit trust scheme separately.

(4) The register of unitholders shall be *prima facie* evidence of any matters inserted therein as required or authorised by these Regulations.

(5) Where a unit trust scheme has more than fifty unitholders, the management company shall, unless the register of unitholders is in such a form as to constitute in itself an index, keep an index in a convenient form of the names of the unitholders and shall, within fourteen days after the date on which any alteration is made in the register of unitholders, make any necessary alteration in the index.

(6) The index shall in respect of each unitholder contain a sufficient indication to enable the account of that unitholder in the register to be readily found.

(7) Any person who contravenes subregulation (1), (2), (5) or (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

35. (1) The register of unitholders and index shall be kept at the registered office of the management company in Malaysia.

The place where the register is to be kept.

(2) Any person who contravenes subregulation (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

36. (1) A management company may, on giving not less than fourteen days notice to the Commission, close the register of unitholders at any time, but no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

Closure and inspection of register.

(2) The register and index shall be open for the inspection of any unitholder without charge.

(3) Any person who is not a unitholder may inspect the register and index on payment for each inspection of a reasonable fee as may be charged by the management company.

(4) Any unitholder may request the management company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to his name, address, number of units held by him and amounts paid on the units, and the management company shall, on payment in advance of a reasonable fee as the management company may require, cause any copy so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the management company.

(5) A management company who contravenes subregulation (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

37. (1) Any unitholder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion of any name in the register may apply to the Court for the rectification of the register, and the Court may refuse the application or may order the rectification of the register and the payment by the management company of any damages sustained by any party to the application.

(2) On any application under subregulation (1) the Court may decide—

(a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between unitholders or alleged unitholders or between registered unitholders or alleged unitholders on the one part and the management company on the other part; and

(b) generally, any question necessary or expedient to be decided for the rectification of the register.

38. (1) Any trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a unitholder of any unit trust scheme may become registered as the unitholder in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of that holdings be subject to the same rights and no more as he would have been subject to if the holdings of the deceased person had remained registered in the name of the deceased person.

(2) Any unit held by a trustee, executor or administrator of a deceased person in respect of a particular trust may with the consent of the management company be marked in the register or branch register in such a way as to identify it as being held in respect of the trust.

(3) Except as provided in this regulation, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register and no liabilities shall be affected by anything done in pursuance of subregulation (1) or (2) or pursuant to the law of any other place which corresponds to this regulation and the management company concerned shall not be affected with notice of any trust by anything so done.

39. (1) Notwithstanding subregulation 35(1), a management company may cause to be kept in any place outside Malaysia a branch register of unitholders of a unit trust scheme which shall be deemed to be part of the unit trust scheme's register of unitholders.

(2) The management company shall lodge with the Commission notice of the location of the office where any branch register is kept and of any change in its location, and if the branch office is permanently closed, of its closure, and any such notice shall be lodged within one month after the opening of the office or of the change or closure, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is by these Regulations required to be kept.

(4) The management company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practical after the entry is made, and shall cause to be kept at that office duly entered up from time to time a copy of its branch register, which shall for all purposes of these Regulations be deemed to be part of the principal register.

(5) A management company may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.

(6) Any person who contravenes subregulation (2), (3) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

PART VII

RESTRICTIONS ON OFFERING UNITS FOR SUBSCRIPTION OR PURCHASE

40. (1) Except as otherwise expressly provided in this regulation, a person shall not, whether by appointment or otherwise, go from place to place—

Restrictions on offering units for subscription or purchase.

(a) making—

(i) an unsolicited invitation to subscribe for or purchase any unit;

(ii) an unsolicited offer of any unit for subscription or purchase; or

(iii) an unsolicited recommendation of any unit; or

(b) otherwise solicit expressions of interest in any unit for subscription or purchase or provide further information or notices that recommend or make invitations or offers with respect to the unit.

(2) Subregulation (1) shall not—

(a) prohibit an exempt dealer, a licensed person or any other person, allowed in writing by the Commission, from issuing or making invitations or offers or recommendations—

- (i) in relation to any unit that is listed for quotation on a stock market of a stock exchange in Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission;
- (ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:

(A) the person has acquired or sold the unit through the exempt dealer, licensed person or other person, allowed in writing by the Commission, in the twelve months before the issue or making of the invitation or offer or recommendation; or

(B) when the invitation or offer or recommendation is issued or made, a written agreement is in force under which the exempt dealer, licensed person or other person, allowed in writing by the Commission, is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any unit by the person, or advise the person about the acquisition or sale of any unit by the person:

Provided that exempt dealer, a licensed person or any other person, allowed in writing by the Commission shall not breach its duties owed to the client or person referred to in paragraph (i) or (ii) under the Securities Industry Act 1983 or any other law;

- (b) an invitation or offer that is made in, or accompanied by, a prospectus that complies with these Regulations; or
- (c) an invitation or offer or recommendation in relation to units which has been exempted in writing by the Commission from the operation of subregulation (1).

(3) A person shall not, whether by appointment or otherwise, go from place to place—

- (a) issuing invitations to subscribe for or purchase any unit of a unit trust scheme that is proposed to be formed; or

- (b) offering units of a unit trust scheme that is proposed to be formed for subscription or purchase.

(4) In this regulation, a reference to a person going from place to place includes a reference to a person communicating with other persons at different places by the use of a postal, telegraphic, telephonic or other communication service or device.

PART VIII

MISCELLANEOUS

41. There shall be paid to the Commission the fees specified in the Third Schedule. Fees.

42. (1) Any person may, on payment of the fees specified in the Third Schedule, inspect, request for a copy of or an extract from any prospectus or deed that has been registered by the Commission not being a prospectus or deed that has been destroyed or disposed of under subregulation (2). Inspection of prospectus or deed.

(2) If the Commission is of the opinion that it is no longer necessary or desirable to retain any prospectus, deed or any other document which has been sent to, lodged with, or registered by, the Commission, it may destroy the prospectus, deed or document.

(3) A copy of or an extract from any prospectus or deed certified by the Commission to be a true copy or extract shall be admissible in any proceedings as evidence having equal validity with the original document.

43. Any provision in any agreement, so far as it purports to exclude or restrict a liability of any person for the contravention of any provision of these Regulations shall be void. Agreement to exclude or restrict liability void.

44. (1) Where any unit has been issued by a management company before the date of coming into force ("effective date") of these Regulations, and these Regulations would have applied in relation to the issue of the unit if the units had been issued on or after the effective date, subject to the provisions of this regulation, then— Saving and transitional.

(a) every deed and supplementary deed which has been approved prior to the effective date under any corresponding law in force in Malaysia and applicable to such deeds before that date shall be deemed to be registered under these Regulations;

(b) any deed or supplementary deed falling under paragraph (a) shall, if it does not contain the covenants required by these Regulations to be contained in the deed or supplementary deed, be deemed to contain those covenants;

- (c) any prospectus offering or inviting the public to purchase any unit that has been registered under the law referred to in paragraph (a) shall be deemed to be registered under these Regulations and shall remain valid for six months from the date of the registration under that law; and
- (d) any promotional materials and advertisements that have been approved under a previous corresponding law shall be deemed to be approved under these Regulations.

(2) A deed falling under paragraph (1)(a) shall, within the period of two months after the effective date, be lodged with the Commission, and if upon the expiration of such period the deed has not been lodged with the Commission, the registration of the deed under paragraph (1)(a) shall be deemed to have been revoked.

FIRST SCHEDULE

(Subregulation 3(2))

APPLICATION PROCEDURE

1. An application for approval under paragraph 3(a) of these Regulations shall consist of—
 - (a) a letter of application;
 - (b) the Memorandum and Articles of Association of the applicant;
 - (c) information on the structure and operations of the applicant;
 - (d) the organisational chart of the applicant;
 - (e) the names, addresses, qualifications and relevant experience of directors;
 - (f) the shareholding structure of the holding company and details of substantial shareholders;
 - (g) names, addresses, qualifications and relevant experiences of the key management;
 - (h) the previous five years' audited accounts and directors' reports for the applicant;
 - (i) copy of fund management business code of practice;
 - (j) information on the investment department's process and procedures;
 - (k) information on the compliance procedures and a copy of the compliance manual;
 - (l) information regarding the marketing department and its marketing strategy;
 - (m) a statutory declaration from the applicant stating that it is independent of the trustee;
 - (n) a copy of any external auditor's management report;
 - (o) the list of unit trust schemes under its management and the past performance thereof; and
 - (p) any other information to demonstrate that the applicant is a fit and proper person to act as a management company of a unit trust scheme.

(c) information on transactions:

- (i) the minimum initial investment, referring to the minimum amount of units, that may be purchased by the unitholder in the unit trust scheme upon application for units in the unit trust scheme;
- (ii) the minimum additional investment, referring to the minimum amount of units, that may be purchased by the investor in the unit trust scheme upon application for additional units in the unit trust scheme;
- (iii) the minimum redemption, referring to the minimum amount of units, that may be resold to the management company by the unitholder at any single transaction in return for a cash consideration;
- (iv) restriction on the frequency of redemption, if any;
- (v) the period for realisation of redemption moneys, referring to the time period by which the investor would be able to receive the cash consideration for the units resold to the management company;
- (vi) a statement as to the maximum commission or brokerage that may be paid out of the sale or issue price of units expressed in absolute terms and as a percentage of the net amount to be credited in the unit trust scheme;
- (vii) notice of cooling-off period; and
- (viii) exit and re-entry option, if any;

(d) earnings distribution:

- (i) distribution policy of the unit trust scheme;
- (ii) distribution of earnings from income for the past one year;
- (iii) distribution of earnings from realised capital gains for the past one year; and
- (iv) a statement in bold print of the same type size as the rest of the prospectus stating to the effect that the past earnings record is not a guarantee as to future distributions;

(e) other information/statement:

- (i) a statement to the effect that the prospective unitholder should read the prospectus carefully and to consult their adviser if the prospective unitholder is in any doubt about any feature or nature of the unit trust scheme; and
- (ii) a statement that past performance is no indication of future performance.

2. Explanation as to investing in unit trust schemes

- (1) The prospectus should explain the basics of investing in unit trust schemes as well as the regulatory regime governing unit trust schemes.
- (2) The prospectus may also explain the benefits of investing in unit trust schemes in comparison to investing in other form of investments.
- (3) The prospectus shall explain the investment objective and strategy for the unit trust scheme in detail. The prospectus may explain the benefit and / or reasons as to why the management company has adopted the particular strategy for the unit trust scheme.

- (4) The prospectus shall contain an explanation as to the function of the Board of directors, investment committee and management company (and external investment manager if one is used) in the particular unit trust scheme.

3. The management company of the unit trust scheme

The prospectus shall have in it a section on the management company of the unit trust scheme. This section shall contain the following details:

- (a) full details of the experience of the management company;
- (b) the qualifications and experience of the directors and key employees, being the senior management, of the management company;
- (c) full details of the experience of the external investment manager or adviser, where one is used;
- (d) the qualifications and experience of the directors and key employees of the external investment management company; and
- (e) the qualifications and experience of the members in the investment committee, being the committee of the unit trust scheme which is responsible for the investment strategy of the unit trust scheme.

4. The trustee of the unit trust scheme

The prospectus shall have in it, a brief section on the trustee of the unit trust scheme. This section shall contain the following details:

- (a) the name and address of the trustee for the unit trust scheme;
- (b) a brief description of the obligations of the trustee;
- (c) a brief account on the retirement of the trustee, and the circumstances in which the trustee can retire, or be required to retire or be removed from office; and
- (d) a brief statement as to the willingness of the trustee to assume the position and all the obligation that comes along with it under the trust deed, all relevant written laws and rules of laws, and also its willingness to provide indemnity to the management company for the benefit of unitholders of the unit trust scheme for any loss incurred as a result of non-performance of the trustees.

5. Rights of a unitholder

The prospectus shall have a section on the rights of a unitholder in the unit trust scheme as may be contained in the trust deed to the unit trust scheme.

6. Fees and charges

The prospectus shall prominently disclose details of—

- (a) all initial ("front end") fees, and other fees, charges and other income to be earned by the management company and the trustee in such a way that the prospective unitholder can discern with certainty what these amounts might be;
- (b) any additional form of remuneration which the management company or any related corporation or associated person may derive;
- (c) expenses borne and to be borne by the unit trust scheme;
- (d) fees applicable when buying and selling units; and
- (e) the Management Expense Ratio (MER) for the last three financial years if possible (where a unit trust scheme has not been in existence for a complete financial year the MER shall be shown on an annualised basis

with reference to the period covered and to the fact that the MER has been annualised) and an explanation as to its calculation. In the case of a first prospectus, the MER will not be required.

7. Effect of investment on taxation liability

The prospectus shall disclose the tax liability of investing in the unit trust scheme.

8. Accountant's Report and other financial information

- (1) The prospectus shall contain an accountant's report for the unit trust scheme for the past five (5) financial years (if applicable) immediately preceding the date of the prospectus. The report shall contain the following:
 - (a) a condensed profit and loss account, and balance sheet for the past five (5) financial years in tabular form;
 - (b) the date of distribution of income in respect of each unit for the past five (5) years;
 - (c) the amount of the distribution for the past five (5) years where available;
 - (d) the extent to which the distribution consisted of any item other than dividends, interests or bonuses and the nature and amount of such components; and
 - (e) a brief explanation as to the significant accounting policies used.
- (2) The prospectus shall also contain a condensed profit and loss account for the past five (5) financial years of the management company.

9. Director's Statement

The prospectus shall contain a signed statement from the directors of the management company stating that the prospectus presents a true and fair account of the unit trust scheme and the management company.

10. Disclosures and Consents

The prospectus shall contain all the necessary disclosure as to interest and benefits of the management company and trustee, any brokerage payable to any agents involved, any exemptions granted on the unit trust scheme, and a statement of consent from all relevant parties.

THIRD SCHEDULE

(Regulation 41)

FEES

PART I

PROSPECTUS AND DEED

<i>Matter</i>	<i>Fees (RM)</i>
1. Registration of prospectus	1500.00
2. Registration of deed	1500.00

PART II
OTHER FEES

<i>Matter</i>	<i>Fees (RM)</i>
1. Approval of management company	1000.00
2. Approval of trustee	500.00
3. Lodging or depositing of documents	50.00
4. Perusal of documents under regulation 42	10.00
5. Copy or extract of a document under regulation 42	1.00 per page
6. Certified true copy of prospectus, supplementary prospectus, deed or supplementary deed	5.00 per page
7. Lodging of any application where no fees are specifically provided	50.00

Made 29 August 1996.

*Chairman,
Securities Commission*

Approved 30 August 1996.
[S. (8.02) 443-20; PN. (PU²) 563.]

ANWAR IBRAHIM,
Minister of Finance