

# **BUSINESS TRUSTS ACT**

## **PART I**

### **PRELIMINARY**

#### **Short title**

**1.** This Act may be cited as the Business Trusts Act.

#### **Interpretation**

**2.** In this Act, unless the context otherwise requires —

"accounting records" , in relation to a registered business trust, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the registered business trust are made up;

"accounts" means profit and loss accounts, balance sheets and cash flow statements, and includes notes (other than auditors' reports or directors' reports) attached to or intended to be read with any of those profit and loss accounts, balance sheets or cash flow statements;

"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);

"approved liquidator" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"audit committee" , in relation to a registered business trust, means the audit committee of the trustee-manager of a registered business trust established in accordance with section 15;

"Authority" means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186);

"book" has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

"business" , in relation to a registered business trust, means the business relating to the trust property of the registered business trust and managed and operated

by the trustee-manager of the registered business trust in its capacity as trustee-manager of the registered business trust;

"business trust" means —

(a) a trust that is established in respect of any property and that has the following characteristics:

(i) the purpose or effect, or purported purpose or effect, of the trust is to enable the unitholders (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) to participate in or receive profits, income or other payments or returns arising from the management of the property or management or operation of a business;

(ii) the unitholders of the trust do not have day- to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;

(iii) the property subject to the trust is managed as a whole by a trustee or by another person on behalf of the trustee;

(iv) the contributions of the unitholders and the profits or income from which payments are to be made to them are pooled; and

(v) either —

(A) the units in the trust that are issued are exclusively or primarily non-redeemable; or

(B) the trust invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes referred to in section 284 of the Securities and Futures Act (Cap. 289) and is listed on a securities exchange; or

(b) a class or description of trust that is declared by the Authority, by notice published in the *Gazette*, to be a business trust for the purposes of this Act, but does not include the types of trusts specified in the Schedule;

"company" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"corporation" has the same meaning as in section 4 (1) of the Companies Act;

"creditor" , in relation to a registered business trust, means a creditor of the trustee-manager of the registered business trust where the liability owing to such

creditor was incurred by the trustee-manager on behalf of the registered business trust;

"debenture" has the same meaning as in section 239 (1) of the Securities and Futures Act and, in relation to a registered business trust, means a debenture issued by the trustee-manager of the registered business trust in its capacity as trustee-manager of the registered business trust;

"deed" means any deed which creates a trust or provides for the governance of the affairs of the trust and the conduct of its business and includes any instrument amending or affecting the deed;

"derivative" , in relation to a unit in a business trust, means any right or interest, whether legal or equitable, in the unit in the business trust, by whatever name called, and includes any option to acquire any such right or interest in the unit in the business trust;

"director" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"document" has the same meaning as in section 4 (1) of the Companies Act;

"electronic communication" has the same meaning as in section 4 (1) of the Companies Act;

"exempt private company" has the same meaning as in section 4 (1) of the Companies Act;

"expert" has the same meaning as in section 4 (1) of the Companies Act;

"financial year" , in relation to a registered business trust, means the period in respect of which any profit and loss account of the registered business trust laid before unitholders of the registered business trust in general meeting is made up, whether that period is a year or not;

"liabilities" , in relation to a registered business trust, means the liabilities incurred by the trustee-manager of the registered business trust on behalf of the registered business trust;

"liquidator" , in relation to a registered business trust, means the person appointed under section 48 (1) to take responsibility for winding up the registered business trust or the Official Receiver when acting as liquidator of the registered business trust;

"listing rules" has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

"officer" has the same meaning as in section 4 (1) of the Companies Act;

"Official Receiver" means the Official Assignee appointed under the Bankruptcy Act (Cap. 20) and includes the deputy of any such Official Assignee and any person appointed as Assistant Official Assignee;

"profit or loss" , in relation to a registered business trust, means the profit or loss resulting from operations of that registered business trust;

"public accountant" means a person who is registered or deemed to be registered under the Accountants Act (Cap. 2) as a public accountant;

"registered business trust" means a business trust that is registered by the Authority under section 4 (1);

"related corporation" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"replacement trustee-manager" means a company that has consented in writing to its election by the unitholders of a registered business trust to replace the resigning trustee-manager or temporary trustee-manager, as the case may be, of the registered business trust;

"resigning trustee-manager" means the trustee-manager of a registered business trust that, in accordance with this Act, proposes to resign, is removed or has resigned from the position of trustee-manager of the registered business trust;

"securities exchange" has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

"substantial shareholder" means a person who has a substantial shareholding in a company in accordance with section 81 of the Companies Act;

"substantial unitholder" , in relation to a registered business trust, means a person who has an interest or interests in units representing not less than 5% of the total voting rights of all the unitholders of the registered business trust;

"temporary trustee-manager" means a company that has been appointed as the temporary trustee-manager of a registered business trust under section 21;

"trust property" , in relation to a business trust, means all property and rights of any kind whatsoever which are held on trust for the unitholders of the business trust, in accordance with the terms of the trust deed, including —

- (a) contributions of money or any other assets to the business trust;
- (b) property that forms part of the assets of the business trust under the provisions of this Act;
- (c) property arising in relation to any contract, agreement or arrangement entered into by or on behalf of the trustee in its capacity as trustee of the business trust;
- (d) property arising in relation to any claims or rights held by or on behalf of the trustee in its capacity as trustee of the business trust;
- (e) proceeds from money borrowed or raised by the trustee of the business trust for the purposes of the business trust;
- (f) property acquired, directly or indirectly, with the contributions or money referred to in paragraph (a), (b), (c), (d) or (e) or with the proceeds thereof; and
- (g) profits, income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c), (d) or (e);

"trustee-manager" , in relation to a registered business trust, includes a replacement trustee-manager and temporary trustee-manager;

"unit" , in relation to a business trust, means a share in the beneficial ownership in the trust property of the business trust;

"unitholder" means a person who holds units in a business trust.

*[Companies 1994 Ed., ss. 4, 81; SFA 2002 Ed., s. 2; Aust. Corp. 2001, s. 9]*

## **PART II**

### **REGISTRATION OF BUSINESS TRUSTS**

#### **Application for registration**

**3.** —(1) The proposed trustee-manager of a business trust may apply for the registration of the business trust by lodging an application with the Authority in such form and manner as the Authority may prescribe.

- (2) An application made under subsection (1) shall be accompanied —
- (a) by such information or record as the Authority may require; and
  - (b) by a prescribed application fee which shall be non-refundable and be paid in such manner as the Authority may specify.

### **Registration of business trusts**

**4.** —(1) The Authority may, upon an application lodged with it by the proposed trustee-manager of a business trust in accordance with section 3, register the business trust.

(2) The Authority may refuse an application to register a business trust if —

- (a) the Authority is not satisfied that the application lodged has complied with section 3;
- (b) the Authority is not satisfied that the proposed trustee-manager of the business trust is a company and not an exempt private company;
- (c) the Authority is not satisfied that the proposed trustee-manager does not carry on any business other than the business of management and operation of the business trust in respect of which the application has been lodged;
- (d) the Authority is not satisfied that the proposed trustee-manager has —
  - (i) complied with sections 14 (1), 15 (1), 28 (1) and 30 (1) (as modified by subsection (6) or pursuant to subsection (7)); and
  - (ii) satisfied any other criteria as the Authority may prescribe;
- (e) the proposed trustee-manager or any of its substantial shareholders is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (f) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the proposed trustee-manager or any of its substantial shareholders;
- (g) the proposed trustee-manager or any of its substantial shareholders has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(h) execution against the proposed trustee-manager or any of its substantial shareholders in respect of a judgment debt has been returned unsatisfied in whole or in part;

(i) the proposed trustee-manager or any of its substantial shareholders or officers —

(i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act; or

(j) the Authority is of the opinion that it would be contrary to the public interest to register the business trust.

(3) Subject to subsection (4), the Authority shall not refuse an application to register a business trust under subsection (1) without giving the proposed trustee-manager of the business trust an opportunity to be heard.

(4) The Authority may refuse an application to register a business trust on any of the following grounds without giving the proposed trustee-manager of the business trust an opportunity to be heard:

(a) the proposed trustee-manager is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the proposed trustee-manager;

(c) the proposed trustee-manager has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(5) The proposed trustee-manager of any business trust who is aggrieved by the refusal of the Authority to register the business trust under subsection (2) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(6) For the purpose of determining whether subsection (2) is satisfied in relation to the business trust —

(a) references in Division 1 of Part III and Part IV to a registered business trust shall be read as including a reference to the business trust referred to in subsection (1); and

(b) references in Division 1 of Part III and Part IV to the trustee-manager of the registered business trust shall be read as including a reference to the proposed trustee-manager of the business trust.

(7) The Authority may prescribe such other modifications to the provisions of Division 1 of Part III and Part IV as may be necessary for their proper application to a proposed trustee-manager of a business trust that has not yet been registered under this Act.

### **Register and notification of change in particulars**

**5.** —(1) The Authority shall establish and maintain a register of registered business trusts, and may prescribe the manner in which the register is established or maintained, including the details or particulars required to be entered in the register.

(2) Any person may, upon payment of such fee as may be prescribed, inspect and take an extract from the register established under subsection (1), and any such extract, certified by the Authority to be a true copy, shall be admissible as evidence in any legal proceedings.

(3) Where a change occurs in any matter in relation to a registered business trust, particulars of which are required to be entered in the register of registered business trusts under subsection (1), the trustee-manager of the registered business trust shall, not later than 14 days after the occurrence of the change, furnish particulars of the change to the Authority in the prescribed form and manner.

(4) Any trustee-manager of a registered business trust which contravenes subsection (3) shall be guilty of an offence.

*[FAA 2000 Ed., ss. 18, 63]*

## **PART III**

### **TRUSTEE-MANAGER**



## ***Division 1 — Responsibilities and powers***

### **Trustee-manager to be company and not to carry on any other business**

**6.** —(1) No person other than a company (not being an exempt private company) shall act as the trustee-manager of a registered business trust.

(2) The business of a registered business trust shall be managed and operated only by the trustee-manager of the registered business trust.

(3) The trustee-manager of a registered business trust shall not carry on any business other than the management and operation of the registered business trust as its trustee-manager.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Secretary**

**7.** —(1) The trustee-manager of a registered business trust shall ensure that its secretary is a person who —

(a) for at least 3 years in the period of 5 years immediately preceding his appointment as secretary, held the office of secretary of a company or trustee-manager of a registered business trust;

(b) is a qualified person under the Legal Profession Act (Cap. 161), a public accountant, a member of the Singapore Association of the Institute of Chartered Secretaries and Administrators or a member of such other professional association as may be prescribed; or

(c) is, by virtue of such academic or professional qualifications as may be prescribed, capable of discharging the functions of secretary of the trustee-manager.

(2) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence.

*[Companies 1994 Ed., s. 171]*

### **Trustee-manager to operate registered business trust and power to appoint agents**

**8.** —(1) The trustee-manager of a registered business trust shall —

(a) manage and operate the registered business trust in accordance with the provisions of this Act and the trust deed of the registered business trust; and  
(b) perform the functions conferred on it by the trust deed and the provisions of this Act.

(2) Subject to the trust deed of a registered business trust, the trustee-manager of the registered business trust shall have power to appoint an agent to carry out or perform any matter that the trustee-manager is authorised to carry out or perform in connection with the management and operation of the registered business trust.

(3) An agent referred to in subsection (2) may also, with the consent of the trustee-manager of the registered business trust, appoint an agent (referred to in this section as a sub-agent) to carry out or perform any matter that the agent has been appointed by the trustee-manager to carry out or perform and, for the avoidance of doubt, the sub-agent shall be deemed to be an agent appointed by the trustee-manager to carry out or perform that matter for the purposes of that subsection.

(4) Where an agent or a sub-agent appointed under subsection (2) or (3), as the case may be, is liable to indemnify the trustee-manager of the registered business trust against any loss or damage suffered by the trustee-manager as a result of the acts of the agent or sub-agent, any amount recovered under the indemnity shall form part of the trust property of the registered business trust.

(5) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

*[Aust. Corp. 2001, s. 601FB]*

### **Use of information and advice**

**9.** —(1) Subject to subsection (2), the trustee-manager of a registered business trust may, when exercising powers or performing duties as a trustee-manager, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by a professional adviser or

an expert in relation to matters which the trustee-manager believes on reasonable grounds to be within the person's professional or expert competence.

(2) Subsection (1) shall apply to the trustee-manager of a registered business trust only if the trustee-manager —

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.

*[Companies 1994 Ed., s. 157C]*

### **Duties of trustee-manager**

**10.** —(1) The trustee-manager of a registered business trust shall at all times act honestly and exercise reasonable diligence in the discharge of its duties as a trustee-manager in accordance with this Act and the trust deed of the registered business trust.

(2) The trustee-manager of a registered business trust shall —

(a) act in the best interests of all the unitholders of the registered business trust as a whole; and

(b) give priority to the interests of all the unitholders of the registered business trust as a whole over its own interests in the event of a conflict between the interests of all the unitholders as a whole and its own interests.

(3) The trustee-manager of a registered business trust shall not make improper use of any information acquired by virtue of its position as trustee-manager to gain, directly or indirectly, an advantage for itself or for any other person to the detriment of the unitholders of the registered business trust.

(4) The trustee-manager of a registered business trust shall hold the trust property of the registered business trust on trust for all the unitholders of the registered business trust as a whole in accordance with the terms of the trust deed.

(5) Any trustee-manager of a registered business trust which contravenes subsection (1), (2), (3) or (4) —

(a) shall be liable to all the unitholders of the registered business trust as a whole for any profit or financial gain directly or indirectly made by it or any of its

related corporations or for any damage suffered by all the unitholders of the registered business trust as a whole as a result of the contravention; and  
(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(6) The Authority may, by regulations, prescribe requirements on the scope of the duties of the trustee-manager of a registered business trust.

*[Aust. Corp. 2001, s. 601FC]*

### **Duties of directors, officers and agents of trustee-manager**

**11.** —(1) A director of the trustee-manager of a registered business trust shall —

(a) act honestly and exercise reasonable diligence in the discharge of the duties of his office and, in particular, shall take all reasonable steps to ensure that the trustee-manager discharges its duties under section 10 (1) and (2); and  
(b) give priority to the interests of all the unitholders of the registered business trust as a whole over the interests of the trustee-manager in the event of a conflict between the interests of all the unitholders as a whole and the interests of the trustee-manager.

(2) An officer or agent of the trustee-manager of a registered business trust shall not make improper use of any information acquired by virtue of his position as an officer or agent of the trustee-manager to gain, directly or indirectly, an advantage for himself or for any other person to the detriment of the unitholders of the registered business trust.

(3) A duty of a director of the trustee-manager of a registered business trust under subsection (1) shall override any conflicting duty of such director under section 157 of the Companies Act (Cap. 50).

(4) No civil or criminal proceedings shall lie against a director of the trustee-manager of a registered business trust for a breach of section 157 of the Companies Act, any fiduciary duty or any other duty under common law in relation to any act or omission to act if such act or omission was required by subsection (1).

(5) A director, an officer or an agent of the trustee-manager of a registered business trust who or which contravenes subsection (1) or (2) —

(a) shall be liable to all the unitholders of the registered business trust as a whole for any profit or financial gain directly or indirectly made by him or it or the trustee-manager or any related corporation of the trustee-manager or for any damage suffered by all the unitholders of the registered business trust as a whole as a result of the contravention; and

(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) For the avoidance of doubt, no action or proceedings whatsoever may be brought by or on behalf of all or any of the unitholders of a registered business trust against a director of the trustee-manager of that registered business trust for any breach or alleged breach of the duties imposed by subsections (1) and (2), except to the extent and in the manner provided for under sections 41 and 42.

(7) The Authority may, by regulations, prescribe requirements on the scope of the duties of an officer or agent of the trustee-manager of a registered business trust.

(8) In this section —

"agent" includes a banker, a solicitor or an auditor of the trustee-manager and any person who at any time has been a banker, a solicitor or an auditor of the trustee-manager;

"officer" includes a person who at any time has been an officer of the trustee-manager.

*[Companies 1994 Ed., s. 157; Aust. Corp. 2001, s. 601FD]*

### **Disclosure of interests in transactions**

**12.** —(1) Subject to subsections (2) and (3), every director of the trustee-manager of a registered business trust who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction entered or to be entered into by the trustee-manager for or on behalf of the registered business trust shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the trustee-manager.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director of the trustee-manager of a registered business trust consists only of being a member or creditor of a corporation which is interested

in a transaction or proposed transaction referred to in that subsection if the interest of the director of the trustee-manager may properly be regarded as not being a material interest.

(3) A director of the trustee-manager of a registered business trust shall not be deemed to be interested or to have been at any time interested in any transaction or proposed transaction referred to in subsection (1) by reason only —

(a) in the case where the transaction or proposed transaction relates to any loan to the trustee-manager — that that director has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a related corporation of the trustee-manager of the registered business trust — that that director is a director of the related corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the trust deed of the registered business trust.

(4) For the purposes of subsection (1), a general notice given to the directors of the trustee-manager of a registered business trust by a director to the effect that he is an officer or a member of a specified corporation or a member of a specified firm and is to be regarded as interested in any transaction which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any transaction so made if it specifies the nature and extent of his interest in the specified corporation or firm and his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any transaction is so made; but no such notice shall be of effect unless either it is given at a meeting of the directors of the trustee-manager or the director of the trustee-manager takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors of the trustee-manager after it is given.

(5) Every director of the trustee-manager of a registered business trust who holds any office or possesses any property whereby, whether directly or indirectly,

duties or interests might be created in conflict with the duties of the trustee-manager in relation to the registered business trust, shall declare the fact and the nature, character and extent of the conflict at a meeting of the directors of the trustee-manager.

(6) The declaration referred to in subsection (5) shall be made at the first meeting of the directors of the trustee-manager of a registered business trust held —

(a) after he becomes a director; or

(b) if he is already a director of the trustee-manager, after he commenced to hold the office or to possess the property,

as the case requires.

(7) The secretary of the trustee-manager of a registered business trust shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) For the purposes of this section, an interest of a member of a director's family shall be treated as an interest of the director of the trustee-manager of a registered business trust and the words "member of a director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

(9) Subject to subsection (3), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the trust deed restricting a director of the trustee-manager of a registered business trust from having any interest in transactions with the trustee-manager in its capacity as the trustee-manager of the registered business trust or from holding offices or possessing properties involving duties or interests in conflict with the duties of the trustee-manager in relation to the registered business trust.

(10) A director of the trustee-manager of a registered business trust who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 156]*

### **Disclosure of directors' interests**

**13.** —(1) The trustee-manager of a registered business trust shall keep a register showing with respect to each director of the trustee-manager particulars of —  
(a) units or derivatives of units in the registered business trust, being units or derivatives in which the director has an interest and the nature and extent of that interest; and

(b) debentures of the registered business trust in which the director has an interest and the nature and extent of that interest.

(2) The trustee-manager of a registered business trust shall, within 3 days after receiving any notice from its director under subsection (8), enter in its register in relation to the director the particulars in subsection (1), including —

(a) the number and description of units or derivatives of units in a registered business trust and debentures of a registered business trust, in which the director has an interest;

(b) in respect of units or derivatives of units in a registered business trust or debentures of a registered business trust, acquired after he became a director —

(i) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this subsection; and

(ii) the date of the agreement for the transaction and the date of completion of the transaction; or where there was no transaction, the date of the occurrence of the event by reason of which an entry is required to be made under this subsection; and

(c) particulars of any change in respect of the particulars referred to in paragraphs (a) and (b), including the consideration, if any, received as a result of the event giving rise to the change.

(3) The trustee-manager of a registered business trust shall make the register available for public inspection at the registered office of the trustee-manager without charge.

(4) A person may request the trustee-manager of a registered business trust to furnish him with a copy of its register or any part thereof on payment in advance of a sum of \$1 or such lesser sum as the trustee-manager requires for every page or part thereof required to be copied, and the trustee-manager shall send the



copy to that person within 21 days after the day on which the request is received by the trustee-manager.

(5) The trustee-manager of a registered business trust shall, at the direction of the Authority, send to the Authority within such time as may be specified by the Authority a copy of its register or any part thereof.

(6) The trustee-manager of a registered business trust shall produce its register at the commencement of each annual general meeting of the unitholders of the registered business trust and keep it open and accessible during the meeting to all persons attending the meeting.

(7) It is a defence to a prosecution for failing to comply with subsection (1) or (2) in respect of particulars relating to a director of the trustee-manager of a registered business trust if the defendant proves that the failure was due to the failure of the director to comply with subsection (8) with respect to those particulars.

(8) In accordance with subsection (9), a director of the trustee-manager of a registered business trust shall give notice in writing to the trustee-manager of —

- (a) particulars relating to his units or derivatives of units in the registered business trust, or debentures of the registered business trust; and
- (b) particulars of any change in respect of the particulars referred to in paragraph (a),

as are necessary for the purposes of compliance by the trustee-manager with subsections (1) and (2).

(9) A notice under subsection (8) shall be given —

(a) in the case of a notice under paragraph (a) of that subsection, within 2 business days after —

(i) the date on which the director became a director of the trustee-manager of a registered business trust; or

(ii) the date on which the director became a unitholder of the registered business trust or acquired an interest in the units or derivatives of units in the registered business trust or debentures of the registered business trust,

whichever last occurs; and

(b) in the case of a notice under paragraph (b) of that subsection, within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph.

(10) The trustee-manager of a registered business trust shall, within 7 days after it receives a notice given under subsection (8), send a copy of the notice to each of the other directors of the trustee-manager.

(11) It is a defence to a prosecution for failing to comply with subsection (8) (a) or (b) or with subsection (9) if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) he was not so aware on the date of the information or summons; or

(b) he became so aware less than 2 days before the date of the summons.

(12) For the purposes of subsection (11), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest in units or derivatives of units in the registered business trust or debentures of the registered business trust, was aware or would, if he had acted with reasonable diligence in the conduct of his employer's or principal's affairs, have been aware at that time.

(13) Where a person is required under subsection (8) to give notice to the trustee-manager of a registered business trust that is listed on a securities exchange, he shall also notify the securities exchange of that matter within the same period, and the securities exchange may publish, in such manner as it may determine, any information received by it under this subsection.

(14) For the purposes of this section, a director of the trustee-manager of a registered business trust is deemed to have an interest in units or derivatives of units in the registered business trust or debentures of the registered business trust, as the case may be, if that director is deemed to have an interest in the

units, derivatives of units or debentures, as the case may be, under section 4 of the Securities and Futures Act (Cap. 289).

(15) For the purposes of this section, an interest of a family member of a director of the trustee-manager of a registered business trust shall be treated as an interest of that director and the words "member of a director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

(16) Any director of the trustee-manager of a registered business trust who contravenes subsection (8) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(17) Any trustee-manager of a registered business trust which contravenes subsection (1), (2), (3), (4), (5), (6) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., ss. 164, 165, 166]*

### **Composition of board**

**14.** —(1) The trustee-manager of a registered business trust shall ensure that the composition of its board of directors complies with such requirements as may be prescribed by the Authority.

(2) Any trustee-manager of a registered business trust which contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Audit committees**

**15.** —(1) The trustee-manager of a registered business trust shall establish an audit committee in accordance with such requirements as may be prescribed by

the Authority, including requirements in respect of the composition of an audit committee.

(2) The audit committee and every member thereof shall comply with such requirements as may be prescribed by the Authority, including requirements in respect of the duties and functions of an audit committee.

(3) Every director of the trustee-manager of a registered business trust shall take all reasonable steps to secure compliance by the audit committee of the trustee-manager and every member of the audit committee, as the case may be, with subsection (2).

(4) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(5) If any director of the trustee-manager of a registered business trust —

(a) fails to take all reasonable steps to secure the compliance by the audit committee of the trustee-manager or any member of the audit committee with subsection (2); or

(b) has by his own wilful act been the cause of any contravention of subsection (2) by the audit committee of the trustee-manager or any member of the audit committee,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 201B]*

### **Acquisition of interest in registered business trust by trustee-manager**

**16.** —(1) The trustee-manager of a registered business trust shall not acquire or hold any unit or derivative of any unit in the registered business trust unless it acquires or holds the unit or derivative —

(a) for not less than the consideration that would be payable if the unit or derivative of the unit were acquired by another person; and

(b) subject to terms and conditions that would not disadvantage other unitholders of the registered business trust.

(2) No person shall aid, abet or assist the contravention of subsection (1) by the trustee-manager of a registered business trust.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

*[Aust. Corp. 2001, s. 601FG]*

### **Liquidator of trustee-manager entitled to exercise indemnity rights**

**17.** If the trustee-manager of a registered business trust is being wound up, is under judicial management or receivership or has executed a deed of company arrangement that has not terminated —

(a) any provision of the trust deed of the registered business trust or of another instrument which purports to deny the trustee-manager a right to be indemnified out of the trust property of the registered business trust that the trustee-manager would have had if it were not being wound up, under judicial management or receivership or if it had not executed a deed of company arrangement, as the case may be, shall be void against the liquidator, judicial manager or receiver of the trustee-manager or the executor of the deed of company arrangement, as the case may be; and

(b) any right of the trustee-manager to be indemnified out of the trust property of the registered business trust shall be exercised by the liquidator, judicial manager or receiver of the trustee-manager or the executor of the deed of company arrangement, as the case may be.

*[Aust. Corp. 2001, s. 601FH]*

## ***Division 2 — Change of trustee-manager***

### **Changes to take effect upon date of appointment**

**18.** —(1) Notwithstanding any provision in this Division, a person named as the trustee-manager of a registered business trust in the register which is maintained by the Authority in accordance with section 5 shall remain the trustee-manager or temporary trustee-manager, as the case may be, until another person is appointed —

- (a) by the unitholders of the registered business trust to be the trustee-manager of the registered business trust; or
  - (b) by the court under section 21 (1) to be the temporary trustee-manager of the registered business trust,
- and such appointment shall be effective from the date stated in the resolution of the unitholders or court order as the effective date of the appointment of the trustee-manager or temporary trustee-manager, as the case may be.
- (2) Any purported change of the trustee-manager of the registered business trust is ineffective unless it is made in accordance with this Division.

### **Resignation of trustee-manager**

- 19.** —(1) The trustee-manager of a registered business trust may resign from its position as trustee-manager only in accordance with such requirements and in such manner as the Authority may prescribe.
- (2) The trustee-manager of a registered business trust shall, until its resignation in accordance with subsection (1) becomes effective, continue to observe, and be liable for the failure to observe, the duties and responsibilities assigned to it under this Act and the trust deed of the registered business trust.
- (3) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence.

*[Aust. Corp. 2001, s. 601FL]*

### **Removal of trustee-manager by unitholders**

- 20.** The trustee-manager of a registered business trust may be removed as the trustee-manager by the unitholders of the registered business trust only —
- (a) if a resolution to remove the trustee-manager is approved by unitholders of the registered business trust holding in the aggregate not less than three-fourths of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or where proxies are allowed, by proxy present at a meeting of the unitholders of the registered business trust; and
  - (b) in accordance with such procedures as the Authority may prescribe.

*[Aust. Corp. 2001, s. 601FM]*

### **Appointment of temporary trustee-manager by court**

- 21.** —(1) On an application by the Authority or the trustee-manager or a

unitholder of a registered business trust, the court may, by order, appoint a company that has consented in writing to serve as a temporary trustee-manager to be the temporary trustee-manager of the registered business trust for a period of 3 months if the court is satisfied that the appointment is in the interest of the unitholders of the registered business trust.

(2) The company that is appointed by the court under subsection (1) to act as the temporary trustee-manager of a registered business trust shall comply with the duties, obligations and such other requirements imposed under this Act and as may be prescribed by the Authority with respect to the trustee-manager of a registered business trust.

(3) Notwithstanding subsection (2), the court may exempt the temporary trustee-manager of a registered business trust, as it deems appropriate, from sections 6, 14 and 15.

(4) The court may make such further orders in respect of the appointment of a temporary trustee-manager under subsection (1) as it thinks necessary for the protection of the interests of the unitholders of the registered business trust, including an order for the reimbursement of the costs of the application out of the trust property of the registered business trust to the person who made the application under that subsection.

(5) Upon the making of an order by the court appointing a company as the temporary trustee-manager of a registered business trust, the resigning trustee-manager of the registered business trust and that appointed temporary trustee-manager shall comply with such requirements as the Authority may prescribe.

(6) Any trustee-manager of a registered business trust which contravenes subsection (5) shall be guilty of an offence.

*[Aust. Corp. 2001, ss. 601FN, 601 FP]*

### **Temporary trustee-manager to take steps for appointment of new trustee-manager**

**22.** —(1) The temporary trustee-manager of a registered business trust shall, within such time and in accordance with such requirements as may be prescribed by the Authority, take such steps to enable the unitholders of the registered

business trust to appoint another person as the trustee-manager (not being a temporary trustee-manager) of the registered business trust.

(2) Any temporary trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence.

*[Aust. Corp. 2001, s. 601FQ]*

### ***Division 3 — Consequences of change of trustee-manager***

#### **Resigning trustee-manager to hand over books and provide reasonable assistance**

**23.** —(1) The resigning trustee-manager of a registered business trust shall, as soon as practicable after the appointment of the replacement trustee-manager or the temporary trustee-manager, as the case may be, of the registered business trust

- (a) give the replacement trustee-manager or temporary trustee-manager, as the case may be, any books which are in the possession or control of the resigning trustee-manager and which this Act or the trust deed of the registered business trust requires to be kept in relation to the registered business trust; and
- (b) give reasonable assistance to the replacement trustee-manager or temporary trustee-manager, as the case may be, to facilitate the change of trustee-manager of the registered business trust.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*[Aust. Corp. 2001, s. 601FR]*

#### **Rights, obligations and liabilities of resigning trustee-manager**

**24.** —(1) Any —

- (a) legal right in, title to and interest under any trust property of a registered business trust owned, leased, held or used by a resigning trustee-manager for or on behalf of the registered business trust; and
- (b) obligations and liabilities of the resigning trustee-manager undertaken for or on behalf of the registered business trust,



shall be transferred to and vested in, and assumed by, the replacement trustee-manager or the temporary trustee-manager of the registered business trust to be held for or on behalf of the registered business trust from the effective date of appointment of the replacement trustee-manager or temporary trustee-manager, as the case may be.

(2) Notwithstanding subsection (1), the following rights, obligations and liabilities shall remain the rights, obligations and liabilities of the resigning trustee-manager of a registered business trust:

- (a) any right of the resigning trustee-manager to be paid fees for the performance of its functions before it ceased to be the trustee-manager of the registered business trust;
- (b) any right of the resigning trustee-manager to be indemnified for expenses it had incurred before it ceased to be the trustee-manager of the registered business trust;
- (c) any right, obligation or liability that the resigning trustee-manager had or continues to have as a unitholder of the registered business trust; and
- (d) any liability in respect of which the resigning trustee-manager would have had no claim of indemnification out of the trust property of the registered business trust if it had remained the trustee-manager of the registered business trust.

*[Aust. Corp. 2001, s. 601FS]*

**Effect of change of trustee-manager on documents, etc., to which resigning trustee-manager is a party**

**25.** —(1) Any document or agreement entered into by the resigning trustee-manager of a registered business trust on behalf of the registered business trust —

- (a) to which the resigning trustee-manager is a party, in which a reference is made to the resigning trustee-manager or under which the resigning trustee-manager has acquired or incurred any right, obligation or liability or might have acquired or incurred any right, obligation or liability if it had remained the trustee-manager of the registered business trust; and

(b) that is capable of having effect after the appointment of the replacement trustee-manager or the temporary trustee-manager of the registered business trust, as the case may be,

shall, from the effective date of appointment of the replacement trustee-manager or temporary trustee-manager under section 18, as the case may be, have effect as if the replacement trustee-manager or temporary trustee-manager, as the case may be, (and not the resigning trustee-manager) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

(2) Subsection (1) shall not apply to any right, obligation or liability that remains the right, obligation or liability of the resigning trustee-manager by virtue of section 24 (2).

*[Aust. Corp. 2001, s. 601FT]*

### ***Division 4 — Written directions***

#### **Power of Authority to issue directions to trustee-manager or temporary trustee-manager**

**26.** —(1) The Authority may —

- (a) for the purpose of ensuring compliance with the provisions of this Act; or
- (b) if it thinks it necessary in the public interest for the proper administration of this Act,

issue written directions, either of a general or specific nature, to the trustee-manager or temporary trustee-manager of a registered business trust.

(2) Without prejudice to the generality of subsection (1), the Authority may issue written directions —

- (a) where the trustee-manager or temporary trustee-manager of a registered business trust is contravening, is likely to contravene or has contravened any provision of this Act, to require that person —
  - (i) to comply with that provision or to cease contravention of that provision; or
  - (ii) to resign as trustee-manager of the registered business trust; or
- (b) with respect to any other matter which the Authority considers necessary for the proper administration of this Act,

and the trustee-manager or temporary trustee-manager shall comply with any such directions.

(3) The Authority may at any time vary, rescind or revoke any written direction issued under this section.

(4) Any trustee-manager or temporary trustee-manager of a registered business trust which contravenes any written direction issued under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) For the avoidance of doubt, a written direction issued under this section shall be deemed not to be subsidiary legislation.

### ***Division 5 — Indemnification***

#### **Provisions indemnifying officers of trustee-manager and auditors of registered business trust**

**27.** —(1) Except as otherwise provided in this Act, any provision (whether in the trust deed of a registered business trust, in any contract entered into by the trustee-manager of a registered business trust or its officer or auditor or whenever and however arising) that exempts any officer of the trustee-manager or auditor of the registered business trust from, or indemnifies such officer or auditor against, any liability which by law would otherwise attach to such officer or auditor in respect of any negligence, default, breach of duty or breach of trust of which such officer or auditor may be guilty in relation to the registered business trust shall be void.

(2) This section shall not prevent the trustee-manager of a registered business trust —

(a) from purchasing and maintaining for such officer insurance against any liability referred to in subsection (1); or

(b) from indemnifying such officer or auditor against any liability incurred by such officer or auditor —

- (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted; or
- (ii) in connection with any application in which relief is granted to him by the court.

*[Companies 1994 Ed., s. 172]*

## **PART IV**

### **TRUST DEED**

#### **Contents of trust deed**

**28.** —(1) The trustee-manager of a registered business trust shall make provision in the trust deed of the registered business trust —

- (a) relating to such particulars as are sufficient to define the scope of business of the registered business trust and disclose the structure of, and the nature of the units in, the registered business trust;
- (b) for the powers of the trustee-manager in relation to managing and operating the business of the registered business trust;
- (c) in respect of the duration, if ascertainable, of the registered business trust or, if the duration is not ascertainable, a statement of that fact;
- (d) for the conditions governing the transfer of units in the registered business trust;
- (e) specifying the full particulars of —
  - (i) the remuneration of the trustee-manager of the registered business trust and the manner in which that remuneration is provided for; and
  - (ii) any other fees or charges payable out of the trust property of the registered business trust;
- (f) relating to the procedure for the winding up of the registered business trust, which procedure shall not be in conflict with any provision in Part VII and, in the case of any such conflict, the provisions in Part VII shall prevail; and
- (g) in respect of such other matters as may be prescribed by the Authority.

(2) The trustee-manager of a registered business trust shall not have any right to be paid fees or to claim indemnification for debts, expenses or other liabilities incurred by the trustee-manager on behalf of the registered business trust out of the trust property of the registered business trust, and any agreement, arrangement or any provision in the trust deed of the registered business trust that purports to confer such a right shall be of no effect, unless such right to fees or indemnification has been conferred on the trustee-manager by the trust deed of the registered business trust.

(3) No contract or arrangement purporting to restrict or remove the entitlement of the trustee-manager of a registered business trust to be indemnified out of the trust property of the registered business trust as conferred on the trustee-manager by the trust deed of the registered business trust shall have any effect.

(4) The trustee-manager of a registered business trust shall not have any power to borrow or raise money, to issue debentures of the registered business trust or to assume (whether by way of declaration of trust, transfer, novation, vesting or otherwise) obligations or liabilities for such borrowings or issuance of debentures of the registered business trust on behalf of the registered business trust, unless such power is provided in the trust deed of the registered business trust, and any agreement or arrangement that purports to confer such power shall have no effect.

(5) The unitholders of a registered business trust shall not have a right to redeem their units in return for distributions of profits, income or other payments or returns from the trust property of the registered business trust, unless the trust deed of the registered business trust —

(a) confers such right; and

(b) sets out procedures relating to the making and handling of redemption orders which are fair to all the unitholders of the registered business trust.

(6) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

*[SF (Offers of Investments) (Collective Investment Schemes) (Rg 2), r. 9; Aust. Corp. 2001, s. 601GA]*

### **Liability of trustee-managers**

**29.** —(1) Subject to subsection (2), any provision in a trust deed of a registered business trust required under section 28 or in any contract with the unitholders of a registered business trust to which such a trust deed relates shall be void in so far as it would have the effect of exempting the trustee-manager of the registered business trust under the trust deed from, or indemnifying the trustee-manager against, liability for breach of trust where the trustee-manager fails to exercise the degree of care and diligence required of a trustee-manager of a registered business trust.

(2) Subsection (1) shall not invalidate —

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

(b) any provision enabling such a release to be given —

(i) on the passing of a special resolution by the unitholders of the registered business trust at a general meeting convened in accordance with Division 1 of Part IX; and

(ii) either with respect to specific acts or omissions, or upon the trustee-manager of a registered business trust ceasing to act.

*[SFA 2002 Ed., s. 292]*

### **Trust deed to be legally enforceable**

**30.** —(1) The trustee-manager of a registered business trust shall ensure that the trust deed of the registered business trust is contained in a document that is legally enforceable as between the unitholders of the registered business trust and the trustee-manager.

(2) The unenforceability of the trust deed of a registered business trust shall not operate so as to avoid or affect any agreement, transaction or arrangement entered into by the trustee-manager on behalf of the trust, whether the agreement, transaction or arrangement was entered into before or after the point in time when the trust deed became unenforceable.

(3) The trustee-manager of a registered business trust shall make a copy of the trust deed available to the public without charge.

(4) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(5) Any trustee-manager of a registered business trust which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Aust. Corp. 2001, s. 601GB]*

### **Change of trust deed**

**31.** —(1) No person shall modify or replace the trust deed of a registered business trust unless such modification or replacement is approved

(a) by special resolution of the unitholders of the registered business trust; or  
(b) where the modification is necessary in order to comply with any written law or rule of law applicable in Singapore, by the trustee-manager of the registered business trust.

(2) Notwithstanding subsection (1), any modification or replacement of the trust deed of a registered business trust shall be void if such modification or replacement would result in a breach of section 28 (1) by the trustee-manager of the registered business trust.

(3) Subject to subsection (4), where the trustee-manager of a registered business trust is aggrieved by a modification or replacement of the trust deed of the registered business trust made pursuant to subsection (1) (a), the trustee-manager may apply to the court for a cancellation of the modification or replacement within 21 days after the date on which the resolution of the unitholders referred to in subsection (1) (a) was passed.

(4) On an application made by the trustee-manager of a registered business trust under subsection (3), the court —

(a) shall have regard to whether the provisions of this Act have been complied with and whether the unitholders that approved the modification or replacement have acted in good faith in doing so; and

(b) may make an order cancelling the modification or replacement or confirming the modification or replacement subject to such alterations or conditions as it thinks just,

and such modification or replacement, as the case may be, shall take effect on the date of the order of the court.

(5) Where the trustee-manager of a registered business trust proposes to the unitholders of the registered business trust to act by special resolution to effect a revision to the fees or charges payable out of trust property of the registered business trust to the trustee-manager, the trustee-manager shall include in the notice to the unitholders required under section 63 for such resolution to be considered a special resolution —

(a) the rationale or justification for the proposed revision to the fees or charges;

(b) the methods or procedures for determining the proposed revision to the fees or charges; and

(c) an opinion, from an independent adviser, on whether the methods or procedures for determining the proposed revision to the fees or charges are sufficient to ensure that the proposed revision is on normal commercial terms and will not be prejudicial to the interests of all the unitholders as a whole.

(6) The trustee-manager of a registered business trust shall give notice of the modification or replacement of the trust deed of a registered business trust referred to in subsection (1) (b) to all the unitholders of the registered business trust within 7 days from the modification or replacement of the trust deed.

(7) The trustee-manager of a registered business trust shall lodge with the Authority

(a) a copy of the provisions in the trust deed of the registered business trust that have been modified or replaced in accordance with subsection (1) or a copy of the new trust deed (incorporating such modification or replacement) within 2 business days after the modification or replacement referred to in that subsection takes effect; and



- (b) where an application for the cancellation of the modification or replacement referred to in subsection (3) has been made
- (i) a copy of such application within 2 business days after the application has been made; and
- (ii) a copy of the court order referred to in subsection (4) (b) within 7 days after that order has been made.
- (8) The trustee-manager of a registered business trust shall, at the direction of the Authority, lodge with the Authority a copy of the amended trust deed of the registered business trust after incorporating all the amendments prior to the date of lodgment.
- (9) The trustee-manager of a registered business trust shall make an updated copy of the trust deed available to the public without charge.
- (10) The trustee-manager of a registered business trust shall, at the request of any unitholder of the registered business trust, provide an updated copy of the trust deed to that unitholder without charge.
- (11) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.
- (12) Any trustee-manager of a registered business trust which contravenes subsection (5) or (6) shall be guilty of an offence.
- (13) Any trustee-manager of a registered business trust which contravenes subsection (7), (8), (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Aust. Corp. 2001, s. 601GC]*

## **PART V**

### **UNITHOLDERS**

#### **Limitation of liability of unitholders**

**32.** —(1) For the avoidance of doubt, a unitholder of a registered business trust

shall not be liable to contribute to the registered business trust or in respect of any debts, liabilities or obligations incurred by the trustee-manager in its capacity as trustee-manager for the registered business trust, other than such outstanding amounts of money, if any, which the unitholder has expressly agreed to contribute to the registered business trust.

(2) The limitation of the liability of a unitholder of a registered business trust referred to in subsection (1) shall apply notwithstanding —

(a) any provision to the contrary in the trust deed of the registered business trust; or

(b) the winding up of the registered business trust.

### **Distributions to unitholders**

**33.** —(1) The trustee-manager of a registered business trust shall have the right to declare a distribution of profits, income or other payments or returns to the unitholders of the registered business trust out of the trust property of the registered business trust; but such distribution shall only be made if the board of directors of the trustee-manager makes a written statement, in accordance with a resolution of the board of directors of the trustee-manager and signed by not less than 2 of the directors, that the board of directors is satisfied on reasonable grounds that, immediately after making the distribution, the trustee-manager will be able to fulfil, from the trust property of the registered business trust, the liabilities of the registered business trust as these liabilities fall due.

(2) Upon the declaration by the trustee-manager of a registered business trust to make a distribution of profits, income or other payments or returns from the trust property of the registered business trust to the unitholders of the registered business trust in accordance with subsection (1), the trustee-manager shall —

(a) send to all the unitholders of the registered business trust —

(i) a copy of the written statement of the board of directors referred to in subsection (1);

(ii) a written statement disclosing the distribution policy and the measures and assumptions for deriving the amount available to be distributed from the trust property; and

(iii) a written statement containing such other information as the Authority may prescribe or specify;

(b) give notice of the declaration of the distribution of profits, income or other payments or returns from the trust property of the registered business trust to the unitholders in one or more newspapers circulating in Singapore; and

(c) make available a copy of each of the statements referred to in paragraph (a) to the public without charge.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2) shall be guilty of an offence.

(4) If the board of directors of the trustee-manager of a registered business trust makes a written statement referred to in subsection (1) without any reasonable basis for arriving at the conclusions set out in the written statement, any director of the trustee-manager who permits or authorises the written statement to be made shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Creditors of unitholders to have no rights to obtain possession of trust property**

**34.** No creditor of a unitholder of a registered business trust shall have any right to obtain possession of, or otherwise exercise any legal or equitable remedy with respect to, the trust property of the registered business trust.

*[Delaware Stat. Trust, s. 3805 (b)]*

### **Rights of unitholders to distribution**

**35.** —(1) Upon the declaration by the trustee-manager of a registered business trust of a distribution of profits, income or other payments or returns out of the trust property of the registered business trust to the unitholders of the registered business trust, each unitholder shall, after the date on which the distribution is payable, become entitled to receive the distribution, and upon such declaration, the unitholder shall be deemed to be, and is entitled to all legal and equitable remedies available to, a creditor of the registered business trust, with recourse to the trust property out of which the distribution is to be made.

(2) The trust deed of a registered business trust may provide for the establishment of book closure dates with respect to distributions of profits, income or other payments or returns by the trustee-manager of the registered business trust.

*[Delaware Stat. Trust, s. 3805 (c)]*

**Approval of unitholders required for issue of units by trustee-manager**

**36.** —(1) Notwithstanding anything in the trust deed of a registered business trust, the trustee-manager of the registered business trust shall not, without the prior approval of a majority of the number of votes of the unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting which is convened in accordance with the requirements under Division 1 of Part IX, exercise any power to issue units in the registered business trust or to make or grant an offer, agreement or option which would or might require units in the registered business trust to be issued.

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally, and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until —  
(a) the conclusion of the annual general meeting of the registered business trust commencing next after the date on which the approval was given; or  
(b) the expiration of the period within which the next annual general meeting of the registered business trust after that date is required under section 53 to be held,

whichever is the earlier, but any approval may be previously revoked or varied by the unitholders of the registered business trust in general meeting.

(4) The trustee-manager of a registered business trust may issue units in the registered business trust notwithstanding that an approval for the purposes of this section has ceased to be in force if the units are issued in pursuance of an offer, agreement or option made or granted by the trustee-manager while the approval was in force and it was authorised by the approval to make or grant an

offer, agreement or option which would or might require units to be issued after the expiration of the approval.

(5) Section 65 shall apply to any resolution whereby an approval is given for the purposes of this section as if the resolution were a special resolution for purposes of that section.

(6) Any issue of units in a registered business trust made in contravention of this section shall be void and consideration given for the units shall be recoverable accordingly.

(7) Any trustee-manager of a registered business trust which contravenes this section with respect to any issue of units in the registered business trust shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(8) The trustee-manager of a registered business trust shall have no recourse to the trust property for the purposes of reimbursement of any liabilities incurred by the trustee-manager as a result of this section.

(9) If the trustee-manager of any registered business trust is found guilty of an offence under subsection (7), the trustee-manager and any director of the trustee-manager who knowingly contravenes, or permits or authorises the contravention of this section with respect to any issue of units in the registered business trust shall be liable to compensate the person to whom the units were issued for any loss, damages or costs which that person may have sustained or incurred thereby; but no proceedings to recover from any director of the trustee-manager or the trustee-manager for any such loss, damages or costs shall be commenced after the expiration of 6 years from the date of such issue of units.

*[Companies 1994 Ed., s. 161]*

### **Duty of substantial unitholders to notify securities exchange**

**37.** —(1) In the case of a registered business trust, all or any of which units are listed for quotation on the official list of a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of the registered business trust as though

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(a) references to the company to which notification should be given were references to the securities exchange;

(b) references to shares in the company were references to units in the registered business trust;

(c) references to substantial shareholding were references to substantial unitholding; and

(d) references to a substantial shareholder were references to a substantial unitholder,

and such person shall comply with those provisions accordingly.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

*[SFA 2002 Ed., s. 137]*

### **Duty of substantial unitholders to notify trustee-manager of registered business trust**

**38.** —(1) In the case of a registered business trust, all or any of which units are listed for quotation on the official list of a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of the registered business trust as though —

(a) references to the company to which notification should be given were references to the trustee-manager of the registered business trust;

(b) references to shares in the company were references to units in the registered business trust;

(c) references to substantial shareholding were references to substantial unitholding;

(d) references to a substantial shareholder were references to a substantial unitholder; and

(e) references to the Registrar were references to the Authority,

and such person shall comply with those provisions accordingly.

(2) If a person to whom subsection (1) applies fails to comply with any of the provisions of Division 4 of Part IV of the Companies Act, he shall be guilty of an offence and shall be liable on conviction to the same penalties as are prescribed under that Act for a failure to comply with such provision.

**Duty of substantial shareholder of trustee-manager to notify securities exchange**

**39.** —(1) In the case of a registered business trust, all or any of which units are listed for quotation on the official list of a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial shareholder of the trustee-manager of the registered business trust as though references to the company to which notification should be given were references to the securities exchange.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

*[SFA 2002 Ed., s. 137]*

## **PART VI**

### **CIVIL LIABILITY AND TAKE-OVERS**

**Civil liability of trustee-managers to unitholders**

**40.** —(1) Any unitholder of a registered business trust who suffers loss or damage because of any conduct of the trustee-manager of the registered business trust which contravenes any provision of this Act may recover the amount of the loss or damage by action against the trustee-manager, whether or not the trustee-manager has been convicted of an offence in respect of such contravention.

(2) Any action under subsection (1) shall commence within 6 years after the cause of action arises.

(3) This section shall not affect any liability that any person has under any other provision of this Act or under any other written law or rule of law.

*[Aust. Corp. 2001, s. 601MA]*

**Power to acquire units of unitholders dissenting from arrangement or contract approved by 90% majority**

**40A.** —(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a business trust (referred to in this section as the subject trust) to —

(a) the trustee of another trust (including the trustee-manager of another business trust and the trustee of a real estate investment trust); or

(b) a corporation,

referred to in this section as the transferee has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by the holders of not less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting unitholder that it desires to acquire his units.

(2) When a notice referred to in subsection (1) is given, the transferee shall, unless on an application made by a dissenting unitholder within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting unitholder under subsection (3) (whichever is the later) a court thinks fit to order otherwise, be entitled and bound to acquire those units —

(a) on the terms which under the arrangement or contract the units of the approving unitholders are to be transferred to the transferee; or

(b) if the offer contained 2 or more alternative sets of terms, on the terms which were specified in the offer as being applicable to dissenting unitholders.

(3) Where a transferee has given notice to any dissenting unitholder of the subject trust that it desires to acquire his units, the dissenting unitholder shall be entitled to require the transferee by a demand in writing served on the transferee,



within one month from the date on which the notice was given, to supply him with a statement in writing of the names and addresses of all other dissenting unitholders as shown in the register of unitholders of the subject trust; and the transferee shall not be entitled or bound to acquire the units of the dissenting unitholders until 14 days after the posting of the statement of such names and addresses to the dissenting unitholder.

(4) Where, in pursuance of any such arrangement or contract, units in the subject trust are transferred to a transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

(a) the transferee shall within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining units in, or of the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and

(b) any such holder may within 3 months from receiving the notice require the transferee to acquire his units.

(5) Where a unitholder has given notice under subsection (4)(b) with respect to any units, the transferee shall be entitled and bound to acquire those units —

(a) on the terms on which under the arrangement or contract the units of the approving unitholders were transferred to it; or

(b) on such other terms as are agreed or as the court on the application of either the transferee or the unitholder thinks fit to order.

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting unitholder, ordered to the contrary, the transferee shall —

(a) after the expiration of one month after the date on which the notice has been given;

(b) after 14 days after a statement has been supplied to a dissenting unitholder under subsection (3); or

(c) if an application to the court by the dissenting unitholder is then pending, after that application has been disposed of, transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the unitholder by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust shall thereupon register the transferee as the holder of those units.

(7) Any sums received by the trustee of the subject trust under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and shall, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to him, transfer such consideration to the Official Receiver.

(9) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him pursuant to section 49.

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

(a) by a nominee on behalf of the transferee;

(b) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;

(c) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —

(i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;

(ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or

(iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or

(d) where the transferee is the trustee of a trust that is not a business trust or a real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation, shall be treated as held or acquired by the transferee.

(11) For the avoidance of doubt, in this section —

(a) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to his doing any of these as trustee of the first-mentioned trust; and

(b) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to him as trustee of that other trust.

(12) The reference in subsection (1) to units already held by the transferee —

(a) includes a reference to units which the transferee has contracted to acquire; but

(b) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

- (a) the consideration for which the units are acquired or contracted to be acquired (referred to in this subsection as the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (a), no longer exceeds the consideration specified in those terms.

(14) In this section —

"dissenting unitholder" includes a unitholder who has not assented to the arrangement or contract and any unitholder who has failed or refused to transfer his units to the transferee in accordance with the arrangement or contract;

"real estate investment trust" means a collective investment scheme that is —

- (a) authorised under section 286 of the Securities and Futures Act (Cap. 289) or recognised under section 287 of that Act; and
- (b) a trust that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of the units of which are listed for quotation on a securities exchange.

### **Remedies in cases of oppression or injustice**

**41.** —(1) Any unitholder or any holder of a debenture of a registered business trust may apply to the court for an order under this section on the ground —

- (a) that the affairs of the registered business trust are being conducted by the trustee-manager of the registered business trust, or the powers of the directors of the trustee-manager of the registered business trust are being exercised, in a manner oppressive to one or more of the unitholders or holders of debentures of the registered business trust including himself or in disregard of his or their interests as unitholders or holders of debentures of the registered business trust; or
- (b) that some act of the trustee-manager of the registered business trust, carried out in its capacity as trustee-manager of the registered business trust, has been done or is threatened or that some resolution of the unitholders or holders of debentures of the registered business trust or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to

one or more of the unitholders or holders of debentures of the registered business trust (including himself).

(2) If on such application the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the trustee-manager of a registered business trust in relation to the registered business trust in future;
- (c) authorise civil proceedings against the directors of the trustee-manager of the registered business trust to be brought in the name of or on behalf of all the unitholders of the registered business trust as a whole by such person or persons and on such terms as the court may direct;
- (d) provide for the purchase of the units in or debentures of the registered business trust by other unitholders or holders of debentures of the registered business trust;
- (e) provide that the registered business trust be wound up; or
- (f) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the trust property of the registered business trust or to be borne and paid in such manner and by such persons as the court deems fit.

(3) Where an order under this section makes any alteration in or addition to the trust deed of any registered business trust, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the trustee-manager of the registered business trust concerned shall not have power, without the leave of the court, to make any further alteration in or addition to the trust deed that is inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall have the same effect as if duly made by special resolution of the unitholders of the registered business trust.

(4) A copy of any order made under this section shall be lodged by the applicant with the Authority within 7 days after the making of the order.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(6) This section shall apply to a person who is not a unitholder of a registered business trust but to whom units in the registered business trust have been transmitted by operation of law as it applies to the unitholders of a registered business trust; and references to a unitholder or unitholders shall be construed accordingly.

*[Companies 1994 Ed., s. 216]*

#### **Derivative or representative actions**

**42.** —(1) Subject to subsection (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of all the unitholders of the registered business trust as a whole or intervene in an action to which the trustee-manager, on behalf of the registered business trust, is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the trustee-manager.

(2) No action may be brought and no intervention in an action may be made under subsection (1) unless the court is satisfied that —

(a) the complainant has given 14 days' notice to the directors of the trustee-manager of the registered business trust of his intention to apply to the court under subsection (1) if the directors of the trustee-manager do not bring, diligently prosecute or defend or discontinue, the action;

(b) the complainant is acting in good faith; and

(c) it appears to be prima facie in the interests of all the unitholders of the registered business trust as a whole that the action be brought, prosecuted, defended or discontinued.

(3) Where a complainant on an application can establish to the satisfaction of the court that it is not expedient to give notice as required in subsection (2) (a), the

court may make such interim order as it thinks fit pending the complainant giving notice as required.

(4) In granting leave under this section, the court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:

(a) an order authorising the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action; and

(c) an order requiring the trustee-manager of a registered business trust in its capacity as trustee-manager of the registered business trust to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action.

(5) Where an action has been commenced or is to be brought in the subordinate courts, an application for leave under subsection (1) shall be made in a District Court.

(6) In this section and section 43, "complainant" means —

(a) any unitholder of a registered business trust; or

(b) any other person who, in the discretion of the court, is a proper person to make an application under this section.

*[Companies 1994 Ed., s. 216A]*

### **Evidence of shareholders' approval not decisive — court approval to discontinue action under section 42**

**43.** —(1) An application made or an action brought or intervened in under section 42 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right of or duty owed to all the unitholders of the registered business trust as a whole has been or may be approved by the unitholders of the registered business trust, but evidence of approval by the unitholders may be taken into account by the court in making an order under that section.

(2) An application made or an action brought or intervened in under section 42 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit

and, if the court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 42, the court may at any time order the trustee-manager of the registered business trust in its capacity as trustee-manager of the registered business trust to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

*[Companies 1994 Ed., s. 216B]*

## **PART VII**

### **WINDING UP OF REGISTERED BUSINESS TRUST**

#### **Winding up under provision of trust deed**

**44.** —(1) Subject to subsection (2), the trust deed of a registered business trust may provide that the registered business trust is to be wound up

- (a) at a specified time;
- (b) in specified circumstances; or
- (c) on the happening of a specified event.

(2) For the purposes of this section and section 47, any provision of the trust deed of a registered business trust that purports to provide that the registered business trust is to be wound up if the particular company which is acting as the trustee-manager of that registered business trust ceases to be the trustee-manager of that registered business trust, shall have no effect.

(3) The trustee-manager of a registered business trust may wind up the registered business trust —

- (a) if the trust deed of the registered business trust provides that the business trust may or is to be wound up at a specified time, in specified circumstances or on the happening of a specified event;



- (b) the specified time, circumstance or event has arisen; and
- (c) the winding up of the registered business trust has been approved by a majority of the number of votes of unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting convened in accordance with the requirements under Division 1 of Part IX.

*[Companies 1994 Ed., s. 290 (1) (a); Aust. Corp. 2001, s. 601NA]*

### **Winding up at direction of unitholders**

**45.** —(1) Notwithstanding any provision in the trust deed of a registered business trust, the trustee-manager of the registered business trust shall wind up the registered business trust upon the passing of a special resolution by the unitholders of the registered business trust at a general meeting convened in accordance with Division 1 of Part IX directing the trustee-manager to wind up the registered business trust.

(2) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 290 (1) (b); Aust. Corp. 2001, s. 601NB]*

### **Winding up ordered by court**

**46.** —(1) A registered business trust may be wound up under an order of the court on the application of —

- (a) the trustee-manager of the registered business trust;
- (b) a director of the trustee-manager of the registered business trust;
- (c) a unitholder of the registered business trust; or
- (d) a creditor of the registered business trust on the basis of subsection (2) (b).

(2) The court may, on an application referred to in subsection (1), order the trustee-manager of a registered business trust to wind up the registered business trust if —

- (a) the court thinks it is just and equitable to make the order; or

(b) within 3 months before the making of the application for the order, execution was issued on a judgment, a decree or an order obtained in court, whether in Singapore or elsewhere, in favour of a creditor of the registered business trust and the execution has been returned unsatisfied, and upon such order, the trustee-manager shall wind up the registered business trust.

(3) The court may order the trustee-manager of a registered business trust to wind up the registered business trust on the application of the Authority on any of the following grounds:

(a) the registered business trust has carried on, promoted or participated in a pyramid selling scheme or arrangement within the meaning of section 2 (1) of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act (Cap. 190) in contravention of that Act;

(b) the registered business trust is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest; or

(c) a report has been made in respect of the registered business trust by an inspector appointed by the Minister under section 103, and upon such order, the trustee-manager shall wind up the registered business trust.

(4) On the making of a winding up order by the court under subsection (2), the applicant shall within 7 days —

(a) lodge a copy of that order with the Authority; and

(b) cause a copy of that order to be served upon the secretary of the trustee-manager of the registered business trust or upon such other person and in such manner as the court may direct.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., ss. 253, 254, 262; Aust. Corp. 2001, s. 601ND]*

### **Winding up of registered business trust**

**47.** —(1) Subject to section 48 (1), the trustee-manager of a registered business trust shall ensure that the registered business trust is wound up in accordance with the trust deed of the registered business trust or an order referred to in section 48 (2) in all cases of winding up, including but not limited to the following situations:

(a) the trust deed provides that the registered business trust is to be wound up at a specified time, in specified circumstances or on the happening of a specified event and —

(i) the specified time, circumstance or event has arisen; and

(ii) the winding up of the registered business trust has been approved by a majority of the number of votes of unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting convened in accordance with the requirements under Division 1 of Part IX;

(b) the unitholders of the registered business trust pass a special resolution directing the trustee-manager to wind up the registered business trust; or

(c) the court makes an order directing the trustee-manager to wind up the registered business trust.

(2) Where a registered business trust is to be wound up, the trustee-manager of the registered business trust shall —

(a) give notice in writing of the proposed winding up to the Authority within 7 days after the passing of the resolution referred to in subsection (1) (a) or (b); and

(b) within 10 days after the passing of the resolution referred to in subsection (1) (a) or (b), give notice of the resolution in one or more newspapers circulating in Singapore.

(3) Upon the completion of the winding up of a registered business trust in accordance with subsection (1), whether proposed by the trustee-manager of the registered business trust or otherwise, the trustee-manager shall give notice in writing of the completed winding up to the Authority within 2 business days of the completion.

(4) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(5) Any trustee-manager of a registered business trust which contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Aust. Corp. 2001, s. 601NE]*

### **Court may make other orders for winding up**

**48.** —(1) The court may, by order, appoint an approved liquidator to take responsibility for winding up a registered business trust in accordance with the trust deed of the registered business trust and any order referred to in subsection (2) if the court thinks it necessary to do so for reasons including the cessation of the trustee-manager of the registered business trust to exist or the failure of the trustee-manager to properly discharge its obligations in relation to the winding up, and upon such appointment by the court and notwithstanding any provision in the trust deed, the trustee-manager shall no longer have any authority or power to wind up the registered business trust.

(2) The court may, by order, give directions as to —

(a) the procedures for the winding up of a registered business trust if the court thinks it necessary to do so for reasons including the inadequacy or impracticability of the provisions in the trust deed of the registered business trust; and

(b) the powers, duties, obligations and remuneration of the liquidator of a registered business trust.

(3) An order referred to in subsection (1) or (2) may be made on the application of —

(a) the trustee-manager of a registered business trust;

(b) a director of the trustee-manager of a registered business trust;

(c) a unitholder of a registered business trust;

(d) the Authority; or

(e) a creditor of a registered business trust.

(4) An order referred to in subsection (2) may be made on the application of the liquidator of a registered business trust.

(5) Upon the completion of the winding up of a registered business trust by a liquidator, the liquidator shall give notice in writing of the completed winding up to the Authority within 2 business days of the completion.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Aust. Corp. 2001, s. 601NF]*

#### **Unclaimed money to be paid to Official Receiver**

**49.** —(1) If the trustee-manager of a registered business trust that is being wound up or the liquidator of a registered business trust has in its possession or under its control —

(a) any unclaimed or undistributed moneys arising from the trust property of the registered business trust on completion of the winding up of the registered business trust; or

(b) any unclaimed distribution of profits, income or other payments or returns to unitholders which have remained unclaimed for more than 6 months from the date when the distribution became payable,

the trustee-manager or the liquidator shall pay those moneys to the Official Receiver to be placed to the credit of the Business Trusts Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The court may, at any time on the application of the Official Receiver, order the trustee-manager of a registered business trust that is being wound up or the liquidator of a registered business trust to submit to the court an account of any unclaimed or undistributed funds, distributions or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may

direct him to pay those moneys to the Official Receiver to be placed to the credit of the Business Trusts Liquidation Account.

(3) The interest arising from the investment of the moneys standing to the credit of the Business Trusts Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section, the court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the registered business trust and the provisions of this Act with respect thereto shall apply, with such adaptations as are prescribed, to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the trustee-manager of a registered business trust that is being wound up or the liquidator of a registered business trust or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the Business Trusts Liquidation Account, the Official Receiver, upon being satisfied that the claimant is the owner of the money, shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of subsection (6) may appeal to the court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Business Trusts Liquidation Account or out of the Consolidated Fund but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the Business Trusts Liquidation Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account shall, on the lapse of 7 years from the date of

the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

*[Companies 1994 Ed., s. 322]*

### **Responsibility for fraudulent trading**

**50.** —(1) If, in the course of the winding up of a registered business trust or in any proceedings against the trustee-manager in its capacity as the trustee-manager of the registered business trust, it appears that an officer of the trustee-manager who was knowingly a party to the contracting of a debt on behalf of the registered business trust had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities of the registered business trust, if any, at the time, of the trustee-manager being able to pay the debt from the trust property of the registered business trust, the officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Where a person has been convicted of an offence under subsection (1) in relation to the contracting of such a debt as is referred to in that subsection, the court, on the application of the liquidator or any creditor of the registered business trust or unitholder of the registered business trust, may, if it thinks proper to do so, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) If, in the course of the winding up of a registered business trust or in any proceedings against the trustee-manager in its capacity as the trustee-manager of the registered business trust, it appears that any business of the registered business trust has been carried on with intent to defraud creditors of the registered business trust or creditors of any other person or for any fraudulent purpose, the court, on the application of the liquidator or any creditor of the registered business trust or unitholder of the registered business trust, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of such business of the registered business trust in that manner shall be personally responsible, without any limitation of liability, for all or any of the

debts or other liabilities incurred by the trustee-manager on behalf of the registered business trust as the court directs.

(4) Where the court makes any declaration pursuant to subsection (2) or (3), the court may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the trustee-manager in its capacity as trustee-manager of the registered business trust to him, or on any charge or any interest in any charge on any trust property of the registered business trust held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(5) For the purpose of subsection (4), "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(6) Where any business of a registered business trust is carried on with the intent or for the purpose mentioned in subsection (3), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(7) Subsection (6) shall apply to a registered business trust whether or not it has been, or is in the course of being, wound up.

(8) This section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(9) On the hearing of an application under subsection (2) or (3), the liquidator may himself give evidence or call witnesses.

*[Companies 1994 Ed., ss. 339 (3), 340]*



## PART VIII

### DEREGISTRATION

#### **Voluntary deregistration by trustee-manager**

**51.** —(1) The trustee-manager of a registered business trust may apply to the Authority for deregistration of the registered business trust with the Authority, if —

(a) the deregistration of the registered business trust is approved by unitholders holding in the aggregate not less than three-fourths of the voting rights of all the unitholders of the registered business trust, who, being entitled to do so, vote in person or, where proxies are allowed, by proxy on a poll at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution to deregister the registered business trust has been duly given; and

(b) the resolution has not been voted against by unitholders holding in the aggregate 10% or more of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy on a poll.

(2) Where the Authority is satisfied that an application for deregistration of a registered business trust is in compliance with subsection (1) and the directors of the trustee-manager of the registered business trust have made a statutory declaration declaring that units in the business trust —

(a) are no longer held by any person (other than a sophisticated investor within the meaning of section 282X (2) of the Securities and Futures Act (Cap. 289) or a person referred to in section 282W of that Act); or

(b) are held by no more than 2 persons,

the Authority may deregister the registered business trust and, upon such deregistration, the Authority shall give notice of the deregistration of the registered business trust in the Gazette.

(3) The Authority shall notify the trustee-manager of a registered business trust of the deregistration of the registered business trust.

*[Aust. Corp. 2001, s. 601PA]*

**Power of Authority to deregister defunct business trust**

**52.** —(1) Where the Authority has reasonable cause to believe that the trustee-manager of a registered business trust is not managing or operating the business of the registered business trust, the Authority may send to the trustee-manager by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof, a notice will be published in the Gazette with a view to deregistering the registered business trust.

(2) Unless the Authority receives an answer within one month from the date of the letter referred to in subsection (1) to the effect that the trustee-manager is managing and operating the business of the registered business trust, the Authority may publish in the Gazette and send to the trustee-manager by registered post a notice that, at the expiration of 3 months from the date of that notice, the Authority may apply to the court to appoint a liquidator with respect to the registered business trust.

(3) Upon receiving a notice of the completion of the winding up of the registered business trust from the liquidator referred to in subsection (2), as required under section 48 (5), the Authority may deregister the registered business trust, and shall publish a notice thereof in the Gazette, and on the publication in the Gazette of the notice the business trust shall be deregistered; but the liability, if any, of every officer of the trustee-manager of the business trust and every unitholder of the business trust shall continue and may be enforced as if the business trust had not been wound up.

(4) If any person feels aggrieved by the deregistration of the business trust, the court, on an application made by that person at any time within 6 years after the business trust has been so deregistered may, if satisfied that the trustee-manager of the business trust was, at the time of the deregistration of the business trust, managing and operating the business of the business trust such that it is just that the registration of the business trust should be reinstated, order the registration of the business trust be reinstated; and upon a copy of the order being lodged with the Authority, the business trust shall be deemed to have continued to be registered as if it had never been deregistered, and the court may by the order

give such directions and make such provisions as seem just for placing the trustee-manager and all other persons in the same position as nearly as may be as if the business trust had not been deregistered.

(5) A notice to be sent under this section to a trustee-manager of a registered business trust may be addressed to the trustee-manager at its registered office or, if no office has been registered, to the care of some officer of the trustee-manager.

*[Companies 1994 Ed., s. 344]*

## **PART IX**

### **MANAGEMENT AND ADMINISTRATION**

#### ***Division 1 — Meetings and proceedings***

##### **Annual general meeting**

**53.** —(1) The trustee-manager of a registered business trust shall call a general meeting of the unitholders of the registered business trust known as the "annual general meeting" once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as the unitholders of the registered business trust hold their first annual general meeting within 18 months of the registration of the registered business trust, the trustee-manager need not call an annual general meeting in the year of the registration of the registered business trust or in the following year.

(2) Notwithstanding subsection (1), the Authority, on the application of the trustee-manager of a registered business trust, may, if for any special reason it thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all the unitholders of a registered business trust entitled to receive notice of the meeting, a general meeting may be held at any time and the unitholders of a registered business trust may resolve that any

meeting held or summoned to be held shall be the annual general meeting of the unitholders of such registered business trust.

(4) If default is made in holding an annual general meeting of the unitholders of a registered business trust —

(a) the trustee-manager of the registered business trust shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction; and

(b) the court may, on the application of any unitholder of the registered business trust, order a general meeting to be called.

*[Companies 1994 Ed., s. 175]*

### **Convening of extraordinary general meeting on requisition**

**54.** —(1) The directors of the trustee-manager of a registered business trust shall, notwithstanding any provision in the trust deed of the registered business trust, on the requisition of unitholders holding in the aggregate at the date of the deposit of the requisition not less than 10% of the total voting rights of all the unitholders of the registered business trust having at that date a right to vote at general meetings, immediately proceed duly to convene an extraordinary general meeting of the unitholders of the registered business trust to be held as soon as practicable but in any case not later than 2 months after the receipt by the trustee-manager of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the trustee-manager of the registered business trust, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors of the trustee-manager of the registered business trust do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitionists or any of them representing more than 50% of the total voting rights of all of the requisitionists, may themselves convene a meeting, in the same manner as nearly as possible as that in which meetings are to be convened by the trustee-manager, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(4) The trustee-manager of the registered business trust shall pay to the requisitionists any reasonable expenses incurred by the requisitionists by reason of the failure of the directors of the trustee-manager to convene a meeting and —

(a) the trustee-manager shall be liable to make such payment to the requisitionists without any recourse to the trust property of the registered business trust for reimbursement of any expenses incurred as a result of that liability; and

(b) any sum so paid by the trustee-manager to the requisitionists shall be retained by the trustee-manager out of any sums due or to become due from the trustee-manager to the directors of the trustee-manager by way of fees or other remuneration in respect of the services of those directors.

(5) Any trustee-manager of a registered business trust which contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 176]*

### **Calling of meetings**

**55.** —(1) Two or more unitholders of a registered business trust may call a meeting of unitholders of the registered business trust if they —

(a) hold in the aggregate not less than 10% of the total voting rights of all the unitholders having at the date of calling of the meeting a right to vote at general meetings of the unitholders of the registered business trust; or

(b) constitute not less than 5% in number of the unitholders of the registered business trust or such lesser number as is provided by the trust deed of the registered business trust.

(2) The trustee-manager of a registered business trust shall call a meeting of the unitholders of the registered business trust or of a class of unitholders of the registered business trust, other than a meeting for the passing of a special resolution, by notice in writing of not less than 14 days or such longer period as is provided in the trust deed of the registered business trust.

- (3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed —
- (a) in the case of a meeting called as the annual general meeting, by all the unitholders entitled to attend and vote thereat; or
  - (b) in the case of any other meeting, by a majority in number of the unitholders having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the unitholders at that meeting.
- (4) The trustee-manager of a registered business trust shall serve notice of every meeting on every unitholder of the registered business trust having a right to attend and vote thereat in the manner in which such notice is required to be served under the trust deed of the registered business trust.
- (5) Any trustee-manager of a registered business trust which contravenes subsection (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 177]*

### **Provision in trust deed as to right to demand poll**

- 56.** —(1) Any provision in the trust deed of a registered business trust shall be void in so far as it would have the effect —
- (a) of excluding the right to demand a poll at a general meeting of the unitholders of the registered business trust on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
  - (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made —
    - (i) by not less than 5 unitholders of the registered business trust having the right to vote at the meeting; or
    - (ii) by a unitholder or unitholders of the registered business trust representing not less than 10% of the total voting rights of all the unitholders having the right to vote at the meeting; or

(c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the trustee-manager of the registered business trust or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(2) The instrument appointing a proxy to vote at a meeting of the unitholders of a registered business trust shall be deemed to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1), a demand by a person as proxy for a unitholder of the registered business trust shall be deemed to be the same as a demand by the unitholder.

(3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act.

*[Companies 1994 Ed., s. 178]*

#### **Quorum, chairman, voting, etc., at meetings**

**57.** —(1) So far as the trust deed of a registered business trust does not make any other provision in that behalf and subject to section 58 —

(a) 2 unitholders of the registered business trust personally present shall form a quorum;

(b) any unitholder of the registered business trust elected by the unitholders present at a meeting may be chairman thereof;

(c) on a show of hands, each unitholder of the registered business trust who is personally present and entitled to vote shall have one vote; and

(d) on a poll, each unitholder of the registered business trust shall have one vote in respect of each unit in the registered business trust held by him.

(2) On a poll taken at a meeting, a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

*[Companies 1994 Ed., s. 179]*

#### **Voting rights in respect of units in registered business trusts**

**58.** Notwithstanding any provision in this Act or in the trust deed of a registered business trust, but subject to section 59, each unit in a registered business trust shall confer the right at a poll at any general meeting of the unitholders of the registered business trust to one vote, and to one vote only.

*[Companies 1994 Ed., s. 64]*

### **Unitholder's rights at meetings**

**59.** Every unitholder of a registered business trust shall, notwithstanding any provision in the trust deed of the registered business trust, have a right to attend any general meeting of the unitholders of the registered business trust and to speak and vote on any resolution before the meeting, except that the trust deed may provide that a unitholder shall not be entitled to vote unless all calls or other sums personally payable by him in respect of units in the registered business trust have been paid.

*[Companies 1994 Ed., s. 180]*

### **Proxies**

**60.** —(1) A unitholder of a registered business trust entitled to attend and vote at a meeting of the unitholders of the registered business trust, or at a meeting of any class of unitholders of the registered business trust, shall be entitled to appoint another person or persons, whether a unitholder or not, as his proxy to attend and vote instead of the unitholder at the meeting.

(2) A proxy appointed under subsection (1) to attend and vote at a meeting of the unitholders of a registered business trust instead of a unitholder of the registered business trust shall also have the same right as the unitholder to speak at the meeting, but unless the trust deed otherwise provides —

(a) a proxy shall not be entitled to vote except on a poll;

(b) a unitholder shall not be entitled to appoint more than 2 proxies to attend and vote at the same meeting; and

(c) where a unitholder appoints 2 proxies, the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(3) The trustee-manager of a registered business trust shall, in every notice calling a meeting of the unitholders of the registered business trust or a meeting of any class of unitholders of the registered business trust, provide with reasonable prominence a statement as to the rights of a unitholder to appoint proxies to attend and vote instead of the unitholder, and that a proxy need not also be a unitholder.



(4) Any trustee-manager of a registered business trust which authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the expense of the registered business trust to only some of the unitholders of the registered business trust entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence.

(5) No person shall be guilty of an offence under subsection (4) by reason only of the issue to a unitholder of a registered business trust at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every unitholder entitled to vote at the meeting by proxy.

(6) Any trustee-manager of a registered business trust which authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which shall entitle the unitholder of the registered business trust to direct the proxy to vote either for or against the resolution.

(7) Any trustee-manager of a registered business trust which contravenes subsection (3) shall be guilty of an offence.

*[Companies 1994 Ed., s. 181]*

### **Power of court to order meeting**

**61.** If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner provided by the trust deed or under this Act, the court may, either of its own motion or on the application of any director of the trustee-manager of a registered business trust or of any unitholder of the registered business trust who would be entitled to vote at the meeting or of the personal representative of any deceased unitholder of the registered business trust, order a meeting to be called, held and conducted in such manner as the court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one unitholder present in person or by proxy shall be deemed to constitute the quorum for a meeting or that the personal representative of any deceased

unitholder may exercise all or any of the powers that the deceased unitholder could have exercised if he were present at the meeting.

*[Companies 1994 Ed., s. 182]*

**Circulation of unitholders' resolutions, etc.**

**62.** —(1) Subject to this section, the trustee-manager of a registered business trust shall, on the requisition of such number of unitholders of the registered business trust specified in subsection (2) and unless the unitholders of the registered business trust otherwise resolve at a general meeting, at the expense of the requisitionists —

- (a) give to the unitholders of the registered business trust entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to the unitholders entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of unitholders of a registered business trust necessary for a requisition under subsection (1) shall be —

- (a) any number of unitholders representing not less than 5% of the total voting rights of all the unitholders of the registered business trust having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than 100 unitholders holding units in the registered business trust on which there has been paid up an average sum, per unitholder, of not less than \$500.

(3) The trustee-manager of a registered business trust shall give the notice of a resolution and the statement referred to in subsection (1) (b) to the unitholders of the registered business trust entitled to have notice of the meeting sent to them by serving on each unitholder, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.

(4) The trustee-manager of a registered business trust shall serve the copy of the resolution referred to in subsection (3) in the same manner and, so far as practicable, at the same time as the notice of the meeting and, where it is not

practicable for it to be served or given at that time, the trustee-manager shall serve the copy of the resolution or give notice of the general effect of the resolution as soon as practicable thereafter.

(5) The trustee-manager of a registered business trust shall not be bound under this section to give notice of any resolution or to circulate any statement unless a copy of the requisition signed by the requisitionists, or 2 or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the trustee-manager —

(a) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting; and

(b) in the case of any other requisition, not less than one week before the meeting.

(6) Notwithstanding subsection (5), a copy of a requisition requiring notice of a resolution deposited at the registered office of the trustee-manager shall be deemed to have been properly deposited for the purposes of that subsection even if the copy was not deposited within the time required by that subsection so long as the copy was deposited before an annual general meeting is called and the annual general meeting is called for a date 6 weeks or less after the copy has been deposited.

(7) The trustee-manager of a registered business trust shall not be bound under this section to circulate any statement if the court is, on the application either of the trustee-manager or of any other person who claims to be aggrieved, satisfied that the rights conferred by this section are being abused to secure needless publicity for any defamatory matter and the court may order the trustee-manager's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that the requisitionists are not parties to the application.

(8) Notwithstanding anything in the trust deed of a registered business trust, the business which may be dealt with at an annual general meeting of the unitholders of the registered business trust shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection, notice shall be deemed to have been so given notwithstanding the

accidental omission, in giving it, of one or more unitholders of the registered business trust.

(9) Any trustee-manager of a registered business trust which contravenes subsection (1), (3) or (4) shall be guilty of an offence.

*[Companies 1994 Ed., s. 183]*

### **Special resolutions**

**63.** —(1) A resolution shall be considered a special resolution when it has been passed by the unitholders of a registered business trust holding in the aggregate not less than three-fourths of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding subsection (1), if it is so agreed by a majority in number of the unitholders of a registered business trust having the right to attend and vote at the meeting, being a majority which together holds not less than 95% of the total voting rights that could be exercised at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under subsection (1) has been given.

(3) At any meeting at which a special resolution is submitted, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded —

(a) by such number of unitholders of a registered business trust for the time being entitled under the trust deed of the registered business trust to vote at the meeting as is specified in the trust deed, but it shall not in any case be necessary for more than 5 unitholders to make the demand; or

(b) if no such provision is made by the trust deed, by 3 unitholders so entitled, or by one unitholder or 2 unitholders so entitled, if that unitholder holds or those 2

unitholders together hold not less than 10% of the total voting rights of all the unitholders having a right to vote at the meeting.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each unitholder is entitled by this Act or the trust deed of the registered business trust.

*[Companies 1994 Ed., s. 184]*

### **Resolutions requiring special notice**

**64.** —(1) Subject to subsection (2), where by this Act special notice is required of a resolution, the resolution shall not be effective unless —

(a) notice of the intention to move it has been given to the trustee-manager of a registered business trust not less than 28 days before the meeting at which it is moved; and

(b) the trustee-manager of a registered business trust has given the unitholders of the registered business trust notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, has given them notice thereof, in any manner allowed by the trust deed of the registered business trust, not less than 14 days before the meeting.

(2) If a meeting is called for a date 28 days or less after notice of the intention to move a resolution referred to in subsection (1) has been given to the trustee-manager of the registered business trust, such notice shall, although not given to the trustee-manager within the time required by that subsection, be deemed to be properly given.

*[Companies 1994 Ed., s. 185]*

### **Registration and copies of certain resolutions**

**65.** —(1) Except as otherwise expressly provided in this Act, the trustee-manager of a registered business trust shall lodge with the Authority a copy of —

(a) every special resolution; and

(b) every resolution passed by any class of unitholders of the registered business trust whether agreed to by all the unitholders of that class or not, within one month after the passing or making thereof.

(2) The trustee-manager of a registered business trust shall, at the request of any unitholder of the registered business trust and without charge, forward to the unitholder a copy of every resolution to which this section applies.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 186]*

### **Resolutions at adjourned meetings**

**66.** Where a resolution is passed at an adjourned meeting of the unitholders of a registered business trust or of unitholders of any class of units in the registered business trust, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

*[Companies 1994 Ed., s. 187]*

### **Minutes of proceedings**

**67.** —(1) The trustee-manager of a registered business trust shall cause —

(a) minutes of all proceedings of general meetings of the unitholders of the registered business trust to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and

(b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2) Any minutes so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which they relate, unless the contrary is proved.

(3) Where minutes have been so entered and signed, then, until the contrary is proved —

(a) the meeting shall be deemed to have been duly held and convened; and

(b) all proceedings had thereat shall be deemed to have been duly had.

(4) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further

fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 188]*

### **Inspection of minute books**

**68.** —(1) The trustee-manager of a registered business trust shall —

- (a) keep the books referred to in section 67 (1) at the registered office or the principal place of business in Singapore of the trustee-manager; and
- (b) make the books available for inspection by any unitholder of the registered business trust without charge.

(2) The trustee-manager of a registered business trust shall, within 14 days after any unitholder of the registered business trust has made a request in writing for a copy of any minutes specified in section 67 (1), furnish that unitholder with a copy of the minutes without charge.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 189]*

## ***Division 2 — Registers***

### **Register of unitholders**

**69.** —(1) The trustee-manager of a registered business trust shall —

- (a) keep and maintain, or cause to be kept and maintained, a register of the unitholders of the registered business trust; and
- (b) make that register available for inspection, without charge, by any person during the business hours of the trustee-manager.

(2) The register referred to in subsection (1) shall contain —

- (a) the name and address of each unitholder of the registered business trust;
- (b) the extent of holding by each unitholder of units in the registered business trust;

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

(d) the date on which any person ceased to be a unitholder.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[SF (Offers of Investments) (Collective Investment Schemes) (Rg 2), r. 7 (1) (f) and (2)]*

### **Place at which register is kept**

**70.** —(1) The trustee-manager of a registered business trust shall keep the register referred to in section 69 at its registered office, but —

(a) if the work of making up the register is done at another office of the trustee-manager in Singapore, the register may be kept at that other office; or

(b) if the trustee-manager arranges with some other person to make up the register on its behalf, the register may be kept at the office of that other person at which the work is done if that office is in Singapore.

(2) The trustee-manager of a registered business trust shall, within 14 days after the register is first kept at a place other than the registered office, lodge with the Authority notice of the place where the register is kept and shall, within 14 days after any change in the place at which the register is kept, lodge with the Authority notice of the change.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 191]*

### **Consequences of default by agent**

**71.** Where, by virtue of section 70 (1) (b), the register of the unitholders of a registered business trust is kept at the office of a person other than the trustee-



manager of the registered business trust and, by reason of any default of that person, the trustee-manager fails to comply with section 70 (1) or (2) or any other provision of this Act as to the production of the register, that person shall be liable to the same penalties as if he were an officer of the trustee-manager in accordance with section 109, and the power of the court under section 102 shall extend to the making of orders against that other person and his officers and employees.

*[Companies 1994 Ed., s. 193]*

### **Power of court to rectify register**

**72.** —(1) If —

(a) the name of any person is without sufficient cause entered in or omitted from the register of the unitholders of a registered business trust referred to in section 69 (1); or

(b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a unitholder, the person aggrieved or any unitholder or the trustee-manager of the registered business trust, on behalf of the registered business trust, may apply to the court for rectification of the register, and the court may refuse the application or may order rectification of the register and payment by the trustee-manager of any damages sustained by any party to the application.

(2) On any application under subsection (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 of unitholders of a registered business trust referred to in section 69 (1), whether the question arises between unitholders or alleged unitholders or between unitholders or alleged unitholders on the one hand and the trustee-manager of the registered business trust on the other hand; and

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

(3) The court when making an order for rectification of a register of the unitholders of a registered business trust shall by its order direct a notice of the rectification to be so lodged with the Authority.

(4) No application for the rectification of a register of the unitholders of a registered business trust in respect of an entry which was made in the register more than 30 years before the date of the application shall be entertained by the court.

*[Companies 1994 Ed., s. 194]*

### **Limitation of liability of trustee, etc., registered as holder of units**

**73.** —(1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register of the unitholders of a registered business trust, referred to in section 69 (1) and kept in Singapore, as the holder of a unit in the registered business trust may become registered as the holder of that unit as trustee, executor or administrator of that estate and shall in respect of that unit be subject to the same liabilities and no more as he would have been subject to if the unit had remained registered in the name of the deceased person.

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a unit in a registered business trust (being a unit registered in a register of the unitholders of the registered business trust referred to in section 69 (1) and kept in Singapore) may, with the consent of the trustee-manager of the registered business trust on behalf of the registered business trust and of the registered holder of that unit, become registered as the holder of the unit as trustee, executor or administrator of that estate and shall in respect of the unit be subject to the same liabilities and no more as he would have been subject to if the unit had been registered in the name of the deceased person.

(3) Units in a registered business trust registered in a register of the unitholders of the registered business trust, referred to in section 69 (1) and kept in Singapore, and held by a trustee in respect of a particular trust shall, at the request of the trustee, be marked in the register in such a way as to identify them as being held in respect of the trust.

(4) Subject to this section, no notice of any trust expressed, implied or constructive shall be entered in a register of the unitholders of a registered business trust referred to in section 69 (1) or be receivable by the Authority and no liabilities shall be affected by anything done in pursuance of subsection (1), (2)

or (3) or pursuant to the law of any other place which corresponds to this section and the trustee-manager of the registered business trust concerned shall not be affected with notice of any trust by anything so done.

*[Companies 1994 Ed., s. 195]*

### ***Division 3 — Annual return***

#### **Annual returns and information**

**74.** —(1) The trustee-manager of a registered business trust shall lodge with the Authority, within one month after the annual general meeting of the unitholders of the registered business trust, a return containing such statements and particulars as may be prescribed by the Authority.

(2) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 197]*

## **PART X**

### **ACCOUNTS, AUDIT AND DISCLOSURE**

#### ***Division 1 — Accounts***

#### **Accounting records and systems of control**

**75.** —(1) The trustee-manager of a registered business trust shall cause to be kept such accounting records and other records as will sufficiently explain the transactions by the trustee-manager entered into on behalf of the registered business trust and financial position of the registered business trust and enable true and fair accounts and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(2) Every management corporation shall retain all its records, books of account and such other documents relating to any of its transactions or operations for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those documents relate are completed.

(3) The trustee-manager of a registered business trust shall devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

(a) assets that are part of the trust property of the registered business trust are safeguarded against loss from unauthorised use or disposition; and

(b) transactions by the trustee-manager entered into on behalf of or purported to be entered into on behalf of the registered business trust are properly authorised and that they are recorded as necessary to permit the preparation of true and fair accounts and to maintain accountability of assets.

(4) The records referred to in subsection (1) shall be kept at the registered office of the trustee-manager of a registered business trust or at such other place as it thinks fit and shall at all times be open to inspection by the directors of the trustee-manager.

(5) If accounting records and other records are kept by the trustee-manager of a registered business trust at a place outside Singapore, the trustee-manager shall send to and keep at a place in Singapore, and make available at all times for inspection by the directors of the trustee-manager, such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair accounts and any documents required to be attached thereto.

(6) The court may in any particular case order that the accounting records and other records of a registered business trust be open to inspection by a public accountant acting for a director of the trustee-manager of the registered business trust, but only upon an undertaking in writing given to the court that information acquired by the public accountant during his inspection shall not be disclosed by him to any person other than that director.

(7) Any trustee-manager of a registered business trust which contravenes subsection (1), (2), (3), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(8) Any officer of the trustee-manager who knowingly contravenes or permits or authorises the contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

*[Companies 1994 Ed., s. 199]*

### **Accounts and directors' report**

**76.** —(1) The trustee-manager of a registered business trust shall, at a date not later than 18 months after the registration of the registered business trust and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the unitholders of the registered business trust at their annual general meeting a profit and loss account of the registered business trust for the period since the preceding account (or in the case of the first account, since the registration of the registered business trust) made up to a date —

(a) in the case of a registered business trust listed or quoted on a securities exchange in Singapore, not more than 4 months before the date of the meeting; and

(b) in the case of any other registered business trust, not more than 6 months before the date of the meeting.

(2) The trustee-manager of a registered business trust shall ensure that the profit and loss account referred to in subsection (1) gives a true and fair view of the profit and loss of the registered business trust for the period of accounting as shown in the accounting and other records of the registered business trust.

(3) The Authority may, by order published in the Gazette, specify such other period in substitution of the period referred to in subsection (1) (a) or (b).

(4) Notwithstanding subsection (1), the Authority may, on application by the trustee-manager of a registered business trust and for any special reason it thinks fit, extend the periods of 18 months and 15 months referred to in that subsection and with respect to any year extend the period referred to in subsection (1) (a) or (b), notwithstanding that the period is so extended beyond the calendar year.

(5) The trustee-manager of a registered business trust shall cause to be made out, and to be laid before the unitholders of the registered business trust at their annual general meeting with the profit and loss account required by subsection (1) —

(a) a balance sheet of the registered business trust as at the date to which the profit and loss account is made up, being a balance sheet that gives a true and fair view of the state of affairs of the registered business trust as at the end of the period to which it relates; and

(b) a cash flow statement of the registered business trust that gives a true and fair view of the cash flow of the business of the registered business trust for the period of accounting of the profit and loss account referred to in subsection (1).

(6) The trustee-manager of a registered business trust shall, before the profit and loss account, balance sheet and cash flow statement referred to in subsections (1) and (5) are made out, take reasonable steps —

(a) to —

(i) ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts; and

(ii) cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the registered business trust and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(c) to ascertain whether any non-current asset is shown in the books of the registered business trust at an amount which, having regard to its value to the registered business trust as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the accounts such

information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(7) The trustee-manager of a registered business trust shall cause —

(a) the accounts referred to in subsection (9) to be duly audited before they are laid before the unitholders of the registered business trust at their annual general meeting as required by this section; and

(b) the auditor's report required by section 84 to be attached to or endorsed upon those accounts.

(8) The trustee-manager of a registered business trust shall —

(a) take reasonable steps to ensure that the accounts referred to in subsection (9) are audited as required by this Part not less than 14 days before the annual general meeting of the unitholders of the registered business trust; and

(b) cause to be attached to the accounts the auditor's report that is furnished to the trustee-manager of the registered business trust under section 84 (2).

(9) In subsections (7) and (8), "accounts" means the profit and loss account, balance sheet and cash flow statement of a registered business trust required to be laid before the unitholders of the registered business trust at the annual general meeting under subsections (1) and (5).

(10) The trustee-manager of a registered business trust shall cause to be attached to every balance sheet of the registered business trust made out under subsection (5) a report —

(a) containing the information required in subsections (11), (12), (15) and (17) and any other information as may be prescribed by the Authority;

(b) made in accordance with a resolution of the directors of the trustee-manager; and

(c) signed by not fewer than 2 of the directors with respect to the profit or loss of the registered business trust for the financial year and the state of the affairs of the registered business trust as at the end of the financial year.

(11) The report to which subsection (10) relates shall state with appropriate details —

(a) the names of all directors of the trustee-manager of the registered business trust in office at the date of the report;

(b) whether —

(i) at the end of the financial year to which the report relates, there subsists any arrangement to which the trustee-manager is a party, being an arrangement whose object is to enable any director or all directors of the trustee-manager to acquire benefits by means of the acquisition of units in, or debentures of, the registered business trust; or

(ii) there have, at any time in that year, subsisted such an arrangement as aforesaid to which the trustee-manager was a party,

and if so, the report shall contain a statement explaining the effect of the arrangement and giving the names of the persons who at any time in that year were directors of the trustee-manager and held, or whose nominees held, units in, or debentures of, the registered business trust acquired in pursuance of the arrangement; and

(c) as respects each person who, at the end of the financial year to which the report relates, was a director of the trustee-manager —

(i) whether or not he was, at the end of that financial year, interested in units in, or debentures of, the registered business trust, or both, and, if he was, the number and amount of units in, or debentures of, the registered business trust, or both, in which he was then interested; and

(ii) whether or not he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in units in, or debentures of, the registered business trust, or both, and, if he was, the number and amount of units in, or debentures of, the registered business trust, or both, in which he was interested at the beginning of that year or when he became a director, as the case may be.

(12) The report referred to in subsection (10) shall also contain such additional information as the Authority may prescribe, being information which the Authority considers necessary to facilitate an understanding by the unitholders of the registered business trust of the business of the registered business trust.

(13) For the avoidance of doubt, the additional information referred to in subsection (12) need not relate to the profit or loss or the state of affairs of the registered business trust referred to in subsection (10).



(14) Every statement, report or other document relating to the state of affairs of a registered business trust attached to, or included with, a report of the directors of the trustee-manager of a registered business trust laid before the unitholders of the registered business trust at their general meeting or sent to the unitholders under section 78 (not being a statement, report or document required by this Act to be laid before the unitholders in general meeting) shall, for the purposes of section 108, be deemed to be part of that last-mentioned report.

(15) Where the trustee-manager of a registered business trust has granted an option to any person to acquire unissued units in the registered business trust, the report required by subsection (10) shall state —

- (a) the number and class of the units in respect of which the option has been granted;
- (b) the date of expiration of the option; and
- (c) the basis upon which the option may be exercised.

(16) Where any of the particulars required by subsection (15) has been stated in a previous report, it may be stated by reference to that report.

(17) Each report required by subsection (10) shall specify —

- (a) particulars of units issued during the period to which the report relates by virtue of the exercise of options to acquire unissued units in the registered business trust, whether granted before or during that period; and
- (b) the number and class of unissued units in the registered business trust under option as at the end of that period, the price, or method of fixing the price, of issue of those units, and the date of expiration of the option.

(18) The trustee-manager of a registered business trust shall include with every balance sheet, profit and loss account and cash flow statement laid before the unitholders of the registered business trust in general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors of the trustee-manager and signed by not fewer than 2 of the directors, stating whether in their opinion —

- (a) the profit and loss account is drawn up so as to give a true and fair view of the results of the business of the registered business trust for the period covered by the account;

- (b) the balance sheet is drawn up so as to exhibit a true and fair view of the state of affairs of the registered business trust as at the end of that period;
- (c) the cash flow statement is drawn up so as to exhibit a true and fair view of the cash flow of the business of the registered business trust for the period covered by the statement; and
- (d) at the date of the statement there are reasonable grounds to believe that the trustee-manager will be able to fulfil, out of the trust property of the registered business trust, the liabilities of the registered business trust as and when they fall due.

(19) Any trustee-manager of a registered business trust which contravenes subsection (1), (2), (5), (6), (7), (8), (10) or (18) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 201]*

### **Relief from requirements as to form and content of accounts and reports**

**77.** —(1) The trustee-manager of a registered business trust may apply to the Authority in writing for an order relieving the trustee-manager from any requirement of this Act relating to the form and content of accounts or to the form and content of the report required by section 76 (11) and the Authority may make such an order either unconditionally or on condition that the trustee-manager complies with such other requirements relating to the form and content of the accounts or report as the Authority thinks fit to impose.

(2) The Authority may, where it considers it appropriate, make an order in respect of a specified class of registered business trusts relieving the trustee-manager of a registered business trust in that class from compliance with any specified requirements of this Act relating to the form and content of accounts or to the form and content of the report required by section 76 (11) and the order may be made either unconditionally or on condition that the trustee-manager comply with such other requirements relating to the form and content of accounts or report as the Authority thinks fit to impose.

(3) The Authority shall not make an order under subsection (1) unless it is of the opinion that compliance with the requirements of this Act would render the accounts or report, as the case may be, misleading or inappropriate to the circumstances of the registered business trust or would impose unreasonable burdens on the trustee-manager of the registered business trust or any officer of the trustee-manager.

(4) The Authority may make an order under subsection (1) which may be limited to a specific period and may, from time to time, either on application by the trustee-manager of the registered business trust or without any such application (in which case the Authority shall give to the trustee-manager an opportunity of being heard) revoke or suspend the operation of any such order.

*[Companies 1994 Ed., s. 202]*

**Unitholders of registered business trust entitled to balance sheet, etc.**

**78.** —(1) The trustee-manager of a registered business trust shall, not less than 14 days before the date of a general meeting of the unitholders of the registered business trust, send to all the unitholders entitled to receive notice of general meetings of the unitholders of the registered business trust a copy of every profit and loss account, balance sheet and cash flow statement of the registered business trust (including every document required under this Act to be attached thereto), which is duly audited and which is to be laid before the unitholders in general meeting, accompanied by —

(a) a copy of the auditor's report thereon; and

(b) the accounts of the trustee-manager prepared in accordance with section 201 of the Companies Act (Cap. 50).

(2) The trustee-manager of a registered business trust shall, without charge and on a request made by any unitholder of the registered business trust (whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance sheets) to whom copies of the profit and loss account and balance sheet of the registered business trust (including every document required by this Act to be attached thereto) for the financial year immediately preceding the then current financial year have not been sent, furnish to the unitholder such copies of

the profit and loss account and balance sheet, together with a copy of the auditor's report thereon.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*[Companies 1994 Ed., s. 203]*

### **Provision of summary financial statement to unitholders**

**79.** —(1) Notwithstanding section 78 and anything in the trust deed of a registered business trust the units of which are listed on the securities exchange, the trustee-manager of the registered business trust may, in such cases as may be prescribed by the Authority and provided all the conditions imposed thereunder by the Authority are complied with, send a summary financial statement of the registered business trust complying with the requirements of subsections (4) and (5) instead of copies of the documents referred to in section 78 (1) to the unitholders of the listed registered business trust.

(2) Where the trustee-manager of a listed registered business trust sends to the unitholders of the listed registered business trust a summary financial statement under subsection (1), any of the unitholders entitled to be furnished with a copy of the documents referred to in section 78 (2) by the trustee-manager may instead request for a summary financial statement from the trustee-manager, and the trustee-manager shall send the summary financial statement to the requesting unitholder.

(3) The trustee-manager of a listed registered business trust need not send a summary financial statement to any unitholder of the listed registered business trust who does not wish to receive the statement.

(4) The trustee-manager of a listed registered business trust shall send the documents referred to in section 78 (1) to any unitholder of the listed registered business trust who wishes to receive such documents.

(5) The summary financial statement referred to in subsection (1)

(a) shall be derived from the annual accounts of the listed registered business trust and the report of the directors of the trustee-manager of the listed registered business trust; and

(b) shall be in such form and contain such information as may be specified by regulations.

(6) Every summary financial statement referred to in subsection (1) shall —

(a) state that it is only a summary of information in the annual accounts of the listed registered business trust and report of the directors of the trustee-manager of the listed registered business trust; and

(b) contain a statement by the auditors of the listed registered business trust of their opinion as to whether the summary financial statement is consistent with the accounts and the report and complies with the requirements of this section and any regulations made under subsection (8).

(7) Any trustee-manager of a listed registered business trust which contravenes this section or any regulations made under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(8) The Authority may make regulations to give effect to this section, including making provision as to the manner in which it is to be ascertained whether a unitholder of a listed registered business trust wishes to receive copies of the documents referred to in section 78 (1) or does not wish to receive the summary financial statement under this section.

(9) In this section, "listed registered business trust" means a registered business trust that has been admitted to the official list of a securities exchange in Singapore and has not been removed from that list.

*[Companies 1994 Ed., s. 203A]*

### **Penalty**

**80.** —(1) If any director of the trustee-manager of a registered business trust —

(a) fails to take all reasonable steps to secure compliance by the trustee-manager with any provision of this Division; or

(b) has by his own wilful act been the cause of any contravention by the trustee-manager of any provision of this Division,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a registered business trust by reason of an omission from the accounts, it shall be a defence for him to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 76 to be dealt with in the accounts.

(3) If an offence under this section is committed with intent to defraud any creditor of the registered business trust or any creditor of any other person or for a fraudulent purpose, the offender shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(4) No person shall be sentenced to imprisonment for any offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

*[Companies 1994 Ed., s. 204]*

## ***Division 2 — Audit***

### **Auditors**

**81.** —(1) A person shall not consent in writing to be appointed, and shall not knowingly act, as auditor for any registered business trust and shall not prepare, for or on behalf of a registered business trust, any report required by this Act to be prepared by an auditor of the registered business trust —

(a) if he is not a public accountant;

(b) if he is indebted to the trustee-manager of the registered business trust or to a related corporation of the trustee-manager in an amount exceeding \$2,500;

(c) if he is —

- (i) an officer of the trustee-manager;
  - (ii) a partner, an employer or an employee of an officer of the trustee-manager;
  - or
  - (iii) a partner or an employee of an employee of an officer of the trustee-manager; or
  - (d) if he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of unitholders of the registered business trust.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.
- (3) For the purposes of subsection (1), a person shall be deemed to be an officer of the trustee-manager of a registered business trust if he is an officer of a related corporation of the trustee-manager except where the Authority, if it thinks fit in the circumstances of the case, directs otherwise, if he has, at any time within the preceding period of 12 months, been an officer or a promoter of the trustee-manager or of such a corporation.
- (4) For the purposes of this section, a person shall not be deemed to be an officer by reason only of his having been appointed as auditor of a trustee-manager or auditor of a registered business trust.
- (5) An accounting firm shall not consent in writing to be appointed, and shall not knowingly act, as auditor for a registered business trust and shall not prepare, for or on behalf of a registered business trust, any report required by this Act to be prepared by an auditor of the registered business trust if any partner of the firm (whether or not he is a public accountant) is a person described in subsection (1) (b), (c) or (d).
- (6) If an accounting firm contravenes subsection (5), every partner of the firm shall be guilty of an offence.
- (7) An accounting corporation shall not consent in writing to be appointed, and shall not knowingly act, as auditor for a registered business trust and shall not prepare, for or on behalf of a registered business trust, any report required by this Act to be prepared by an auditor of the registered business trust if —
- (a) any director of the corporation (whether or not he is a public accountant); or

(b) any employee of the corporation, who is a public accountant and practising as such in that corporation, is a person described in subsection (1) (b), (c) or (d).

(8) If an accounting corporation contravenes subsection (7) —

(a) the corporation; and

(b) the director or employee who caused the contravention,  
shall be guilty of an offence.

(9) No trustee-manager of a registered business trust or person shall appoint any individual as auditor of the registered business trust unless the individual has prior to such appointment consented in writing to act as auditor of that registered business trust.

(10) No trustee-manager of a registered business trust or person shall appoint any accounting firm or accounting corporation as auditor of the registered business trust unless the firm or corporation has prior to such appointment consented, in writing under the hand of at least one partner of the firm or director of the corporation, as the case may be, to act as auditor of that registered business trust.

(11) Where an accounting firm is appointed as the auditor of a registered business trust in the name of the firm, such appointment shall take effect and operate as if the partners of the firm at the time of the appointment, who are public accountants at that time, have been appointed as auditors of the registered business trust.

(12) Where an accounting corporation is appointed as the auditor of a registered business trust in the name of the corporation, such appointment shall take effect and operate as if the directors and employees of the corporation who are practising as public accountants in that corporation have been appointed as auditors of the registered business trust.

(13) Subsection (12) shall apply to a director or an employee practising as a public accountant in an accounting corporation, even if his appointment as director or employment with the corporation commenced after the date on which the corporation was appointed as auditor of the registered business trust.

(14) In this section



"accounting corporation" means a company approved or deemed to be approved as an accounting corporation under the Accountants Act (Cap. 2);

"accounting firm" means a firm approved or deemed to be approved as an accounting firm under the Accountants Act.

*[Companies 1994 Ed., s. 10]*

### **Appointment of auditor**

**82.** —(1) The trustee-manager of a registered business trust shall, within 3 months after registration of the registered business trust by the Authority under section 4, appoint a person or persons nominated by the audit committee of the registered business trust to be the auditor or auditors of the registered business trust, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting of the unitholders of the registered business trust.

(2) The unitholders of a registered business trust shall, at each annual general meeting of the unitholders of the registered business trust, by a resolution passed by unitholders holding in the aggregate a majority of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, appoint a person or persons nominated by the audit committee of the registered business trust to be the auditor or auditors of the registered business trust, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the unitholders of the registered business trust.

(3) Subject to subsections (7) and (8), the trustee-manager of a registered business trust may appoint a public accountant nominated by the audit committee of the registered business trust to fill any vacancy in the office of auditor of the registered business trust, but while such a vacancy continues, the surviving or continuing auditor or auditors, if any, may act as such auditor or auditors.

(4) An auditor of a registered business trust may be removed from office by a resolution passed by unitholders holding in the aggregate a majority of the voting rights of all the unitholders of the registered business trust who, being

entitled to do so, vote in person or, where proxies are allowed, by proxy, at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by the trustee-manager on behalf of a registered business trust —

(a) the trustee-manager shall immediately send a copy of the notice to the auditor concerned and to the Authority; and

(b) the auditor may, within 7 days after the receipt by him of the copy of the notice, make representations in writing to the trustee-manager and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the trustee-manager to every unitholder of the registered business trust to whom notice of the meeting is sent.

(6) Unless the Authority, on the application of the trustee-manager of a registered business trust, orders otherwise, the trustee-manager shall send a copy of the representations referred to in subsection (5) (b) as so requested and the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a registered business trust is removed from office under subsection (4) at a general meeting of the unitholders of the registered business trust —

(a) the unitholders of the registered business trust may, at the meeting and by a resolution passed by unitholders holding in the aggregate not less than three-fourths of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, immediately appoint another person nominated by the audit committee of the registered business trust as auditor; or

(b) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the unitholders of the registered business trust may, by resolution passed by unitholders holding in the aggregate a majority of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or, where proxies are allowed, by proxy, appoint another person nominated by the audit committee of the registered business trust as auditor.

(8) Any trustee-manager of a registered business trust shall, immediately after the removal of an auditor from office under subsection (4), give notice in writing of the removal to the Authority and, if the unitholders of the registered business trust do not appoint another auditor under subsection (7), the Authority shall appoint an auditor.

(9) An auditor appointed under subsection (7) or (8) shall, subject to this section, hold office until the conclusion of the next annual general meeting of the unitholders of the registered business trust.

(10) If the trustee-manager of a registered business trust does not appoint an auditor or auditors as required by this section, the Authority may, on the application in writing of any unitholder of the registered business trust, make the appointment.

(11) The trustee-manager of a registered business trust shall, not less than 14 days before the annual general meeting of the unitholders of the registered business trust or the adjourned meeting under subsection (7) (b), give notice of the nomination made by the audit committee of the registered business trust to —

- (a) the person so nominated;
- (b) each auditor, if any, of the registered business trust; and
- (c) each person entitled to receive notice of general meetings of the unitholders of the registered business trust.

(12) An auditor of a registered business trust may resign —

- (a) if he is not the sole auditor of the registered business trust; or
- (b) at a general meeting of the unitholders of the registered business trust, but not otherwise.

(13) If an auditor of a registered business trust gives notice in writing to the trustee-manager of the registered business trust that he desires to resign, the trustee-manager shall, as soon as is practicable, call a general meeting of the unitholders of the registered business trust for the purpose of appointing an auditor in place of the auditor who desires to resign and on the appointment of another auditor, the resignation of the first-mentioned auditor shall take effect.

(14) The fees and expenses of an auditor of a registered business trust —

(a) in the case of an auditor appointed by the unitholders of the registered business trust at a general meeting, shall be fixed by the unitholders in general meeting or, if so authorised by the unitholders of the registered business trust at the last preceding annual general meeting, by the trustee-manager of the registered business trust; and

(b) in the case of an auditor appointed by the trustee-manager of the registered business trust or by the Authority, may be fixed by the trustee-manager of the registered business trust or by the Authority, as the case may be, and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the unitholders of the registered business trust.

(15) Any person who contravenes subsection (1), (5), (6), (8), (11), (12) or (13) shall be guilty of an offence.

*[Companies 1994 Ed., s. 205]*

### **Auditors' remuneration**

**83.** —(1) If the trustee-manager of a registered business trust is served with a notice sent by or on behalf of —

(a) at least 5% of the total number of unitholders of the registered business trust; or

(b) the unitholders holding in aggregate not less than 5% of the total voting rights of all the unitholders of the registered business trust, requiring particulars of all emoluments paid to or receivable by the auditor of the registered business trust or any person who is a partner or an employer or an employee of the auditor, by or from the trustee-manager in respect of services other than auditing services rendered in relation to the registered business trust, the trustee-manager shall immediately —

((i)) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;

((ii)) forward a copy of the statement to all the unitholders entitled to receive notice of general meetings of the unitholders of the registered business trust; and

((iii)) lay such statement before the unitholders in general meeting.

(2) Without prejudice to subsection (1), the trustee-manager of a registered business trust shall, under prescribed circumstances, undertake a review of the fees, expenses and emoluments of the auditor of the registered business trust to determine whether the independence of the auditor has been compromised, and the outcome of the review shall be sent to all persons entitled to receive notice of general meetings of the unitholders of the registered business trust.

(3) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2) shall be guilty of an offence.

*[Companies 1994 Ed., s. 206]*

### **Powers and duties of auditors as to reports on accounts**

**84.** —(1) An auditor of a registered business trust shall report to the unitholders of the registered business trust on the accounts required to be laid before the unitholders in general meeting and on the accounting and other records of the registered business trust relating to those accounts.

(2) A report by an auditor of a registered business trust under subsection (1) shall be furnished by the auditor to the trustee-manager of the registered business trust in sufficient time to enable the trustee-manager to comply with the requirements of section 78 (1) in relation to that report, but no offence shall be committed by an auditor under this subsection if the trustee-manager has not submitted the accounts for audit as required under this Part in sufficient time, having regard to the complexity of the accounts, for the auditor to make his report.

(3) An auditor of a registered business trust shall, in a report under this section, state —

(a) whether the accounts, in his opinion —

(i) give a true and fair view of the matters required by section 76 to be dealt with in the accounts; and

(ii) are in accordance with this Act so as —

(A) in the case of a balance sheet, to give a true and fair view of the state of affairs of the registered business trust;

(B) in the case of a profit and loss account, to give a true and fair view of the profit or loss of the registered business trust; and

(C) in the case of a cash flow statement, to give a true and fair view of the cash flow of the business of the registered business trust;

(b) whether the accounting and other records required by this Act to be kept by the trustee-manager of the registered business trust have been, in his opinion, properly kept in accordance with this Act;

(c) any defect or irregularity in the accounts and any matter not set out in the accounts without regard to which a true and fair view of the matters dealt with by the accounts would not be obtained; and

(d) if he is not satisfied as to any matter referred to in paragraph (a) or (b), his reasons for not being so satisfied.

(4) It shall be the duty of an auditor of a registered business trust to form an opinion as to —

(a) whether he has obtained all the information and explanations that he required; and

(b) whether proper accounting and other records have been kept by the trustee-manager of the registered business trust as required by section 75 of this Act, and he shall state in his report particulars of any deficiency, failure or short-coming in respect of any matter referred to in this subsection.

(5) An auditor of a registered business trust —

(a) shall have right of access at all times to the accounting and other records, including registers, of the registered business trust; and

(b) shall be entitled to require from any officer of the trustee-manager of the registered business trust and any auditor of a related corporation of the trustee-manager such information and explanations as the auditor may desire for the purposes of audit.

(6) The auditor's report shall —

(a) be attached to or endorsed on the accounts;

(b) if any unitholder of the registered business trust so requires, be read before the unitholders of the registered business trust in general meeting; and

(c) be open to inspection by any unitholder of the registered business trust at any reasonable time.

(7) An auditor of a registered business trust or his agent authorised by him in writing for the purpose shall be entitled —

(a) to attend any general meeting of the unitholders of the registered business trust;

(b) to receive all notices of, and other communications relating to, any general meeting which a unitholder of the registered business trust is entitled to receive; and

(c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor of the registered business trust.

(8) If an auditor of a registered business trust, in the course of the performance of his duties as auditor of the registered business trust, is satisfied that —

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

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or by bringing the matter to the notice of the board of directors of the trustee-manager of the registered business trust,

he shall immediately report the matter in writing to the Authority.

(9) Notwithstanding subsection (8), if an auditor of a registered business trust, in the course of the performance of his duties as auditor, has reason to believe that a serious offence involving fraud or dishonesty is being or has been committed in relation to the registered business trust by officers or employees of the trustee-manager of the registered business trust, he shall immediately report the matter to the Minister.

(10) No duty to which an auditor of a registered business trust may be subject shall be regarded as having been contravened by reason of his reporting the matter referred to in subsection (9) in good faith to the Minister.

(11) In subsection (9), "a serious offence involving fraud or dishonesty" means an offence —

(a) that is punishable by imprisonment for a term that is not less than 2 years; and

(b) in respect of which the value of the property obtained or likely to be obtained from the commission thereof is not less than \$20,000.

(12) Any officer of the trustee-manager of a registered business trust who refuses or fails to allow an auditor of the registered business trust access, in accordance with this section, to any accounting and other records, including registers, of the registered business trust in his custody or control or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, shall be guilty of an offence.

*[Companies 1994 Ed., s. 207]*

#### **Auditors and other persons to enjoy qualified privilege in certain circumstances**

**85.** —(1) An auditor of a registered business trust shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on his part and in the course of his duties, be liable to any action for defamation at the suit of any other person in respect of the publication of any document prepared by an auditor of a registered business trust and required by this Act to be lodged with the Authority.

(3) This section shall not limit or affect any other right, privilege or immunity that an auditor or any other person has as defendant in an action for defamation.

*[Companies 1994 Ed., s. 208]*

### ***Division 3 – Disclosure***

#### **Certification by chief executive officer and board of directors of trustee-manager**

**86.** —(1) Subject to subsections (4) and (5), the trustee-manager of a registered business trust shall —



(a) cause the written statements required by subsections (2) and (3) to be made out in accordance with those subsections; and

(b) ensure that the written statements referred to in paragraph (a) are annexed to the profit and loss account of the registered business trust required under section 76 (1).

(2) Subject to subsection (4), the board of directors of the trustee-manager of a registered business trust shall make a written statement, in accordance with a resolution of the board of directors of the trustee-manager and signed by not less than 2 directors on behalf of the board of directors, certifying that —

(a) fees or charges paid or payable out of the trust property of the registered business trust to the trustee-manager are in accordance with the trust deed of the registered business trust;

(b) interested person transactions are not detrimental to the interests of all the unitholders of the registered business trust as a whole based on the circumstances at the time of the transaction; and

(c) the board of directors of the trustee-manager is not aware of any violation of duties of the trustee-manager which would have a materially adverse effect on the business of the registered business trust or on the interests of all the unitholders of the registered business trust as a whole.

(3) Subject to subsection (5), the chief executive officer of the trustee-manager of a registered business trust shall, in his personal capacity, make a written statement certifying that he is not aware of any violation of duties of the trustee-manager which would have a materially adverse effect on the business of the registered business trust or on the interests of all the unitholders of the registered business trust as a whole.

(4) Where the board of directors of the trustee-manager of a registered business trust is unable to provide a written statement in accordance with subsection (2), for the reason that —

(a) the board of directors is of the opinion that the assertions referred to in subsection (2) are not true; or

(b) there is a divergence of views among the directors of the trustee-manager as to the accuracy of the assertions referred to in subsection (2),

the trustee-manager need not annex the written statement required by subsection (2) to the profit and loss account of the registered business trust required under section 76 (1), but the board of directors shall provide an explanation, including the important factors for the inability to provide such a written statement, and such explanation shall be annexed by the trustee-manager to the profit and loss account of the registered business trust required under section 76 (1).

(5) Where the chief executive officer of the trustee-manager of a registered business trust is unable to provide a written statement in accordance with subsection (3) for the reason that he is of the opinion that the assertion referred to in subsection (3) is not true, the trustee-manager need not annex the written statement required by subsection (3) to the profit and loss account of the registered business trust required under section 76 (1), but the chief executive officer of the trustee-manager shall provide an explanation, including the important factors for his inability to provide such a written statement, and such explanation shall be annexed by the trustee-manager to the profit and loss account of the registered business trust required under section 76 (1).

(6) Any person who contravenes subsection (1), (2), (3), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(7) If the board of directors of the trustee-manager of a registered business trust makes a written statement referred to in subsection (2) without any reasonable basis for arriving at the conclusions as set forth in the statement, any director of the trustee-manager who permits or authorises the statement to be made shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) If the chief executive officer of the trustee-manager of a registered business trust makes a written statement referred to in subsection (3) without any reasonable basis for arriving at the conclusions as set forth in the statement, the chief executive officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(9) For the purposes of this section, a person or group of persons is deemed to have an interest in shares or units, as the case may be, if that person or group of persons is deemed to have an interest in the shares or units, as the case may be, under section 4 of the Securities and Futures Act (Cap. 289).

(10) In this section —

"associate" —

(a) in relation to an individual who is a director, chief executive officer or controlling shareholder of the trustee-manager of a registered business trust or a controlling unitholder of a registered business trust, means —

(i) his immediate family;

(ii) a trustee, when acting in his capacity as such trustee, of any trust of which the individual or his immediate family is a beneficiary or, in the case of a discretionary trust, is a discretionary object; or

(iii) any corporation in which he and his immediate family together (whether directly or indirectly) have an interest in shares entitling the beneficial owners thereof the right to cast, whether by proxy or in person, not less than 30% of the total votes able to be cast at a general meeting of the corporation; and

(b) in relation to a corporation which is a controlling shareholder of the trustee-manager of a registered business trust or a controlling unitholder of a registered business trust, means any corporation which is its related corporation or associated company;

"associated company" , in relation to a corporation, means

(a) any corporation in which the corporation or its subsidiary has, or the corporation and its subsidiary together have, an interest in shares entitling the beneficial owners thereof the right to cast, whether by proxy or in person, not less than 20% but not more than 50% of the total votes able to be cast at a general meeting of the corporation; or

(b) any corporation, other than a subsidiary of the corporation or a corporation which is an associated company by virtue of paragraph (a), the policies of which the corporation or its subsidiary, or the corporation together with its subsidiary, is able to control or influence materially;

"chief executive officer" , in relation to the trustee-manager of a registered business trust, means any person, by whatever name described, who is —

- (a) in the direct employment of, acting for or by arrangement with, the trustee-manager of a registered business trust; and
- (b) principally responsible for the management and conduct of the trustee-manager;

"control" , in relation to a corporation, means the capacity to determine the outcome of decisions on the financial and operating policies of the corporation, having regard to the following considerations:

- (a) the practical influence which can be exerted (rather than the rights which can be enforced); and
- (b) any practice or pattern of behaviour affecting the financial and operating policies of the corporation (even if it involves a breach of an agreement or a breach of trust),

but excludes any capacity to influence decisions on the financial and operating policies of a corporation where such influence is required to be exercised for the benefit of other persons pursuant to an obligation imposed under any written law, rule of law, contract or order of court;

"controlling shareholder" , in relation to a corporation, means

- (a) a person who has an interest in the voting shares of a corporation and who exercises control over the corporation; or
- (b) a person who has an interest in shares entitling the beneficial owners thereof the right to cast, whether by proxy or in person, 30% or more of the total votes able to be cast at a general meeting of the corporation, unless he does not exercise control over the corporation;

"controlling unitholder" , in relation to a registered business trust, means a person who has an interest or interests in units representing 30% or more of the total voting rights of all the unitholders of the registered business trust;

"immediate family" , in relation to an individual, means the individual's spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

"interested person" , in relation to a registered business trust, means —

- (a) the trustee-manager of the registered business trust;
  - (b) a related corporation of the trustee-manager of the registered business trust;
  - (c) an associated company of the trustee-manager of the registered business trust;
  - (d) a director, chief executive officer or controlling shareholder of the trustee-manager of the registered business trust;
  - (e) an associate of a director, chief executive officer or controlling shareholder of the trustee-manager of the registered business trust;
  - (f) a controlling unitholder of the registered business trust; or
  - (g) an associate of a controlling unitholder of the registered business trust;
- "interested person transaction" means a transaction between the trustee-manager of a registered business trust on behalf of the registered business trust and an interested person of the registered business trust.

#### **Disclosure of policies and practices**

**87.** —(1) The trustee-manager of a registered business trust shall attach to the profit and loss account of the registered business trust required under section 76

(1) a statement of its policies and practices in relation to its management and governance of the registered business trust containing such information and description as may be prescribed by the Authority.

(2) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence.

## **PART XI**

### **APPEALS**

#### **Appeals to Minister**

**88.** —(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(2) Where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory

Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2) and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

*[SFA 2002 Ed., s. 310]*

### **Appeal Advisory Committees**

**89.** —(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 88, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the public and private sectors as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for reappointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or material containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee

—

(a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and

(b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of unitholders of registered business trusts and of persons intending to acquire units, or derivatives of units, in registered business trusts and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

*[SFA 2002 Ed., s. 311]*

### **Disclosure of information**

**90.** Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the interest of the public to disclose.

*[SFA 2002 Ed., s. 312]*

### **Regulations for purposes of this Part**

**91.** —(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

(a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;

(b) the form and manner in which an appeal to the Minister under this Act shall be made;

(c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;

(d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and

(e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

*[SFA 2002 Ed., s. 313]*

## PART XII

### MISCELLANEOUS

#### **Electronic transmission of notices of meetings**

**92.** —(1) Where any notice of a meeting is required or permitted to be given, sent or served under this Act or under the trust deed of a registered business trust by the trustee-manager of the registered business trust or the directors of the trustee-manager to —

- (a) a unitholder of the registered business trust;
- (b) an officer of the trustee-manager; or
- (c) the auditor of the registered business trust,

that notice may be given, sent or served using electronic communications to the current address of that person.

(2) For the purposes of this section, a notice in writing of a meeting shall also be treated as given or sent to, or served on, a person where —

- (a) the trustee-manager of a registered business trust and that person have agreed in writing that notices of meetings required to be given to that person may instead be accessed by him on a website;
- (b) the meeting is a meeting to which that agreement applies;
- (c) the notice is published on the website such that it is or can be made legible;
- (d) that person is notified, in a manner for the time being agreed between him and the trustee-manager for the purpose, of —

- (i) the publication of the notice on a website;
- (ii) the address of that website; and
- (iii) the place on that website where the notice may be accessed, and how it may be accessed; and

(e) the notice continues to be published on and remains accessible to that person from that website throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

(3) For the purposes of this Act, a notice of a meeting treated in accordance with subsection (2) as given or sent to, or served on, any person shall be treated as so



given, sent or served at the time of the notification referred to in subsection (2) (d).

(4) A notice of a meeting given for the purposes of subsection (2) (d) shall specify such matters or information as may be required for a notice of that type under any other provision of this Act or the trust deed of that registered business trust.

(5) Nothing in subsection (2) shall invalidate the proceedings of a meeting where —

(a) any notice of a meeting that is required to be published and remain accessible as mentioned in paragraph (e) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish and make accessible that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the trustee-manager of the registered business trust to prevent or avoid.

(6) The trustee-manager of a registered business trust may, notwithstanding any provision to the contrary in the trust deed of the registered business trust, take advantage of subsection (1), (2), (3), (4) or (5).

(7) For the purposes of this section and section 93, the current address of a person or a company, in relation to any notice or document, is a number or address used for electronic communication which —

(a) has been notified by the person in writing to the trustee-manager of a registered business trust as one at which the notice or document may be sent to him; and

(b) the trustee-manager has no reason to believe that the notice or document sent to the person at that address will not reach him.

*[Companies 1994 Ed., s. 387A]*

### **Electronic transmission of documents**

**93.** —(1) Where any accounts, balance sheet, report or other document is required or permitted to be given, sent or served under this Act or under the trust deed of a registered business trust by the trustee-manager of the registered business trust or the directors of the trustee-manager to —

(a) a unitholder of the registered business trust;

(b) an officer of the trustee-manager; or

(c) the auditor of the registered business trust,

that document may be given, sent or served using electronic communications to the current address of that person.

(2) For the purposes of this section, any account, balance sheet, report or other document shall also be treated as given or sent to, or served on, a person where —

(a) the trustee-manager of a registered business trust and that person have agreed in writing to his having access to documents on a website (instead of their being sent to him);

(b) the document is a document to which that agreement applies;

(c) the document is published on the website such that it is or can be made legible; and

(d) that person is notified, in a manner for the time being agreed between him and the trustee-manager for that purpose, of —

(i) the publication of the document on that website;

(ii) the address of that website; and

(iii) the place on that website where the documents may be accessed, and how it may be accessed.

(3) Where any provision of this Act or of the trust deed of a registered business trust requires any document to be given or sent to, or served on, a person not less than a specified number of days before a meeting, that document, if treated in accordance with subsection (2) as given or sent to, or served on, any person, shall be treated as given or sent to, or served on, the person not less than the specified number of days before the date of a meeting if, and only if —

(a) the document is published on and remains accessible to that person from the website throughout a period beginning before the specified number of days before the date of the meeting and ending with the conclusion of the meeting; and

(b) the notification given for the purpose of subsection (2) (d) is given not less than the specified number of days before the date of the meeting.

(4) Nothing in subsection (3) shall invalidate the proceedings of a meeting where

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(a) any document that is required to be published and remain accessible as mentioned in paragraph (a) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and  
(b) the failure to publish and make accessible that document throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the trustee-manager of a registered business trust to prevent or avoid.

(5) The trustee-manager of a registered business trust may, notwithstanding any provision to the contrary in the trust deed of the registered business trust, take advantage of subsection (1), (2), (3) or (4).

*[Companies 1994 Ed., s. 387B]*

#### **Trustees Act not to apply to registered business trusts**

**94.** The Trustees Act (Cap. 337) shall not apply to a registered business trust, notwithstanding that the business trust was constituted before 12th October 2004.

#### **Non-applicability of rules relating to perpetuities, accumulations and inalienability of property to registered business trusts.**

**95.** The rules of law relating to perpetuities, accumulations and inalienability of property shall not apply to any registered business trust, notwithstanding that the business trust was constituted before 12th October 2004.

*[Aust. Corp. 2001, s. 1346]*

#### **Opportunity to be heard**

**96.** Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

*[SFA 2002 Ed., s. 316]*

#### **Appointment of assistants**

**97.** —(1) The Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(2) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

*[SFA 2002 Ed., s. 320]*

**Codes, guidelines, etc., issued by Authority**

**98.** —(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or
- (c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline or no-action letter in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

(a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline or no-action letter; and

(b) any reference in this Act or any other written law to the code, guideline or no-action letter however expressed shall, unless the context otherwise requires, be a reference to the code, guideline, or no-action letter as so amended.

(5) The failure of any person to comply with any of the provisions of a code or guideline issued under this section that applies to him shall not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter shall not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(7) Any code or guideline issued under this section —

(a) may be of general or specific application; and

(b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) For the avoidance of doubt, any code, guideline or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(9) In this section, "no-action letter" means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

*[SFA 2002 Ed., s. 321]*

### **Translation of instruments**

**99.** —(1) Where a person submits or furnishes to or lodges with the Authority any book, application, return, report, statement or other information or document under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, submit or furnish to or lodge with the Authority, as the case may be, an accurate translation thereof in the English language.

(2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, make available for such inspection an accurate translation thereof in the English language.

(3) Where a person is required to maintain or keep any accounts, minutes or other records under this Act and the accounts, minutes or other records or any part thereof is not maintained or kept in the English language, the person shall —

(a) cause an accurate translation of that accounts, minutes or other records or that part of the accounts, minutes or other records in the English language to be made from time to time at intervals of not more than 7 days; and

(b) maintain or keep the translation with the accounts, minutes or other records for so long as the accounts, minutes or other records are required under this Act to be maintained or kept.

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made thereunder.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(6) Where a person is charged with an offence under subsection (5), it shall be a defence for the person to prove that —

(a) he had taken all reasonable steps to ensure that the translation that was submitted or furnished to or lodged with the Authority, made available for inspection, or maintained or kept, as the case may be, was accurate in the circumstances; and

(b) he had believed on reasonable grounds that the translation was accurate.

(7) In subsections (1), (2) and (3), "Act" includes any direction made by the Authority under this Act.

*[Companies 1994 Ed., s. 397; SFA 2002 Ed., s. 318A]*

### **Right of Authority and unitholders to apply to court for order**

**100.** Without prejudice to any other right of action or remedy under any written law or rule of law, the Authority or a unitholder of a registered business trust may apply to the court for an order to compel the trustee-manager of the registered business trust to perform its duties as set out in the trust deed of the registered business trust, and the court may either make the order on such terms as it considers appropriate or dismiss the application.

*[SFA 2002 Ed., s. 267A]*

### **Power of court to make certain orders**

**101.** —(1) Where —

(a) on the application of the Authority, it appears to the court that a person has committed an offence under this Act or has contravened any condition or restriction imposed on him under this Act or the listing rules of a securities exchange; or

- (b) on the application of a securities exchange, it appears to the court that a person has contravened the listing rules of the securities exchange, the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:
- ((i)) in the case of a persistent or continuing breach of this Act, any condition or restriction imposed under this Act or the listing rules of a securities exchange, an order directing a person to do or refrain from doing a specified act, including, but not limited to, directing the trustee-manager of a registered business trust to resign as the trustee-manager;
  - ((ii)) any ancillary order deemed to be desirable in consequence of the making of any of these orders;
  - ((iii)) an order for the reimbursement of costs of the application out of the trust property of a registered business trust to the person who made the application under this subsection.
- (2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.
- (3) Any person who, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.
- (4) Subsection (3) shall not affect the powers of the court in relation to the punishment for contempt of court.
- (5) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

*[SFA 2002 Ed., s. 325]*

### **Court may compel compliance**

**102.** —(1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document, the court may by order compel an immediate

inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of the trustee-manager of a registered business trust has failed or omitted to do any act, matter or thing which under this Act he is or was required or directed to do, the court may, on the application of the Authority, any unitholder of the registered business trust, the trustee-manager or the liquidator of the registered business trust, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order and, for the purpose of complying with any such order, a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

*[Companies 1994 Ed., s. 399]*

### **Power of Minister to appoint inspector**

**103.** —(1) Notwithstanding anything in this Act, the Minister may appoint any person as an inspector to investigate any matter if he is satisfied that —

- (a) a prima facie case has been established that, for the protection of the public, the unitholders or the creditors of a registered business trust, it is desirable that the affairs of the registered business trust should be investigated;
- (b) it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the registered business trust should be investigated; or
- (c) for any other reason, it is in the public interest that the affairs of the registered business trust should be investigated.

(2) An inspector appointed under subsection (1) shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap. 50) and that Part shall apply, with the necessary modifications, to such investigation.

(3) Any inspector appointed under subsection (1) shall report the results of his investigation to the Minister and the Minister may, if he thinks it in the public interest to do so, cause the report to be printed and published.

*[Companies 1994 Ed., s. 230; SFA 2002 Ed., s. 151]*

### **Injunctions**

**104.** —(1) Where a person has engaged, is engaging or is likely to engage in any



conduct that constitutes or would constitute a contravention of this Act or the trust deed of a registered business trust, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act or trust deed of a registered business trust to do, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so and before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on an application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order that is granted or made by the court under this section and that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

(a) if the court is satisfied that the person has engaged in conduct of the kind referred to in that subsection, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of the kind referred to in that subsection, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(a) if the court is satisfied that the person has refused or failed to do the act or thing referred to in that subsection, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do the act or thing referred to in that subsection, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial

damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(10) Where any person referred to in subsection (1) or (2) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

*[SFA 2002 Ed., s. 326]*

### **Power of court to grant relief**

**105.** —(1) If, in any civil proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) For the avoidance of doubt and without prejudice to the generality of subsection (1), "liability" includes the liability of a person to whom this section applies to account for profits made or received.

(3) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court shall have the same power to relieve him under this section as it would have had if it had been a court before which civil proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(4) This section shall apply to the following persons:

- (a) the trustee-manager of a registered business trust;
- (b) officers of the trustee-manager of a registered business trust;

- (c) persons employed by the trustee-manager of a registered business trust as auditors, whether they are or are not officers of the trustee-manager; and
- (d) persons who are liquidators appointed or directed by the court to carry out any duty under this Act in relation to a registered business trust and all other persons so appointed or so directed.

*[Companies 1994 Ed., s. 391]*

### **Jurisdiction of court**

**106.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

*[SFA 2002 Ed., s. 327]*

### **Duty not to furnish false information to Authority**

**107.** —(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority shall use due care to ensure that the document is not false or misleading in any material particular.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

*[SFA 2002 Ed., s. 329]*

### **False and misleading statement**

**108.** Every person who in any return, report, certificate or other document required by or for the purposes of this Act —

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

(b) wilfully omits or authorises the accession of any matter or thing without which the document is misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

*[Companies 1994 Ed., s. 401]*

**Offences by bodies corporate, etc.**

**109.** —(1) Where an offence under this Act (other than an offence under Division 1 of Part X) committed by a body corporate is proved —

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of an unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

"officer" —

(a) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes a person purporting to act in any such capacity;

"partner" includes a person purporting to act as a partner.

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

*[SFA 2002 Ed., s. 331]*

### **General penalties**

**110.** Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$50,000.

### **Composition of offences**

**111.** The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine that is prescribed for the offence.

*[SFA 2002 Ed., s. 336]*

### **General exemption**

**112.** —(1) The Authority may, by regulations, exempt any person, registered business trust, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) The Authority may, on the application of any person, exempt the person or any registered business trust, matter or transaction from all or any of the

provisions of this Act or the requirements specified in any written direction, by notice in writing, if the Authority considers it appropriate to do so in the circumstances of the case.

(3) An exemption under subsection (2) —

(a) may be granted subject to such terms or conditions as the Authority may specify by notice in writing;

(b) need not be published in the Gazette; and

(c) may be withdrawn at any time by the Authority.

(4) Any person who contravenes any term or condition prescribed under subsection (1) or specified by the Authority under subsection (3) (a) shall be guilty of an offence.

*[SFA 2002 Ed., s. 100]*

### **Amendment of Schedule**

**113.** —(1) The Authority may, at any time, by order published in the Gazette, amend the Schedule.

(2) The Authority may, in any order made under subsection (1), make such incidental, consequential or supplementary provision as may be necessary or expedient.

### **Regulations**

**114.** —(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to —

(a) the criteria for the registration of business trusts and the constitution, operation and management of registered business trusts including, but not limited to, the powers and duties of the trustee-managers of registered business trusts and the rights and obligations of the unitholders of registered business trusts;

(b) the administration and regulation of registered business trusts and, in particular, the governance practices of such registered business trusts;

(c) the administration and regulation of trustee-managers of registered business trusts;

- (d) the particulars to be recorded in the accounts of registered business trusts and the information on the annual accounts of registered business trusts to be contained in the auditor's reports required to be lodged under this Act;
  - (e) the forms for the purposes of this Act;
  - (f) the fees to be paid in respect of any matter or thing required for the purposes of this Act and the refund and remission, whether in whole or in part, of such fees; and
  - (g) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (3) Except as otherwise expressly provided in this Act, the regulations —
- (a) may be of general or specific application;
  - (b) may provide that a contravention of any specified provision thereof shall be an offence; and
  - (c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

*[SFA 2002 Ed., s. 341]*

## **THE SCHEDULE**

Sections 2 and 113

### **TYPES OF TRUSTS THAT ARE NOT REGARDED AS BUSINESS TRUSTS FOR PURPOSES OF ACT**

- 1.** A trust operated by a person otherwise than by way of business.
- 2.** A trust under which each of the unitholders carries on a business other than investment business and enters into the trust solely incidental to that other business.



- 3.** A trust under which each of the unitholders is a related corporation of the trustee.
- 4.** A trust made by or on behalf of a corporation solely for the benefit of persons each of whom is either a bona fide director, a former director, a consultant, an adviser, an employee or a former employee of that corporation or a related corporation of that corporation, or a spouse, a widow, a widower or a child, an adopted child or a step-child below the age of 18 of such director, former director, employee or former employee.
- 5.** A trust made by or on behalf of 2 or more corporations solely for the benefit of persons each of whom is either a bona fide director, a former director, a consultant, an adviser, an employee or a former employee of any of those corporations or a related corporation of any of those corporations, or a spouse, a widow, a widower or a child, an adopted child or a step-child below the age of 18 of such director, former director, employee or former employee.
- 6.** A franchise as defined in section 2 (1) of the Securities and Futures Act (Cap. 289).
- 7.** A trust under which money is received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions.
- 8.** A trust made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof solely for the benefit of its members.
- 9.** A trust made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39).
- 10.** A trust arising out of a life policy within the meaning of the Insurance Act (Cap. 142).