

No. S 2

**SECURITIES MARKETS ORDER, 2013  
(S 59/2013)**

**SECURITIES MARKETS REGULATIONS, 2015**

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**SECURITIES MARKETS ORDER, 2013**  
(S 59/2013)

**SECURITIES MARKETS REGULATIONS, 2015**

In exercise of the powers conferred by section 268 of the Securities Markets Order, the Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

**PART I**

**PRELIMINARY**

**Citation, commencement and application.**

1. These Regulations may be cited as the Securities Markets Regulations, 2015 and shall commence on such date to be appointed by the Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

**PART II**

**SECURITIES REGISTRATION AND PROSPECTUS REQUIREMENTS**

**Registration statement and prospectus.**

2. (1) Before making a public offering of securities or seeking admission of securities to trading on a regulated market in Brunei Darussalam, persons or entities, or any person or entity acting on their behalf, shall prepare and file —

(a) a registration statement; and

(b) a prospectus,

that follow the instructions of the Authority and submit them for approval by the Authority as required under regulation 11.

(2) Any other documentation that may be required to be filed with the registration statement and prospectus shall be submitted to the Authority for approval.

(3) The requirement to prepare a registration statement and prospectus and does not apply to public offerings of securities identified by the Authority by regulations.

**Short-form registration, shelf registration and prospectus.**

3. (1) The Authority may permit, through issued instructions, the filing of a short-form registration and prospectus that may be used for ongoing or shelf registrations of securities, in which the eligible issuer may register a relatively large amount of different types of securities that it may then issue, or take down from the shelf, from time to time pursuant to the form for public offering as may be determined by the Authority.

(2) A form for public offering or short-form registration statement that follows the Authority's instructions permits an eligible issuer to update disclosure prospectively through incorporation by reference into the registration statement of the subsequently filed current reports and periodic reports filed with the Authority by the issuer.

(3) An eligible issuer may use a short-form registration statement for ongoing or shelf registrations of its securities, in which the issuer registers a relatively large amount of different types of securities that it may then issue from time to time as needed.

(4) A shelf registration statement and a prospectus become effective upon approval of the Authority and permit take-downs of the securities without additional approval of the Authority provided the filing is updated with current required information as set forth in the Authority's instructions.

**Disclosure of information in prospectus.**

4. (1) The prospectus shall disclose all the necessary information, depending on the particular nature of the issuer and of the securities being offered to the public, or for which admission to trading on a regulated market is sought, to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of the guarantors, if any, of the securities being offered to the public or admitted to trading, as well as the rights attaching to such securities and the conditions in which the securities are issued as set forth in the guidelines issued by the Authority.

(2) The information in the registration statement must be presented in a structure that is comprehensible and easy to analyse and must comply with the requirements of these Regulations.

(3) The prospectus may be drawn up as a single document or as separate documents.

(4) A prospectus drawn up as a single document shall comprise parts in the following order —

- (a)* a clear and detailed table of contents;
  - (b)* a prospectus summary provided for under these Regulations;
  - (c)* identified risk factors linked to the issuer and the type of security covered by the issue;
  - (d)* any information required by the Authority.
- (5) A prospectus drawn up as separate documents shall include —
  - (a)* a registration statement or, for the first admission to trading of equity securities, a base document containing information about the issuer;
  - (b)* a securities note which is a short form information document in any form whatsoever and which contains information on the securities being offered to the public or for which admission to trading on a regulated market is sought; and
  - (c)* a prospectus summary described in regulation 5.
- (6) An issuer, an offeror or a person requesting admission who already has a registration statement approved by the Authority, must prepare a securities note and a prospectus summary when securities are offered or a request is made for admission to trading.
- (7) When sub-regulation (6) applies, the securities note must provide information that would normally be provided in the registration statement if there has been a material change or a recent development which could affect assessments by investors since the approval of the latest updated registration statement or any supplemental note to the prospectus.
- (8) If an issuer has filed a registration statement that has not been approved by the Authority, the entire documentation, including updated information, shall be subject to approval by the Authority.
- (9) The securities note and the prospectus summary must be submitted for approval by the Authority.
- (10) The prospectus must be drawn up in accordance with disclosures included in the guidelines issued by the Authority for the different categories of securities.
- (11) In situations where one or more of the information items referred to in the guidelines issued by the Authority or equivalent information is not pertinent to the issuer, to the offer or to the securities to which the prospectus relates, the information may be omitted.

**Prospectus summary.**

5. (1) The prospectus shall include a summary, which shall, in a brief manner and in a non-technical language, convey the essential characteristics and main risks associated with the issuer, the guarantors, if any, and the securities being offered to the public or for which admission to trading on a regulated market is sought.

(2) The prospectus summary shall contain a warning that —

(a) the prospectus summary shall be read as an introduction to the prospectus; and

(b) any decision by the investor to invest in the relevant securities shall be based on consideration of the prospectus as a whole.

(3) The prospectus summary shall generally not exceed two thousand five hundred words.

**Omission of information from prospectus.**

6. (1) The Authority may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground that —

(a) the disclosure would be contrary to the public interest;

(b) the disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment; or

(c) the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment.

(2) A request to the Authority to authorise the omission referred to in sub-regulation (1) must —

(a) be in writing;

(b) identify the specific information concerned and the specific reason for its omission; and

(c) state why one or more of the grounds in sub-regulation (1) applies.

**Final offer price and quantity of securities.**

7. (1) If a prospectus for which approval is sought does not include the final offer price and the quantity of securities to be offered —

(a) the prospectus must disclose the criteria and the conditions in accordance with which the final offer price and the quantity of securities are determined or, in the case of price, the maximum price; and

(b) the final offer price and the quantity of securities must, as soon as practicable, be filed with the Authority in accordance with the direction of the Authority.

(2) Where either the final offer price or the quantity of securities to be offered in sub-regulation (1) is not stated in the prospectus, investors shall be entitled to withdraw their acceptance of the acquisition or subscription terms for the securities within 2 trading days following the publication of the final offer price and the quantity of the securities.

**Use of proceeds from offering of securities.**

8. (1) The prospectus shall disclose the estimated net amount and percentage of the proceeds broken down into each principal intended use thereof.

(2) If the anticipated proceeds are not sufficient to fund all the proposed purposes, the order of priority of such purpose must be given, as well as the amount and sources of other funds needed.

(3) The prospectus shall disclose how the proceeds will be used pending their eventual utilisation for the proposed purposes.

(4) If the issuer has no specific plans for the proceeds and the Authority has allowed this, it shall discuss the principal reasons for the offering of the securities.

(5) Where the offer is not fully underwritten on a firm commitment basis, the prospectus shall state the minimum amount that, in the reasonable opinion of the directors of the issuer, must be raised by the offer of securities.

(6) If the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, the prospectus shall briefly describe the assets and their costs.

(7) If the assets have been or will be acquired from affiliates of the issuer or their associates, the prospectus shall disclose the persons from whom they will be acquired and how the cost to the issuer will be determined.



(8) If the proceeds are to be used to finance acquisition of other businesses, the issuer shall give a brief description of such businesses and information on the status of the acquisition.

(9) If any material part of the proceeds is to be used to discharge, reduce or retire indebtedness, the prospectus shall describe the interest rate and maturity of such indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.

**Expenses of offering.**

9. (1) The following information shall be provided in the registration statement pertaining to the expenses of the offering —

(a) the total amount of the discounts or commissions agreed upon by the underwriters or other placement, or the selling agents, or the issuer or the offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share;

(b) a reasonably itemised statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered (in absolute terms and as a percentage of the total amount of the offering) and by whom the expenses are payable, if other than the issuer;

(c) if any of the securities are to be offered for the account of a selling shareholder, indication of the portion of such expenses to be borne by such shareholder and indication of the amount of any expenses specifically charged to the subscriber or purchaser of the securities being offered.

(2) The information may be given subject to future contingencies.

(3) If the amount of any items is not known, estimates (identified as such) shall be given.

**Incorporation by reference.**

10. (1) Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents, approved by or filed with the Authority. This information shall be the latest available to the issuer.

(2) The summary note must not incorporate information by reference.

(3) When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information.

**Approval of prospectus.**

11. (1) An applicant must submit the following information to the Authority —
- (a) a completed registration statement;
  - (b) a prospectus;
  - (c) if the order of items in the prospectus does not coincide with the order in the guidelines, a cross-reference list identifying the pages where each item can be found in the prospectus;
  - (d) a letter identifying any items from the guidelines that have not been included because they are not applicable;
  - (e) if information is incorporated in the prospectus by reference to another document, a copy of the document (annotated to indicate which item of the guidelines it relates to);
  - (f) if the issuer is requesting the Authority to authorise the omission of information, the requirements under regulation 6 shall apply.
- (2) An applicant must provide contact details of individuals who are —
- (a) sufficiently knowledgeable about the documentation to be able to answer questions from the Authority; and
  - (b) available to answer questions during the normal business hours of the Authority.
- (3) Drafts of documents must be submitted to the Authority —
- (a) in a substantially complete form;
  - (b) in duplicate hard copy or an agreed electronic format;
  - (c) annotated in the margin to indicate compliance with all applicable requirements of these Regulations; and
  - (d) such as may be required by the Authority.
- (4) If the Authority requires further drafts of documents, they must be submitted to the Authority —
- (a) marked to indicate all changes made since the last draft was reviewed by the Authority;

*(b)* marked to indicate all changes made to the documents as a consequence of the comments by the Authority;

*(c)* in duplicate hard copy or an agreed electronic form; and

*(d)* annotated in the margin to indicate compliance with all applicable requirements.

(5) A prospectus must not be published unless the Authority has approved it.

**Filing and publication of prospectus.**

12. (1) After a prospectus is approved by the Authority, it must be filed with the Authority and made available to the public as soon as practicable, and in any case, at a reasonable time, before the making of the public offering or before the admission to trading of the securities.

(2) In the case of an initial public offering of a class of shares not already admitted to trading and that is to be admitted to trading for the first time, the prospectus must be made available to the public at least 6 business days before the end of the public offering.

(3) A prospectus is deemed available to the public for the purposes of this regulation when published either –

*(a)* by insertion in one or more newspapers widely circulated in Brunei Darussalam;

*(b)* in a printed form to be made available, free of charge, to the public at the offices of the regulated market on which the securities are being admitted for trading;

*(c)* at the registered office of the issuer and at the offices of any underwriter; or

*(d)* in an electronic form on the website of the issuer, the underwriter or the regulated market.

(4) If the prospectus is made available by publication in an electronic form, a hard copy must nevertheless be delivered to the investor by the issuer, upon his request and free of charge.

(5) A prospectus is valid for 12 months after its publication for a public offering or an admission to trading, provided the prospectus is updated by a supplementary prospectus, if required by these Regulations.

(6) A registration form is valid for 12 months after it is filed provided that it has been updated in accordance with these Regulations.

**Publication of list of prospectuses as Authority directs.**

13. (1) The Authority shall publish a list of prospectuses that it has approved over the previous 12 months.

(2) The list shall specify how a prospectus is made available and where it can be obtained, including, if applicable, a hyperlink to the prospectus published on the website of the issuer and it must be possible for investors to download and print the prospectus.

**Advertisements.**

14. (1) An advertisement relating to an offering or to an admission to trading under the Order, shall not be issued unless it has been approved by a holder of a capital markets services licence and —

(a) it states that a prospectus has been or will be published and indicates where investors can obtain it;

(b) it is clearly recognisable as an advertisement;

(c) the information in the advertisement is accurate and not misleading; and

(d) the information in the advertisement is consistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is to be published later.

(2) A written advertisement must contain a bold and prominent statement to the effect that it is not a prospectus but an advertisement and investors should not subscribe for any securities referred to in the advertisement except on the basis of the information in the prospectus.

(3) In this regulation, “advertisement” includes all information concerning an offering or an admission to trading disclosed in an oral or written form (even if not for advertising purposes), and must be consistent with that contained in the prospectus.

(4) Types of advertisements may include advertisements made through —

(a) an addressed or an unaddressed printed matter;

- (b) an electronic message or advertisement received via a mobile telephone or pager;
- (c) a standard letter;
- (d) a press advertising with or without order form;
- (e) a catalogue;
- (f) a telephone with or without human intervention;
- (g) seminars and presentations;
- (h) radio and television;
- (i) electronic mail;
- (j) *facsimile* (fax);
- (k) brochure; and
- (l) web posting including internet banners.

**New factor, material mistake and inaccuracy in prospectus.**

15. (1) If there arises or is noted a significant new factor, material mistake or inaccuracy relating to information included in a prospectus approved by the Authority, the person on whose application the prospectus was approved must, in accordance with prospectus regulations, submit a supplementary prospectus containing details of the new factor, material mistake or inaccuracy to the Authority for its approval within a relevant period.

(2) The relevant period begins when the prospectus is approved by the Authority and ends —

- (a) with the closure of the offering of the securities to which the prospectus relates; or
- (b) when trading in those securities on a regulated market begins.

(3) Any person responsible for the prospectus who is aware of any new factor, material mistake or inaccuracy that may require the submission of a supplementary prospectus must give notice of it to the issuer of the securities to which the prospectus relates, and the person on whose application the prospectus was approved.

(4) A supplementary prospectus must provide sufficient information to address the new factor, correct any material mistake or inaccuracy that gave rise to the need for it.

(5) An investor has a right to withdraw his acceptance after a supplementary prospectus is published.

**Responsibility of experts.**

16. (1) For the purposes of the Order, an expert is deemed as having certified any part of the registration statement or any document and is responsible for any statement or report reproduced (in whole or in part) in a prospectus with his written consent.

(2) A person responsible for filing a prospectus must —

(a) include a statement in the prospectus that the expert has consented to the reproduction of his statement or report;

(b) file the written consent of the expert with the Authority; and

(c) keep a record of the written consent received from the expert.

**Offer of asset-backed securities issued by special purpose vehicle.**

17. (1) An offer of asset-backed securities shall be made only if they are issued by —

(a) a special purpose vehicle (SPV) other than a trust; or

(b) the trustee of a trust that is a special purpose vehicle.

(2) The Authority may exempt any person or class of persons from this regulation, subject to such conditions or restrictions as the Authority may determine.

(3) In this regulation —

“asset-backed securities” means debentures or units of debentures issued pursuant to a securitisation transaction;

“securitisation transaction” means an arrangement that involves the sale, transfer or assignment of assets to a special purpose vehicle where —

(a) such sale, transfer or assignment is funded by the issue of debentures or units of debentures, whether by that special purpose vehicle or another special purpose vehicle; and

(b) payments in respect of such debentures or units of debentures are or will be principally derived, directly or indirectly, from the cash flows generated by the assets;

“special purpose vehicle” is an entity or a trust (for its trustee) that is established solely in order to do either or both of the following —

(a) hold, whether as a legal or equitable owner, the assets from which payments to holders of any asset-backed securities are or will be primarily derived; or

(b) issue any asset-backed securities.

### PART III

#### CONTINUING DISCLOSURE OBLIGATIONS

##### Annual reports and financial statements.

18. (1) Market disclosure of the annual report and annual financial statements by reporting entities (public companies and listed companies, including funds) must be made on a timely basis and include significant information about the operations and business results of the reporting entities.

(2) The annual report and annual financial statements referred to in sub-regulation (1) must be made and filed with the Authority as soon as possible after the annual report and financial statements have been audited and approved but not later than 90 days after the end of the financial period, and save in exceptional circumstances, the Authority may consider an application for extension of this period.

(3) With respect to the financial year to which it relates, the annual report must include —

(a) a review of operations during the financial year and the results of those operations;

(b) the details of any significant changes in the state of affairs of the reporting entity during the financial year;

(c) the principal activities of the reporting entity during the financial year and any significant changes in the nature of those activities during that financial year;

(d) the details of any matter or circumstance that have arisen since the end of the financial year that have significantly affected or may significantly affect —

- (i) the reporting entity's operations in future financial years;
- (ii) the results of those operations in future financial years; or
- (iii) the reporting entity's state of affairs in future financial years;

(e) the likely developments in the reporting entity's operations in future financial years and the expected results of those operations; and

(f) a statement by the auditors that the accounts give a true and fair view of the state of affairs of the reporting entity, profit and loss and additional information as may be required.

(4) An independent, competent and qualified auditor must audit the annual financial statements in accordance with the International Financial Reporting Standards or where applicable, the Accounting and Auditing Organisation for Islamic Financial Institutions Standards or such other international standards as may be applicable.

#### **Preliminary and interim financial results.**

19. (1) A market disclosure of preliminary financial results must be made public without delay, but not later than 30 minutes before the market opens on the day after the board of directors' approval.

(2) A reporting entity must publish a semi-annual financial statement for the first 6 months of each financial year, and if the accounts have either been audited or reviewed by the auditors, comments to this effect must be included.

(3) The semi-annual financial statement referred to in sub-regulation (2) must be made without delay and in any event not later than 60 days of the end of the period to which the statement relates.

(4) A change of accounting reference date that includes a market disclosure of previous and proposed accounting reference date, and reasons for the change must be made without delay.

#### **Disclosure of price sensitive information.**

20. (1) Reporting entities are required to disseminate unpublished price sensitive information without delay as part of a continuous reporting obligation.



(2) Reporting entities must ensure that any price sensitive information is disclosed to the market as a whole and must take all reasonable care to ensure that such information is sufficiently detailed, accurate and not misleading or deceptive.

(3) The price sensitive information must be released by the reporting entities without delay by way of an announcement or such other manner as the Authority may determine.

(4) A short period before announcing price sensitive information is permitted where a reporting entity is affected by an unexpected event and the reporting entity needs to clarify the situation so that any information released is accurate and not misleading.

(5) Where there is a danger of information leaking out in the meantime, the reporting entity must make a holding announcement, giving an outline of the subject matter of the announcement, the reasons why a full announcement cannot yet be made and undertaking to give a full announcement as soon as possible.

(6) Price sensitive information that is already available to the market, such as interest rate changes, does not need to be announced unless it has an unexpected or unusual effect on the reporting entity.

(7) The obligation of a reporting entity to announce price sensitive information is not discharged where a fee must be paid for access to the information or it is not a matter of general knowledge that the information can be obtained and in cases of doubt, a reporting entity must consult with the Authority.

**Types of price sensitive information.**

21. (1) Types of price sensitive information that must be reported by reporting entities may include —

(a) transactions in the securities of the reporting entities, including derivative securities, made by their executive officers and directors;

(b) defaults and other events that could trigger acceleration of direct or contingent obligations;

(c) transactions that result in material direct or contingent obligations not included in a prospectus filed by the reporting entities with the Authority;

(d) offerings of securities not included in a prospectus filed by the reporting entities with the Authority;

- (e)* waivers of corporate ethics and conduct regulations for officers, directors and other key employees;
- (f)* material modification to rights of security holders;
- (g)* departure of any of the senior management of the reporting entities (or persons in equivalent positions);
- (h)* notices that reliance on a prior audit is no longer permissible, or that the auditor does not consent to the use of his report in a filing under the Order;
- (i)* definitive agreement that is material to the reporting entities (negotiations of agreements would be excluded from this requirement unless and until a definitive agreement is entered into);
- (j)* any loss or gain of a material client or contract;
- (k)* any material write-offs, restructurings or impairments;
- (l)* any material change in accounting policy or estimates;
- (m)* movement or de-listing of the securities of the reporting entities from one quotation system or securities exchange to another;
- (n)* changes in rating agency decisions and other rating agency contacts; and
- (o)* any other material events.

(2) Reporting entities must announce any of the events referred to in sub-regulation (1) not later than the second business day after the event occurs and, if possible, by the opening of business on the day after the event occurs.

**Exemption to requirement to disclose.**

22. (1) The reporting entities must ensure that any price sensitive information is kept confidential within the reporting entities, if the disclosure of information would be unduly detrimental to the interests of the reporting entities or where the information to be disclosed is commercially sensitive.

(2) In the circumstances referred to in sub-regulation (1), the reporting entities must deliver a notification requesting non-disclosure to the Authority without delay.

**Persons to whom price sensitive information may be disclosed.**

23. (1) Reporting entities may only disclose price sensitive information, in strict confidence, to –

(a) their advisers;

(b) agents employed to release the information;

(c) persons with whom they are negotiating with a view to effecting a transaction or raising finance,

or where the information is disclosed in the necessary course of business of the reporting entities.

(2) In the event that it is likely that price sensitive information will be made known to certain employees of the reporting entities, the reporting entities must put in place procedures to ensure that those employees do not disclose such information, whether or not inadvertently, and that those employees are adequately trained in the handling, distribution and announcement of price sensitive information.

**Framework for handling of price sensitive information.**

24. (1) The responsibility for an overall policy on the handling of price sensitive information lies with the directors and senior management of the reporting entities, who must be aware that they may be held personally liable for breach of these Regulations.

(2) Reporting entities must have a consistent procedure for assessing whether information is price sensitive and should clearly identify the persons within the reporting entities who are responsible for the communication of the price sensitive information to the market.

(3) Before making any announcement, reporting entities must put in place arrangements for maintaining the confidentiality of price sensitive information that must include adequate training for employees in the appropriate handling, distribution and announcement of price sensitive information.

**Inadvertent disclosure on selective basis.**

25. (1) Where price sensitive information is provided by a reporting entity on a selective basis, that reporting entity is in breach of its continuing obligation of disclosure.

(2) The reporting entity shall, as soon as it becomes aware of the inadvertent disclosure referred to in sub-regulation (1), ensure that a full announcement is made to the market.

**Correction of inaccurate or misleading information.**

26. Where a reporting entity has made a market announcement (such as a profit forecast), and the reporting entity becomes aware that there is likely to be inaccurate or misleading information, the reporting entity must make an announcement correcting the information as soon as possible.

**Securities listed in more than one jurisdiction.**

27. (1) A reporting entity that has securities listed in the same class in more than one jurisdiction must ensure that the release of announcements containing price sensitive information is coordinated across those jurisdictions.

(2) When the requirements for disclosure are stricter in another jurisdiction than in Brunei Darussalam, the reporting entity must ensure that the same information is released in Brunei Darussalam as in that jurisdiction.

(3) A reporting entity shall not delay any reporting to the Authority in order to wait for a market to open in another jurisdiction.

**PART IV**

**CAPITAL MARKETS SERVICES LICENCES**

**Capital markets services licence and representative's licence applications.**

28. (1) Part VII of the Order provides for two types of licences —

(a) a capital markets services licence which entitles a person to carry on the business or hold himself out as doing by way of business in any one or more regulated activities; and

(b) a representative's licence which entitles an individual to carry on any one or more regulated activities or holds himself out as doing so on behalf of holder of a capital markets services licence.

(2) A holder of a capital markets services licence or a holder of a representative's licence may carry on any of the regulated activities in the Order as permitted by the Authority.

(3) A holder of a representative's licence may only carry on any one or more regulated activities that a holder of a capital markets services licence is licensed to carry on.

(4) The combination of regulated activities that a holder of a representative's licence is allowed to carry on depends on the nature of the regulated activities, and whether there are inherent conflicts arising from simultaneously carrying on the regulated activities, which are determined by the Authority.

(5) Although a capital markets services licence or a representative's licence is valid for a period of 12 months, the Authority may extend the licence tenure to 36 months for qualified holders of capital markets services licences and to 24 months for qualified holders of representative's licences as an incentive to holders of capital market services licences or representative's licences with high standards of corporate governance and market conduct.

(6) The Authority may require applicants for capital markets services licences or representative's licences, or key management personnel to attend interviews to demonstrate credibility and knowledge in their regulated activities.

(7) The Authority may, if it thinks fit, allow exemption or variation from any requirement based on the merits of the case, whether on a permanent basis or for a specified period of time.

**Fit and proper requirements.**

29. (1) The purpose of fit and proper requirements is to set out and describe the criteria that the Authority takes into account when assessing the fitness and propriety of the person applying for a licence. The criteria are relevant in assessing the continuing fitness and propriety of licensed persons.

(2) A person who applies to be licensed under the Order must be fit and proper, as set out in section 157 of the Order. In assessing whether the applicant is fit and proper, the following criteria are considered —

- (a) honesty, integrity and reputation;
- (b) competence and capability;
- (c) financial soundness;
- (d) requirements relating to competencies of representatives.

**Honesty, integrity and reputation.**

30. (1) In determining honesty, integrity and reputation of a person, the Authority may have regard to all relevant matters including, but not limited to, those set out in the Order that may have arisen either in Brunei Darussalam or elsewhere, although conviction for a criminal offence does not automatically mean an application will be rejected.

(2) The Authority may treat an application of a person on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding any offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the rehabilitation of the individual.

(3) In considering the matters in sub-regulations (1) and (2), the Authority may consider whether the reputation of the person might have an adverse impact upon the person for which the function of the person is or is to be performed and on the responsibilities of the person.

(4) The Authority may consider whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory and professional requirements and standards.

**Competence and capability.**

31. (1) In determining the competence and capability of a person, the Authority may have regard to all relevant matters, including, but not limited to —

(a) whether the person satisfies the relevant training and competence requirements of the Authority in relation to the function or the functions the person performs or intends to perform; and

(b) whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the function or functions.

(2) In considering the matter in sub-regulation (1)(b), the fact that a person may have been convicted of, or dismissed or suspended from employment for, drug or alcohol abuses or other abusive acts, will be considered only in relation to the continuing ability to perform the particular function for which the person is or is to be employed.

**Financial soundness.**

32. (1) In determining the financial soundness of a person, the Authority may have regard to any factors including, but not limited to —

(a) whether the person has been the subject of any judgment debt or award, in Brunei Darussalam or elsewhere, that remains outstanding or was not satisfied within a reasonable period;

(b) whether, in Brunei Darussalam or elsewhere, the person has —

- (i) made any arrangements with his creditors;
- (ii) filed for bankruptcy;
- (iii) had a bankruptcy petition served on him;
- (iv) been adjudged bankrupt;
- (v) been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order);
- (vi) offered a bankruptcy restrictions undertaking;
- (vii) had assets sequestrated; or
- (viii) been involved in proceedings relating to subparagraphs (i) to (vii).

(2) In relation to sub-regulation (1), for the purpose of a representative's licence, the Authority will not normally require the person to supply a statement of assets or liabilities. The fact that a person may be of limited financial means does not, in itself, affect his suitability to perform a function.

(3) Every applicant shall submit his business plan and scope of regulated activities that he intends to carry on or hold himself out to be carrying on.

(4) If a matter comes to the attention of the Authority that suggests that the person is not fit and proper, the Authority may consider how relevant and important the matter is.

**Minimum financial requirements for holder of capital markets services licence.**

33. (1) The minimum financial requirements for a holder of a capital markets services licence pertain to the following types of regulated activities under the Order which include —

- (a) dealing and arranging deals in investments as principal or agent;
- (b) managing investments including collective investment scheme management and establishing, operating or winding up a collective investment scheme;
- (c) giving or offering investment advice in his capacity as an investment adviser or a financial planner;
- (d) using computer-based systems for giving investment instructions;

(e) safekeeping and administration of assets including custodial services.

(2) Unless otherwise specified by the Authority, the specific requirements include —

(a) for any person who is licensed to carry out any regulated activity referred to in sub-regulation (1)(a) —

- (i) minimum base capital of \$2,000,000 where the corporation is incorporated in Brunei Darussalam; or
- (ii) net head office funds of \$2,000,000 where the corporation is a foreign branch;

(b) for any person who is licensed to carry out the regulated activity referred to in sub-regulation (1)(b) —

- (i) minimum base capital of \$300,000 where the corporation is incorporated in Brunei Darussalam; or
- (ii) net head office funds of \$300,000 where the corporation is a foreign branch; or
- (iii) 10 *per cent* of aggregate margins required,

whichever is the higher.

(c) for any person who is licensed to carry out the regulated activity referred to in sub-regulation (1)(c) —

- (i) in the case of an investment adviser, minimum base capital of \$250,000 where the corporation is incorporated in Brunei Darussalam, or net head office funds of \$250,000 where the corporation is a foreign branch; or
- (ii) in the case of a financial planner, minimum base capital of \$100,000 where the corporation is incorporated in Brunei Darussalam or net head office funds of \$100,000 where the corporation is a foreign branch;

(d) for any person who is licensed to carry out the regulated activity referred to in sub-regulation (1)(d) or (e), the minimum base capital as determined by the Authority.

(3) A holder of a capital markets services licence must maintain the minimum financial requirement throughout the validity of the licence.



{4} If the financial condition of a holder of a capital markets services licence falls below the minimum financial requirement, the regulated activity may only be continued with the written consent of the Authority.

{5} A holder of a capital markets services licence that is an Islamic investment business as defined under the Order shall not issue preference share.

{6} In this regulation —

“base capital” in relation to a holder of a capital markets services licence, means the sum of —

(a) the following items in the latest account of the holder of the capital markets services licence —

- (i) paid-up ordinary share capital;
- (ii) paid-up irredeemable and non-cumulative preference share capital; and
- (iii) reserve fund;

(b) any unappropriated profit or loss in the latest audited accounts of the holder of the capital markets services licence, less any interim loss in the latest accounts of the holder of the capital markets services licence, and any dividend that has been declared since the last audited accounts of the holder of the capital markets services licence;

“irredeemable and non-cumulative preference share capital” means preference share capital consisting of preference shares that satisfy all of the following requirements —

(a) the principal of the shares is perpetual;

(b) the shares are not callable at the initiative of the issuer of the shares of the shareholders, and the principal of the shares is never repaid outside of liquidation of the issuer, except in the case of a repurchase or other manner of reduction of share capital that is initiated by the issuer and permitted under any written laws;

(c) the issuer has full discretion to cancel dividend payments, and —

- (i) the cancellation of dividend payments is not an event of default of the issuer under any agreement;

- (ii) the issuer has full access to cancelled dividend payments to meet its obligations as they fall due; and
- (iii) the cancellation of dividend payments does not result in any restriction being imposed on the issuer under any agreement, except in relation to dividend payments to ordinary shareholders;

“net head office funds”, in relation to a foreign company, means the net liability of the branch of that foreign company in Brunei Darussalam to its head office and any other branches outside of Brunei Darussalam;

“reserve fund” means a fund amounting to a percentage of the audited net profits of each year, as may be determined by the Authority, which is required from a holder of a capital markets services licence that is permitted to deal in securities and is a member of an approved clearing house.

**Organisational requirements for holder of capital markets services licence.**

34. (1) An applicant for a capital markets services licence must ensure that his business is properly established which includes the following —

- (a) an organisational structure with clear lines of responsibility and authority;
- (b) necessary information technology systems and infrastructure;
- (c) adequate internal control systems;
- (d) risk management policies and processes;
- (e) policies and processes on conflict management and the monitoring of unethical conduct and market abuse;
- (f) policies and procedures to ensure compliance with any written laws and regulations.

(2) In order to carry on more than one regulated activity, an applicant for a capital markets services licence must have —

- (a) requisite systems and procedures to monitor all relevant activities within its organisation; and
- (b) control procedures in place to monitor any conflict of interest, unethical conduct and market abuse.

**Systems and procedures.**

35. (1) The holder of a capital markets services licence must —

(a) establish and maintain appropriate operational policies, procedures and measures to detect any risk and any subsequent risk of non-compliance with their obligations under the Order and these Regulations; and

(b) take appropriate measures to manage those risks.

(2) For the purposes of sub-regulation (1), a holder of a capital markets services licence shall consider the nature, scale, complexity and range of the regulated activities that the holder conducts and the businesses that the holder engages in.

(3) The holder of a capital markets services licence must establish and maintain an effective compliance function that operates separately and independently from their other functions and activities, and has the following responsibilities —

(a) to monitor and, on a regular basis, assess the adequacy and effectiveness of policies, procedures and measures implemented for the purposes of sub-regulation (1), and actions taken to remedy any deficiency to ensure that the holder of the capital markets services licence and the relevant persons comply with their obligations;

(b) to advise and assist the relevant persons responsible for the regulated activities so that they comply with the obligations of the holder of the capital markets services licence.

(4) In these Regulations, a relevant person is any person who is —

(a) a manager, member of the board of directors, any company officer of the holder of the capital markets services licence;

(b) an employee of the holder of the capital markets services licence;

(c) a natural person seconded to and placed under the authority of the holder of the capital markets services licence; or

(d) a natural person who takes part, under the terms of an outsourcing agreement, in providing services to the holder of the capital markets services licence.

**Basic requirements for systems and procedures.**

36. The holder of a capital markets services licence must ensure that the following requirements are met to enable the compliance function to perform its tasks properly and independently —

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for this function and for reporting as to compliance, including the preparation and filing of a report to the management, annually or more frequently as appropriate, concerning compliance, risk control, and the appropriate steps taken in the event of deficiencies;

(c) the relevant persons involved in the compliance function are not involved in the performance of the services and activities that they monitor;

(d) the method for determining the remuneration of the relevant persons involved in the compliance function must not or must not be likely to compromise their objectivity.

**Appointment and responsibilities of compliance officer.**

37. (1) The compliance officer referred to in regulation 36(b) must be authorised by the Authority.

(2) The Authority shall specify the organisational procedures for the compliance function, the appropriate qualifications, the expertise and the requirement of a sufficient level of knowledge, of the compliance officer.

(3) The management of the holder of the capital markets services licence must promptly inform the board of directors of the appointment of the compliance officer.

**Risk management.**

38. (1) The holder of a capital markets services licence must take the following steps regarding risk management —

(a) to establish and maintain effective risk management policies and procedures which identify the risks relating to its activities, processes and systems, and where appropriate, set the level of risk it tolerates;

(b) to adopt effective arrangements, processes and mechanisms to manage the risks relating to their activities, processes and systems, in light of its level of risk tolerance;

(c) to monitor —

- (i) the adequacy and effectiveness of its risk management policies and procedures;
- (ii) the level of its compliance and the compliance of the relevant persons with the arrangements, processes and mechanisms adopted; and
- (iii) the adequacy and effectiveness of measures taken to address any deficiencies in those systems and procedures, including failures by the relevant persons to comply with the requirements of those systems or procedures.

(2) The holder of a capital markets services licence shall, where appropriate and proportionate in view of the nature, scale and complexity of its business, and the nature and range of the services and activities undertaken in the course of that business, establish and maintain a risk management function that operates separately and independently from their other functions and activities and carries out the following tasks —

(a) implementation of the policy and procedures referred to in sub-regulation (1);

(b) provision of advice and appropriate risk management reports to the senior management.

**Internal audit.**

39. The holder of a capital markets services licence shall, where appropriate and proportionate in view of the nature, scale, complexity and range of its business, establish and maintain an effective internal audit function which is separate and independent from their other functions and activities and, has the following responsibilities —

(a) to establish and maintain an effective audit plan to examine and evaluate the adequacy and effectiveness of the management systems of the holder of capital markets services licence and their internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with paragraph (a);

(c) to verify compliance with those recommendations;

(d) to provide reports on internal audit issues to the board of directors and the management of the holder of capital market services licence.

**Requirements for representative's licence.**

40. (1) Before the Authority grants a representative's licence, the applicant must satisfy the requirements of Part VII of the Order and the following conditions —

(a) the applicant must be at least 21 years old;

(b) the applicant must be a fit and proper person and must determine that none of the grounds for refusal specified under the Order or these Regulations apply;

(c) the applicant must provide all the relevant information to his principal to enable the necessary due diligence to support the application and to ensure satisfaction of the minimum requirements for carrying on the regulated activities.

(2) The Authority shall assess the competency of the applicant to carry on a regulated activity that may include educational and professional background, work experience and previous track records of the applicant.

(3) The applicant must pass the relevant licensing examination established by the Authority and the examination result is valid for 3 years from the date of passing the licensing examination.

(4) A holder of a capital markets services representative's licence may be exempted from taking the licensing examination every 3 years by undertaking a minimum of 20 points of continuing professional development in a year, on or before the anniversary date of their licence. The continuing professional development must be in the form of a qualification, a course or an activity recognised by the Authority.

(5) An applicant who has previously been granted a representative's licence under the Order and who has left the industry may reapply for a representative's licence to undertake the same regulated activity without having to retake the Authority's licensing examination, provided the application is made within 3 years from the date the applicant left the industry.

(6) An applicant may apply for exemption from the relevant Authority's licensing examination requirements if the applicant has a distinguished service, which includes having —

(a) a total of at least 20 years' working experience;

(b) spent at least 10 years in the capital markets or the financial services industry or in a regulatory body which regulates the capital markets

or the financial services industry, and the applicant was directly involved in the area in which exemption is applied for; or

(c) held a senior management position during his tenure in the capital markets or the financial services industry, or in the regulatory body.

**General conditions and restrictions of holder of capital markets services licence.**

41. (1) A holder of a capital markets services licence must comply with any conditions and restrictions as long as the capital markets services licence and the representative's licence remain valid. The Authority may impose additional conditions or restrictions on the holder of a capital markets services licence at the time of granting or renewing a capital markets services licence and a representative's licence.

(2) The conditions and restrictions pertaining to the holder of a capital market services licence include —

(a) to remain fit and proper and comply with all the conditions under the Order and these Regulations;

(b) to comply with the Order, these Regulations, any guidelines and any other written laws that may govern the business activities that are conducted;

(c) to obtain the prior approval of the Authority if there are any changes to the regulated activities that he is licensed to carry on or hold himself out as doing by way of business;

(d) to notify the Authority of any change to company shareholding, paid-up capital or management within 14 days of the change;

(e) to conduct the licensed business efficiently, honestly and fairly;

(f) to supervise and monitor the licensed business to ensure compliance with the Order, these Regulations, any guidelines and any relevant code of conduct. Such supervision and monitoring should be able to prevent and identify breaches;

(g) return any licence to the Authority if it has been cancelled upon variation, revoked or if the licensed regulated activities cease to be conducted;

(h) ensure that the carrying on of any licensed regulated activity on its behalf is performed by persons who are appropriately licensed;

(i) ensure that employees, including any holder of a representative's licence, where applicable, comply with the Order, these Regulations, any guidelines and any written laws that may govern the regulated activities; and

(j) ensure that its licensed representatives are —

(i) adequately supervised in the performance of their duties;

(ii) sufficiently trained for those duties; and

(iii) kept abreast of developments by means of continuing training.

(3) The holder of a capital markets services licence must inform the Authority immediately of any occurrence of any of the following events —

(a) any employee misappropriates client's funds or commits any act that is detrimental to the interests of clients;

(b) any holder of representative's licence, where applicable, ceases to be fit and proper to hold a representative's licence; or

(c) any holder of representative's licence, where applicable, fails or ceases to perform his functions.

(4) A holder of a capital markets services licence that conducts the business of managing investments must immediately disclose to its clients —

(a) any legal or disciplinary event that is material to an evaluation of the integrity and ability to meet its contractual commitments to clients; or

(b) any material fact about the financial condition that will impair the ability to meet its contractual commitments to clients.

(5) A holder of a capital markets services licence must —

(a) not undertake the purchase or sale of securities or futures contracts which involves or potentially involves a conflict of interest between the holder of a capital markets services licence and the funds under its management;

(b) not for its own account, undertake, directly or indirectly, the purchase or sale of securities from or to the funds under its management;

(c) obtain the prior approval of the Authority for investments in assets other than conventional and *syariah*-compliant securities, futures contracts,



money market instruments and deposits in conventional and *syariah*-compliant deposit accounts; and

(d) submit any advertisement or promotional material to the Authority for purposes of post-vetting.

**Conditions and restrictions of holder of representative's licence.**

42. The holder of a representative's licence must satisfy the following —

(a) remain fit and proper at all times as required by the Order and these Regulations;

(b) comply with the Order, these Regulations, any guidelines and any written laws that may govern the business activities conducted;

(c) does not allow any unlicensed person to perform any licensed regulated activities on his behalf;

(d) ensure that licensed regulated activity is conducted efficiently, honestly and fairly; and

(e) return his representative's licence to the Authority if it is cancelled upon variation, revoked or if he ceases to conduct licensed regulated activities.

**Know your client's requirements.**

43. (1) A holder of a capital markets services licence shall —

(a) use due diligence in regard to the opening and maintenance of its client's accounts; and

(b) know and retain the essential facts concerning every client and concerning the authority of each person acting on behalf of such client.

(2) The essential facts to be obtained from a client must include information concerning the client's —

(a) age;

(b) other investments;

(c) financial situation and needs;

(d) tax status;

(e) investment objectives;

(f) investment experience;

(g) investment time horizon;

(h) liquidity needs;

(i) risk tolerance;

(j) any other information as the holder of a capital markets services licence considers to be reasonable in recommending any transaction or investment strategy involving a security or securities; and

(k) any other information as may be determined by the Authority.

**Client-specific suitability.**

44. (1) As required under the Order, a holder of a capital markets services licence must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the client, based on the facts known by the holder of the capital markets services licence or disclosed by the client in response to reasonable efforts by the holder of the capital markets services licence to obtain information concerning the client's information in regulation 43(2).

(2) A holder of a capital markets services licence fulfils the client-specific suitability obligation for an institutional investor, if —

(a) the institutional investor affirmatively indicates that it is willing to forego the protection of the client-specific suitability obligation rule; and

(b) the holder of a capital markets services licence has a reasonable basis to believe that the institutional investor is capable of —

(i) evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; and

(ii) exercising independent judgment in evaluating the recommendations of the holder of a capital markets services licence.

(3) Sub-regulation (2) shall apply to agents to whom the decision-making authority of the institutional investor have been delegated.

**Handling of client's complaints.**

45. (1) A holder of a capital markets services licence must establish and maintain effective and transparent procedures for reasonable and prompt handling of complaints received from retail clients or potential retail clients.

(2) A holder of a capital markets services licence must keep a record of each complaint and the measures taken to deal with it.

(3) A holder of a capital markets services licence must prepare and transmit reports of complaints to the Authority when requested by the Authority.

(4) A holder of a capital markets services licence must ensure that records referred to in sub-regulation (2) are retained for a minimum period of 7 years.

**Safeguarding client's assets.**

46. (1) A holder of a capital markets services licence must comply with the following obligations to safeguard client's assets —

(a) maintain such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for other clients, and from their own money and other assets and ensure that such records and accounts are sufficient to reconstruct all transactions undertaken on behalf of any client;

(b) maintain their records and accounts in a way that ensures their accuracy, and in particular, the correspondence of the records and accounts to the securities held by clients;

(c) ensure that records and accounts referred to in paragraphs (a) and (b) are retained for a period of 7 years after they were made;

(d) conduct periodic reconciliations between their internal records and accounts and those of the third parties with whom securities of clients are held and such internal reconciliations should be carried out as often as is necessary, and as soon as reasonably practicable after the date to which the reconciliation relates, to ensure the accuracy of the records and accounts of the holders of capital markets services licences;

(e) take the necessary steps to ensure that clients' securities deposited with a third party can be identified separately from the securities belonging to the holders of capital markets services licences by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

*(f)* introduce adequate organisational arrangements to minimise the risk of loss or diminution of assets or rights of clients in connection with those financial instruments resulting from misuse of money and other assets, fraud, poor administration, incorrect record-keeping or negligence.

(2) For the avoidance of doubt, the obligations as to records and accounts under sub-regulation (1) shall include the following —

- (a)* the identification of the client or the beneficial owner;
- (b)* the address of the client or the beneficial owner;
- (c)* the telephone and e-mail address of the client or the beneficial owner;
- (d)* the date of birth of the client or the beneficial owner;
- (e)* the employment information for the client or the beneficial owner;
- (f)* the annual income and net worth of the client or the beneficial owner;
- (g)* the investment objectives of the client or the beneficial owner;
- (h)* if the account is a discretionary account, the dated signature of the client or the beneficial owner and the person to whom discretionary authority was granted for the client or the beneficial owner;
- (i)* for each transaction —
  - (i)* the name and address of the account holder;
  - (ii)* the amount purchased or sold;
  - (iii)* the time of the transaction;
  - (iv)* the price of the transaction; and
  - (v)* the name of the individual within the regulated person who handled the transaction.

(3) The following records may be provided to foreign regulatory authorities in response to appropriate requests relating to investigations in support of the foreign regulatory authorities —

- (a)* the identification of the customer, the client or the beneficial owner set out in sub-regulation (2);

- (b)* for each transaction —
  - (i) the account holder;
  - (ii) the amount purchased or sold;
  - (iii) the time of the transaction;
  - (iv) the price of the transaction;
  - (v) the individual within the holder of the capital markets services licence who handled the transaction;
  - (vi) the bank or broker and brokerage house that handled the transactions.

**Use of third party holders of clients' money and other assets.**

47. (1) A holder of a capital markets services licence using a third party to hold money and other assets of clients must use all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements made for the holding of those money and other assets.

(2) A holder of a capital markets services licence must take into account the expertise and market reputation of the third party, as well as any legal or regulatory requirements or market practices related to the holding of those money and other assets that could adversely affect clients' money and other assets.

(3) When the holder of a capital markets services licence uses a third party located outside Brunei Darussalam to hold clients' money and other assets that have specific regulations and supervision regarding the holding of money and other assets on behalf of another person, then those investment services providers shall choose a third party that is subject to the supervision and regulations similar to these Regulations.

**Use of clients' money and other assets.**

48. (1) A holder of a capital markets services licence must not —

*(a)* enter into arrangements for securities financing transactions regarding money and other assets held by it on behalf of a client; or

*(b)* use such money and other assets for their own account or for the account of another client,

unless the client has given his prior express consent for the use of the money and other assets on specified terms, as evidenced, in the case of a retail client, by his signature or an equivalent alternative mechanism.

(2) The use of the money and other assets of that client must be restricted to the specified terms to which the client has consented.

(3) A holder of a capital markets services licence may not enter into arrangements for securities financing transactions in respect of money and other assets held by it on behalf of a client in an omnibus account, if permitted by the Authority, maintained by a third party, or otherwise use the money and other assets held in such an account for their own account or for the account of another client unless at least one of the following conditions is met —

*(a)* each client whose money and other assets are held on an omnibus account, if permitted by the Authority, must have given consent in accordance with sub-regulation (1);

*(b)* the holder of the capital markets services licence must have systems and controls to ensure that only money and other assets belonging to clients who have given prior consent under sub-regulation (1) are used.

(4) The records of a holder of a capital markets services licence must include data on the clients on whose instructions the money and other assets have been used and on the number of money and other assets used belonging to each client who has given his consent, so as to enable the allocation of any loss of securities.

(5) The records of a holder of a capital markets services licence shall be retained in a medium that allows the storage of information in a way accessible for future reference by the Authority, and in such form and manner to enable the following conditions are met —

*(a)* the Authority must be able to access them readily and to reconstitute each key stage of the handling of each transaction;

*(b)* it must be possible for any amendment to be made with the contents of the records prior to such amendment to be easily ascertained;

*(c)* it must not be possible for the records to be manipulated or altered.

**Report to Authority regarding client's accounts.**

49. Each holder of a capital markets services licence must assure that its auditor makes a report to the Authority at least annually on the adequacy of the measures taken by the holder of the capital markets services licence to comply with regulation 46 and any other regulations.

**Revocation of holder of capital markets services licence at its request.**

50. (1) A holder of a capital markets services licence seeking to have its licence revoked under section 165 of the Order must make an application in writing to the Authority stating –

(a) the basis for the request;

(b) that it will cease to carry on all regulated activities in or from Brunei Darussalam;

(c) the date on which it will cease to carry on all regulated activities in or from Brunei Darussalam;

(d) that it will discharge, all obligations owed to its clients with respect of whom the holder of the capital markets services licence has carried on, or will cease to carry on, all regulated activities in or from Brunei Darussalam; and

(e) if it is providing investment management or custodial services, that it has made appropriate arrangements for the transfer of business to a new service provider where necessary.

(2) A holder of a capital markets services licence seeking to have its licence revoked under section 165 of the Order must satisfy the Authority that it has made appropriate arrangements with respect to its existing clients, including receipt of any clients' consent where required and, in particular –

(a) whether there may be a long period in which the services will be wound down or transferred;

(b) whether deposits must be returned to clients;

(c) whether money and other assets belonging to clients must be returned to them; and

(d) whether there is any other matter which the Authority may reasonably expect to be resolved before granting a request for the revocation of a capital markets services licence.

(3) In determining a request for the revocation of a capital markets services licence, the Authority may require additional procedures or information as appropriate including information that substantiate that the holder of the capital markets services licence will cease to carry on licensed regulated activities.

(4) Where there may be an extensive period of winding down, detailed plans should be submitted to the Authority.

(5) It may not be appropriate for a holder of a capital markets services licence to request an immediate revocation of its licence in all circumstances, although it may wish to consider reducing the scope of its licence during this period. Arrangements under paragraphs (3) and (4) must be discussed with the Authority.

(6) The Authority may refuse a request for the revocation of a capital markets services licence if —

*(a)* the holder of the capital markets services licence has failed to settle its debts to the Authority;

*(b)* it is in the interests of a current or pending investigation by the Authority, or by another regulatory body or by the Public Prosecutor; or

*(c)* it appears that its clients may be exposed to adverse effect.

(7) When the Authority grants a request for the revocation of a capital markets services licence, the Authority may continue to exercise any power under the Order or these Regulations in relation to the capital markets services licence for 3 years from the date on which the capital markets services licence is revoked.

## PART V

### MARKET OPERATORS AND MARKET INFRASTRUCTURE

#### Application for licence.

51. (1) Any person who intends to carry on either or both of the investment services and activities of operating a securities exchange or a clearing house in or from Brunei Darussalam shall be —

*(a)* constituted as a body corporate; and

*(b)* make an application to the Authority for a licence in accordance with these Regulations; or

*(c)* make an application to the Authority for recognition in accordance with these Regulations.

(2) The Authority may not consider an application for a licence to operate a securities exchange or a clearing house from a person who is already licensed by or has applied for a licence from the Authority.

(3) The applicant must submit a written application to the Authority —



(a) demonstrating how the applicant intends to satisfy the licensing requirements and all other continuing obligations under the Order and these Regulations; and

(b) with copies of any relevant agreements or such other information as the Authority may require.

(4) The Authority may grant a licence to the applicant to carry on either or both of the investment services and activities of operating a securities exchange or a clearing house if the Authority is satisfied that it —

(a) has satisfied or will satisfy the requirements under the Order and these Regulations in relation to the nature of the investment services and activities;

(b) if applicable, will maintain an official list of securities, in a proper and independent manner;

(c) is fit and proper; and

(d) will conduct and manage its affairs in a sound and prudent manner.

(5) In making the assessment as to whether an applicant is fit and proper, the Authority may consider the following —

(a) both the applicant and the systems it operates or proposes to operate;

(b) all information, including a programme of operations setting out *inter alia*, the types of business envisaged and the organisational structure;

(c) the applicant's connection with its senior management and those who hold a controlling interest in the applicant or any other person;

(d) the precise nature of the investment services and activities;

(e) any matter which may harm or may have harmed the integrity or the reputation of Brunei Darussalam;

(f) the activities of the applicant, the associated risks and accumulation of risks, that those activities pose to the Authority's regulatory objectives;

(g) the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant;

(h) in relation to an application for recognition, the regulatory framework and the regulations thereunder which the applicant is required to comply with in its home state;

(i) any other relevant matters.

(6) The Authority may, in considering an application for a licence —

(a) carry out any enquiries which it thinks fit including enquiries independent of the applicant;

(b) require the applicant to provide additional information in such form as the Authority thinks fit;

(c) require any information submitted by the applicant to be verified in such manner as the Authority may specify; and

(d) take into account any information which the Authority thinks relevant.

**Application to change scope of licence, recognition or designation.**

52. When applying to change the scope of its licence, recognition and designation, or to have a condition or restriction of a licence, or a recognition or a designation varied or withdrawn, a market operator must provide the Authority with written details of the proposed changes including a comprehensive plan on how it intends to satisfy the requirements under these Regulations in relation to the new scope of its licence, recognition or designation.

**Determination of application for licence or recognition.**

53. (1) The Authority may grant an application for a licence and recognition, or a change to the scope of an existing licence or recognition, with or without conditions and restrictions.

(2) The Authority may refuse to grant a licence or recognition, or a change to the scope of an existing licence or recognition.

(3) Upon determination of an application under sub-regulation (1), the Authority shall, without delay, notify the applicant or a licensed or recognised market operator in writing of the decision.

**Revocation of licence, recognition or designation.**

54. (1) The Authority may revoke a particular licence, recognition and designation in relation to one or more investment activities and services at the request of a market operator or as decided by the Authority.

(2) A market operator seeking to have its licence, recognition or designation revoked must submit a request in writing stating —

*(a)* the reasons for the request;

*(b)* the date on which it will cease to carry on investment activities and services in or from Brunei Darussalam;

*(c)* where applicable, how persons with securities admitted to an official list of securities are affected and any alternative arrangements made for the listing and trading of the relevant securities; and

*(d)* that it has discharged, or will discharge, all obligations owed to its users in respect of whom the market operator has carried on investment activities and services in or from Brunei Darussalam.

(3) Where the revocation is at the request of a market operator, the market operator must continue to carry on every investment activity and service it is licensed, recognised or designated to conduct until the date on which its licence, recognition or designation is stated to be revoked or until the Authority consents in writing to the revocation.

(4) Where the Authority grants a request for the revocation of a licence, recognition or designation the Authority may continue to exercise any power under the Order or any regulations made thereunder for a period of 3 years from the date on which the licence, recognition or designation was revoked in respect of the market operator.

(5) The Authority may act on its own initiative to revoke a licence, recognition or designation of a market operator if it appears to the Authority that the market operator —

*(a)* has not made use of the licence, recognition or designation at all within 12 months;

*(b)* has expressly renounced the licence, recognition or designation;

*(c)* has not operated within the preceding 6 months;

*(d)* has obtained the authorisation by making false statements or by any other irregular means;

*(e)* no longer meets the requirements under which licence, recognition or designation was granted as set out in the Order and these Regulations;

*(f)* has seriously and systematically contravened the Order, any principles or regulations made by the Authority;

(g) has failed to settle its debts to the Authority; or

(h) it is in the interests of clients that the Authority or other regulatory body exercising similar functions to the Authority continues to exercise its powers in relation to a current or pending investigation of the market operator.

**Significant influence and control over senior management.**

55. (1) For the purposes of these Regulations, significant influence and control over the senior management of market operators is where any person who, either alone or with any associate acquires control under Part I of the Order and in consequence, is able to exercise significant influence over the senior management by virtue of his shareholding.

(2) No person may exercise control of a market operator unless he, or the market operator, has notified the Authority of the proposed person who will exercise control or of a change in the person who will exercise control, and the Authority has given its consent to such person exercising control.

(3) A market operator must take reasonable steps to monitor changes or proposed changes concerning –

(a) persons exercising control;

(b) the level of control of persons exercising control; and

(c) significant changes in the circumstances of existing persons exercising control which might reasonably be considered to affect the fitness and propriety of the market operator.

(4) Where the market operator is incorporated under the Companies Act (Chapter 39) or outside Brunei Darussalam and a person proposes to exercise control or in respect of a person currently exercising control, the level of control changes in regard to the kind of shareholding and influence –

(a) in consequence of any obligation under the Order; or

(b) when any significant influence over management occurs which has not previously been disclosed to the Authority,

the market operator must submit a notification or application to the Authority.

(5) A market operator must submit the notification or application required under these Regulations not less than 28 days in advance of a proposed change or, if this is not reasonably possible, immediately on becoming aware of a proposed or actual change in control.

**Licence, recognition and designation requirements.**

56. (1) A market operator must be able to satisfy the requirements of this Part to the satisfaction of the Authority at the time the licence, recognition or designation is granted and on a continuing basis at all times thereafter.

(2) A market operator must —

(a) be fit and proper;

(b) be appropriately constituted;

(c) have taken appropriate measures to —

(i) satisfy the licensing, recognition and designation requirements under these Regulations; and

(ii) perform its regulatory functions in respect of its members; and

(d) meet standards of corporate governance as appropriate considering the nature, size and complexity of the activities of the market operator.

(3) The board of directors of a market operator must —

(a) demonstrate integrity, competence and commitment to satisfy its licensing, recognition and designation requirements and obligations under these Regulations;

(b) assign senior management within the meaning of the Order with appropriate levels of experience, knowledge and qualifications to oversee the regulatory functions of the market operator;

(c) appoint a member of the senior management who is ordinarily resident in Brunei Darussalam as a compliance officer responsible for money laundering matters;

(d) have independent directors constituting at least one of the directors in the board and ensure that these independent directors are provided with direct access to —

(i) the senior management when required; and

(ii) all relevant information concerning the satisfaction of licensing requirements and the performance of regulatory functions; and

(e) ensure that the senior management have unfettered, direct access to the board of directors.

(4) For a regulated market to exist —

(a) there must be arrangements in place for relevant market information to be made available to persons engaged in dealing on an equitable basis and non-discriminatory basis;

(b) the securities must serve an economic purpose;

(c) there must be a sufficient range and number of investors willing and able to generate adequate supply and demand in the securities;

(d) where appropriate, there must be a sufficiently liquid underlying cash market;

(e) where appropriate, there must be capacity to make and take delivery of the securities; and

(f) the conduct of business and listing regulations of a securities exchange must allow for the discontinuance or suspension of trading in securities when disclosure obligations have not been complied with and in other appropriate circumstances.

(5) A securities exchange that maintains an official list of securities must ensure the function is properly and independently operated.

(6) A securities exchange must have systems, policies and procedures which ensure that only —

(a) securities in which there is a regulated market; or

(b) securities which are admitted to its official list of securities,

are admitted to trading.

**Financial resources.**

57. (1) The minimum financial resources requirement for a market operator is —

(a) an amount equal to one half of the estimated gross operating costs of the market operator for the next 12 months; or

(b) such other base capital amount as may be determined by the Authority.

{2} A market operator must have and maintain at all times on an ongoing basis in addition to the minimum financial resources requirement set out in sub-regulation (1), financial resources of a type acceptable to the Authority which must be sufficient having regard to the nature, size and complexity of the transactions concluded on the market and the degree of risk to which it is exposed, to ensure that there is no significant risk that liabilities cannot be met as they fall due.

**Systems and controls.**

58. (1) A market operator must have systems and controls to enable it to determine and monitor whether its financial resources are sufficient for the purposes of the minimum financial resources requirement and the additional financial resources requirements.

(2) The systems and controls of a market operator must address the following —

(a) the scale, nature, activities and risks of the operation;

(b) the operational, counterparty, market and settlement risks to which the body is exposed;

(c) the amount, composition and legal position of its available financial resources;

(d) the market operator's ability to access additional financial resources if required;

(e) any other factors that are appropriate to its operations model.

(3) A market operator must have sufficient human and independent technology resources to operate and supervise its facilities.

(4) A market operator must ensure, as far as reasonably practical, that its personnel are —

(a) fit and proper;

(b) properly trained for the duties they perform; and

(c) knowledgeable in the written laws relevant to the financial industry in Brunei Darussalam.

(5) A market operator must satisfy the Authority that its human and technology resources including outsourcing arrangements are established and

maintained in such a way so as to ensure that they are secure and maintain the confidentiality of the data they contain.

(6) A market operator must ensure that its systems and controls are adequate and suitable for the performance of its functions and appropriate to the scale and nature of its operations. In particular, systems and controls should exist in relation to —

- (a) the transmission of information to users of its facilities;
- (b) the assessment and management of risks including conflicts of interest;
- (c) the operation of its functions;
- (d) the safeguarding and administration of assets belonging to its users; and
- (e) the fitness and propriety of its personnel and the adequacy of its technology resources.

(7) A market operator must have systems and controls in relation to the supervision and monitoring of transactions on its facilities.

(8) A market operator must undertake regular reviews of its systems and controls.

(9) A market operator may only allow access to its facilities to persons who are licensed, recognised or otherwise approved by the Authority.

**Conduct of business.**

59. (1) A market operator must have conduct of business regulations to ensure that business conducted on or through its facilities is conducted in an orderly manner so as to afford proper protection to investors, and which monitors its members for behaviours that may contravene the Order, any regulations made thereunder or any principles, and detects any financial crime or money laundering.

(2) A market operator must —

- (a) establish appropriate measures to identify, deter and prevent market misconduct, financial crime and money laundering on and through the facilities of the market operator; and
- (b) report to the Authority any market misconduct, financial crime and money laundering.



(3) A market operator must be able and willing to —

*(a)* promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities; and

*(b)* co-operate with the Authority or other relevant authorities with regard to regulatory matters when required.

(4) A market operator must have appropriate procedures and protection for allowing its employees to disclose any information to the Authority or to other relevant authorities involved in the prevention of any financial crime or money laundering.

**Settlement.**

60. (1) A market operator must ensure that satisfactory arrangements are in place for securing the timely discharge and settlement of the rights and liabilities of the parties to transactions conducted on or through its facilities or for whom it provides such services.

(2) A market operator must ensure that satisfactory arrangements are made for —

*(a)* recording the activity and transactions effected on or through its facilities;

*(b)* maintaining the activity and transaction records for at least 7 years; and

*(c)* providing the Authority with these records in a timely manner if required by the Authority.

(3) A market operator must ensure that where its facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities —

*(a)* satisfactory arrangements are made for that purpose; and

*(b)* there are clear written terms of such an agreement between the users of the facilities and the market operator.

(4) A market operator must have transparent and fair non-discriminatory conduct of business regulations that are legally enforceable against its members that are based on objective criteria and govern access to the regulated market.

(5) A market operator must have compliance procedures in place to ensure —

- (a) its conduct of business regulations are monitored and enforced;
- (b) complaints regarding its members are investigated;
- (c) appeal procedures are in place; and

(d) where appropriate, disciplinary action resulting in financial and other types of penalties is available.

(6) A market operator must have arrangements for monitoring compliance with its conduct of business regulations in relation to the provision of clearing and settlement services in respect of transactions effected by its facilities.

(7) A market operator must —

(a) have effective arrangements in place for the investigation and resolution of complaints made against it; and

(b) establish and maintain a register of the complaints and their resolution.

(8) Records of the complaints must be maintained for a minimum of 7 years.

#### **Default provisions.**

61. A market operator must have default rules which, in the event of a member being, or appearing to be, unable to meet his obligations in respect of one or more contracts, enables action to be taken in respect of unsettled market contracts to which the member is a party.

#### **Listing regulations.**

62. (1) A market operator wishing to admit securities to its own official list of securities must have listing regulations which are approved by the Authority.

(2) The listing regulations must be clear and fair, legally enforceable, published and made freely available.

(3) The listing regulations must include, where appropriate to the type of the securities being admitted to the official list of securities, requirements in respect of —

(a) an issuer's financial reporting and, in particular how regular reports are made and the international accounting standards to which they comply;

- (b)* auditing standards;
  - (c)* an issuer's track record in terms of profit or operating history;
  - (d)* the amount of securities in the class of securities which can be considered as in free float;
  - (e)* any restrictions that may exist on transferability; and
  - (f)* any other matter the Authority thinks necessary.
- (4) A market operator must have procedures in place to ensure —
- (a)* its listing regulations are monitored and enforced; and
  - (b)* complaints regarding persons subject to the listing regulations are investigated.
- (5) A market operator must ensure that —
- (a)* where appropriate, disciplinary action may be carried out and financial and other types of penalties may be imposed on the persons subject to the listing regulations; and
  - (b)* appeal procedures are in place.

**Continuing obligation of market operator.**

63. (1) A market operator must at all times do all things necessary to ensure that —
- (a)* its market is fair, orderly and efficient; and
  - (b)* its facilities are operated in a fair and efficient way and which reduces systemic risk.
- (2) A market operator must ensure ongoing compliance with financial requirements.
- (3) A market operator must deliver to the Authority a written report at such times as the Authority may direct, addressing —
- (a)* its ongoing compliance with the terms of its licence;
  - (b)* complaints and disciplinary matters that have arisen;

(c) the adequacy and performance of its systems and controls including its organisational requirements; and

(d) financial matters concerning its operation.

**Modification or amendment to market operator's regulations.**

64. (1) Any modification or amendment to the regulations of a market operator must, prior to such modification or the amendment being effective —

(a) be available for consultation with industry stakeholders; and

(b) be approved by the Authority.

(2) In urgent cases, the Authority may, on written application by the market operator, dispense with the requirement in sub-regulation (1).

(3) A market operator must have procedures for notifying its members of any such modification or amendment.

**Supervision of market operators.**

65. (1) A market operator must deal with the relevant authorities in an open and co-operative manner and keep the Authority promptly informed of significant events or activities, wherever they are carried on relating to the market operator of which the Authority may reasonably expect to be notified.

(2) A market operator must immediately advise the Authority when it becomes aware, or has reasonable grounds to believe, that a significant breach of any regulations made by the market operator or any of its employees may have occurred or may be about to occur.

(3) Unless otherwise provided, notifications in these Regulations may be made orally or in writing, whichever is more appropriate in the circumstances, but where the market operator gives notice or information orally, it must confirm that notice or information in writing without delay.

(4) Where a member of the senior management becomes or ceases to be responsible for a market operator, that market operator must immediately give notice in writing to the Authority of that event setting out the following information —

(a) where an individual has been appointed or elected to a position of senior management —

(i) that individual's name;

- (ii) his date of birth;
- (iii) a description of the responsibilities which he will have in the position to which he has been appointed or elected;
- (iv) the relevant experience and qualifications of that individual;

(b) where an individual has resigned as or otherwise ceased to be a member of the senior management —

- (i) that individual's name;
- (ii) the reasons for resignation;
- (iii) the date of resignation.

(5) Where a member of the senior management of a market operator —

(a) is the subject of any —

- (i) disciplinary action arising out of alleged misconduct; or
- (ii) criminal prosecution arising out of alleged misconduct involving fraud or dishonesty;

(b) resigns as a result of an investigation into alleged misconduct; or

(c) is dismissed for misconduct,

the market operator must immediately notify the Authority of that event and give the following information —

- (i) the name of the senior manager and his responsibilities within the market operator;
- (ii) details of the alleged acts of misconduct by that senior manager;
- (iii) details of any disciplinary action which has been imposed or is proposed to be taken by that market operator in relation to that senior manager.

(6) Where a market operator becomes aware that any of the following events have occurred in relation to a senior manager, it must immediately notify the Authority of that event —

(a) a petition of bankruptcy is presented against a senior manager;

(b) a bankruptcy order is made against him; or

(c) he enters into a voluntary arrangement with his creditors.

**Amendment to memorandum and articles of association.**

66. (1) A market operator must obtain approval from the Authority before it circulates any notice or other documents proposing any amendment to its memorandum and articles of association, or other documents relating to its constitution, to —

(a) its shareholders or any group or class of shareholders;

(b) persons or any group or class of persons granted access to its facilities; or

(c) any other group or class of persons who has the power to make those amendments.

(2) A market operator must give notice of that proposed amendment to the Authority setting out the following information —

(a) the proposed amendment;

(b) the reasons for the proposed amendment;

(c) a description of the group or class of persons to whom the proposed amendment is to be circulated.

(3) Where a market operator makes an amendment to its memorandum and articles of association, or other document relating to its constitution, that market operator must notify the Authority setting out written particulars of that amendment and the date on which it becomes effective.

(4) Where a market operator makes any amendment to any agreement that relates to the constitution or governance of the market operator, that market operator must notify the Authority of the amendment and the date on which it becomes effective.

**Annual reports and financial statements.**

67. (1) A market operator must give the Authority —

(a) a copy of its annual report and annual financial statements; and

*(b)* a copy of any consolidated annual report and any consolidated annual financial statements of any group of which the market operator is a member,

not later than when the first of the following events occurs —

- (i) 3 months after the end of the financial year to which the documents relate;
- (ii) the time when the documents are sent to members granted access to the facilities or shareholders of the market operator;
- (iii) the time when the documents are sent to a holding company of the market operator.

(2) Where an audit committee of a market operator has received a report in relation to any period or any matter relating to any regulatory function of that market operator, the market operator must immediately give the Authority a copy of that report.

(3) A market operator must give the Authority a copy of its quarterly management reports within one month of the end of the period to which they relate.

(4) A market operator must give the Authority —

*(a)* a statement of its projected income, expenditure and cash flow for each financial year; and

*(b)* an estimated balance sheet at the end of each financial year,

before the beginning of that financial year.

(5) A market operator must give the Authority a summary of —

*(a)* any proposal for changes to the fees or charges levied on users or any group or class of users of its facilities, at the same time as the proposal is communicated to the relevant users; and

*(b)* any such change, not later than the date when it is published and notified to relevant parties.

#### **Removal or suspension from trading.**

68. (1) A market operator must notify the Authority of any proposal to remove or suspend from trading or admit to trading, by means of its facilities, a class of securities which it has not previously traded, but is licensed to do so, and that

proposal must be communicated to persons granted access to its facilities or shareholder, with the following information —

- (a)* a description of the security to which the proposal relates;
- (b)* where that security is a derivative product, the proposed terms of that derivative;
- (c)* the name of any clearing or settlement facility in respect of that security.

(2) A market operator must notify the Authority and any person granted access to its facilities of any decision to suspend, restore from suspension or cease trading of any securities.

(3) A market operator must notify the Authority of any proposal to cease clearing or settling, or to clear or settle by means of its facilities a class of securities which it has not previously traded, but is licensed to do so, and that proposal must be communicated to persons granted access to its facilities or the shareholders, with the following information —

- (a)* a description of the security to which the proposal relates;
- (b)* if that security is a derivative product, the proposed terms of that derivative;
- (c)* the name of any trading facility in respect of that security.

**Changes to systems.**

69. (1) Where a market operator changes any of its plans for action in response to a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately notify and give the Authority a copy of the revised or new plan.

(2) Where the main information technology system or any reserve information technology system of a market operator fails in such a way that causes the market operator to be unable to operate any of its facilities during its normal hours of operation, that market operator must immediately notify and inform the Authority of —

- (a)* the action that market operator is taking to restore the operation of the main information technology system and reserve information technology system; and
- (b)* when it expects the operation of that system will be restored.



{3} Where, because of the occurrence of any event or circumstances, a market operator is unable to discharge any regulatory function, it must immediately notify the Authority of its inability to discharge that function, and inform the Authority of —

(a) the cause of the event or circumstance;

(b) the regulatory functions it is unable to discharge; and

(c) the action, if any, it takes or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that regulatory function.

**Enforcement actions.**

70. (1) A market operator must immediately notify the Authority, if it becomes aware that a person other than the Authority has been appointed by any other regulatory authority to investigate —

(a) any business transacted on or through its facilities; or

(b) any aspect of the clearing or settlement services that it provides.

(2) A market operator must immediately notify the Authority of any disciplinary action taken against a member who is granted access to its facilities, or any employee of such a member, in respect of a breach of its regulations and give —

(a) the name of that member or the employee;

(b) details of the disciplinary action taken by the market operator; and

(c) the market operator's reasons for taking that disciplinary action.

(3) A market operator must immediately notify the Authority where an appeal is lodged against any disciplinary action and give —

(a) the name of the appellant and the grounds on which the appeal is based; and

(b) the outcome of the appeal, if known.

(4) Where a market operator has information tending to suggest that any person has been —

(a) carrying on or is about to carry on investment business and activities in Brunei Darussalam without a licence; or

(b) engaging or is about to engage in financial crime or money laundering,

it must immediately notify the Authority with full details of that information in writing.

(5) Where a market operator —

(a) decides to limit the open position of any member in any securities;  
or

(b) issues directions to any member to close out his position in any securities,

that market operator must immediately notify the Authority, and give the person's name, the securities and size of any position to be limited or closed out and the reasons for the market operator's decision.

(6) Where a market operator has investigated a complaint arising in connection with the performance of, or failure to perform any of its regulatory functions, and the recommendation is that the market operator must —

(a) make a compensatory payment to any person; or

(b) remedy the matter which was the subject of that complaint,

the market operator must immediately notify the Authority and give the Authority a copy of the report and particulars of the recommendation as soon as that report or that recommendation is available to it.

**Additional directions by Authority.**

71. (1) Where a market operator has made regulations for the purpose of persons using its facilities and has not exercised powers under those regulations and where the Authority reasonably thinks it necessary and desirable to do so, the Authority may exercise the powers contained in those regulations as though it was the market operator.

(2) The Authority may direct a market operator to suspend, or delist from or restore from suspension, securities from its official list of securities. Such direction may take immediate effect or from a date and time as may be specified by the Authority.

**Market disclosure.**

72. (1) A market operator must make a market disclosure —

- (a)* on the website of the market operator;
- (b)* to the public; and
- (c)* to the Authority,

of decisions in relation to the following events —

- (i)* an admission of securities to an official list of securities;
- (ii)* a suspension of securities from an official list of securities;
- (iii)* a restoration from suspension of securities from an official list of securities;
- (iv)* a delisting of securities from an official list of securities;
- (v)* a suspension, restoration from suspension or decision to cease trading of any securities.

(2) The disclosure made in accordance with this regulation must indicate whether the event was made under a direction given to the market operator by the Authority.

#### **Appeals against decisions of market operators.**

73. (1) Pursuant to the Order, any person who is aggrieved by a decision of the market operator —

- (a)* has a right to a further appeal of decision of the market operator to a panel established under the regulations of the market operator; and
- (b)* if he has exhausted the internal appeal process of the market operator,

may appeal to the Panel established under section 254 of the Order within 30 days after the date on which the market operator sent the notice of the decision to that person.

(2) The grounds on which an appeal may lie under this regulation are limited to the following —

- (a)* an error of law or jurisdiction;
- (b)* a breach of the rules of natural justice;
- (c)* the decision is manifestly unreasonable.

(3) The Panel has jurisdiction to hear and determine an appeal against a decision of a market operator made under this regulation and may uphold, vary or reverse the decision of the market operator under appeal or refer the matter back to the market operator for further reconsideration.

(4) The powers of the Panel as set out in the Order apply to appeals brought under this regulation.

## PART VI

### COLLECTIVE INVESTMENT SCHEME

#### Chapter I

##### Application and Interpretation

###### Application.

74. (1) This Part applies to every person who carries on, or intends to carry on, in or from Brunei Darussalam the investment activities and services of —

(a) establishing, operating or winding up a collective investment scheme;

(b) providing collective investment scheme administration; or

(c) providing custody or acting as a trustee in relation to collective investment scheme.

(2) This Part applies to every person who is, or intends to —

(a) be an operator;

(b) be a member of the board of directors;

(c) be a custodian or trustee;

(d) undertake an oversight function; and

(e) be the auditor of a collective investment scheme.

(3) In this Part, unless the context otherwise requires —

“close relative” includes grandchildren;

“providing collective investment scheme administration” means providing one or more of the following services —

- (a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements;
- (b) valuing of assets and performing net asset value calculations;
- (c) maintaining the share register and unit holder's registration details;
- (d) complying with anti-money laundering requirements;
- (e) undertaking transaction monitoring and reconciliation functions;
- (f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange;
- (g) producing financial statements, other than as the collective investment scheme's registered auditor; or
- (h) communicating with participants, the collective investment scheme, the collective investment scheme operator, the brokers, the regulatory authorities and any other parties in relation to the administration of the collective investment scheme.

## Chapter II

### Marketing and Transactions Involving Collective Investment Scheme

#### Application.

75. (1) This Chapter applies to any person who —

(a) markets or intends to market a unit of a collective investment scheme by offering it for issue or sale; or

(b) undertakes or intends to undertake a transaction in a unit of a collective investment scheme.

(2) Unless expressly provided otherwise, this Chapter does not apply —

(a) to a person who establishes or operates a collective investment scheme;

(b) where an offer is made or directed by a regulated person to a market counterparty; or

*(c)* to a regulated person if it undertakes a transaction for the purpose of disposing of a unit in a collective investment scheme for or on behalf of a unit holder in that collective investment scheme.

**Prospectus of collective investment scheme.**

76. (1) Subject to sub-regulation (2), where a regulated person offers a unit of a collective investment scheme for issue or sale to a client, or undertakes a transaction in respect of such a unit for or on behalf of a client, it must make available to that client a copy of the most recent prospectus at the time of the offer or before effecting the transaction.

(2) The requirement to provide a copy of the prospectus does not apply to a regulated person where it is —

*(a)* undertaking an execution-only transaction;

*(b)* undertaking a transaction solely for the purposes of a discretionary portfolio management agreement entered into with the client; or

*(c)* undertaking a transaction with the operator of a collective investment scheme for the purpose of redeeming a unit of that collective investment scheme.

(3) A regulated person that makes an offer or undertakes a transaction as set out in sub-regulation (1) must keep and maintain at its place of business in Brunei Darussalam copies of the relevant prospectus for inspection by clients and by the Authority during normal business hours.

**Private collective investment scheme.**

77. A regulated person must not make an offer or undertake a transaction in relation to the units of a collective investment scheme that is a private collective investment scheme if it is aware that this would result in any contravention under the Order or these Regulations.

**Recognised collective investment scheme.**

78. A regulated person may make an offer or undertake a transaction for or on behalf of a client in respect of a unit of a foreign collective investment scheme —

*(a)* if the collective investment scheme is a recognised collective investment scheme by the Authority under the Order; and

*(b)* if the collective investment scheme is a property collective investment scheme, which complies with the requirements in this Chapter in relation to a foreign property collective investment scheme.

**Prospectus of foreign collective investment scheme.**

79. (1) A regulated person must not offer a unit of a foreign collective investment scheme for issue or sale to a client or undertake a transaction for or on behalf of a client in respect of such a unit unless —

(a) the collective investment scheme meets the criteria for a recognised collective investment scheme;

(b) in the case of a transaction in respect of such units, with or for, a retail client, the units satisfy the requirements that govern the sale of such units to retail investors in the collective investment scheme's domestic jurisdiction; and

(c) the additional requirements in this Chapter are satisfied.

(2) Where a regulated person offers a unit of a foreign collective investment scheme for issue or sale to a client or undertakes a transaction in such a unit for or on behalf of a client, it must make available to the client a copy of the most recent prospectus which complies with the requirements under these Regulations at the time of the offer or before effecting the transaction.

(3) The requirement to provide a copy of the prospectus does not apply to a regulated person if it is —

(a) undertaking an execution-only transaction;

(b) undertaking a transaction solely for the purposes of a discretionary portfolio management agreement entered into with the client; or

(c) undertaking a transaction with the operator of a foreign collective investment scheme for the purpose of redeeming a unit of the foreign collective investment scheme.

(4) The prospectus of a foreign collective investment scheme made available by a regulated person must be in the English language and must contain in a prominent position or have attached to it a statement that clearly —

(a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the foreign collective investment scheme;

(b) states the name of the relevant financial services regulator in that jurisdiction and describes the regulatory status accorded to the foreign collective investment scheme by that regulator;

(c) clearly states the name and address of the local representative of the foreign collective investment scheme in Brunei Darussalam;

(d) includes the following warning —

“This prospectus relates to a foreign collective investment scheme which is not subject to any form of domestic regulation by the Authority. The Authority is not responsible for reviewing or verifying any prospectus or other documents in connection with this collective investment scheme. The Authority has not approved this prospectus or any other associated documents nor taken any steps to verify the information set out in this prospectus, and is not responsible for it.

The units to which this prospectus relates may be illiquid or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the units.

If you do not understand the contents of this document you should consult a licensed financial adviser.”; and

(e) if the offer is not directed to retail clients, it must include a prominent statement to that effect to be incorporated within the warning set out in paragraph (d).

(5) Where a regulated person makes an offer or undertakes a transaction in respect of a foreign collective investment scheme, it must maintain at its place of business in Brunei Darussalam copies of the relevant prospectus for inspection by clients and by the Authority during normal business hours.

**Foreign property collective investment scheme.**

80. (1) A regulated person must ensure that it does not offer or undertake a transaction in respect of a unit of a foreign collective investment scheme which is a property collective investment scheme unless —

(a) the collective investment scheme is a closed-ended structure; and

(b) the collective investment scheme is recognised by the Authority under the Order, and the unit is listed and traded on a regulated market or on a securities exchange, unless the unit is to be offered, issued or sold by means only of private placement.

(2) In this regulation, “property collective investment scheme” mean a collective investment scheme in respect of which 60 *per cent* or more of the collective investment scheme's assets comprise real property, property related assets or units in another property collective investment scheme.



**Information to be provided to Authority.**

81. (1) A regulated person must submit to the Authority within 3 months of the end of the regulated person's financial year, a report regarding any offer or transaction in respect of a unit of any collective investment scheme which has been made during the preceding financial year.

(2) The report required under sub-regulation (1) must include —

(a) the name of the collective investment scheme and its operator; and

(b) if the collective investment scheme is a recognised collective investment scheme, the jurisdiction in which it is licensed.

**Record keeping.**

82. A regulated person must keep records of the relevant prospectus and documentary evidence of the provision of a copy of the prospectus for a minimum of 7 years.

**Chapter III**

**Collective Investment Scheme Administration**

**Application.**

83. (1) This Chapter applies to a regulated person who is a collective investment scheme administrator.

(2) In these Regulations, “collective investment scheme administrator” means an administrator that provides collective investment scheme administration for a collective investment scheme.

(3) This Chapter does not apply to an operator or trustee to the extent that it carries on an activity of providing collective investment scheme administration within the investment activities and services of operating a collective investment scheme or of acting as the trustee of a collective investment scheme.

**Compliance with anti-money laundering requirements.**

84. A collective investment scheme administrator must comply with any written laws relating to anti-money laundering as if each reference in any written laws relating to anti-money laundering to “customer” is a reference to “unit holders” or “prospective unit holders”, as the case may be.

**Clients' money and assets.**

85. A collective investment scheme administrator must not hold or control monies or assets belonging to clients in connection with such administration except in the following circumstances —

(a) holding cheques to the order of a collective investment scheme's bank account, provided such cheques are securely held for a maximum of 3 business days prior to being deposited into the relevant collective investment scheme's bank account or returned to the drawer of the cheque; or

(b) where a mandate over a collective investment scheme's or other clients' bank accounts is granted to a collective investment scheme administrator and the mandate has been agreed in writing with the bank, transfers out of the relevant bank accounts may be made only in circumstances where the mandate restricts instructions to make such payments to being made solely —

- (i) in accordance with the payment of invoiced fees and expenses; and
- (ii) in accordance with the relevant collective investment scheme's constitution and prospectus,

and are not remitted to the account of the collective investment scheme administrator except by express instructions of the collective investment scheme's operator.

**Delegation and service agreements.**

86. (1) A collective investment scheme administrator must have a delegation agreement with the operator or trustee in accordance with the requirements in the Regulations in relation to outsourcing.

(2) The agreement referred to in sub-regulation (1) must set out the activities and functions that are applied to the provision of such administration.

(3) The agreement referred to in sub-regulation (1) must ensure that the collective investment scheme administrator cannot in turn delegate the activities and functions delegated to it by the operator or the trustee of the collective investment scheme unless the operator has approved the sub-delegation.

(4) The agreement referred to in sub-regulation (1) must require the collective investment scheme administrator to retain any relevant documents or records relating to the delegated activities and functions should the contract be terminated by the operator or the trustee of the collective investment scheme.

**Record keeping.**

87. (1) A collective investment scheme administrator must maintain records which are sufficient to show and explain transactions in relation to each of the specific activities and functions which are being provided to each operator in relation to the unit holders of the collective investment scheme or potential unit holders of the collective investment scheme, as the case may be.

(2) The records referred to in sub-regulation (1) must be —

(a) maintained by the collective investment scheme administrator such as to enable the board of directors of the collective investment scheme to ensure that any accounts prepared comply with the Regulations and any other applicable laws;

(b) retained by the collective investment scheme administrator for at least 7 years from the date to which they relate;

(c) at all reasonable times, open to inspection by the Authority, the collective investment scheme's auditor and any person providing oversight functions for the collective investment scheme; and

(d) if requested by the Authority, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in the English language.

**Chapter IV**

**Core Regulations Applicable to All Collective Investment Schemes**

**Application.**

88. This Chapter applies to an operator and a custodian in relation to a collective investment scheme.

**Written constitution requirement.**

89. (1) Every application for a collective investment scheme licence must include a written constitution which sets out the legal form of the collective investment scheme and to which the operator is a party and sets out the provisions relating to any aspect of the operation or management of the collective investment scheme which contains the information required by Part IX of the Order.

(2) The operator of a collective investment scheme must ensure that the requirements of sub-regulation (1) are met and in the case of an investment trust, the trustee must ensure that those requirements are met.

(3) The operator, and in the case of a collective investment scheme structured as an investment trust, both the operator and the trustee are responsible for maintaining the constitution and for making necessary amendments to it in accordance with any written laws.

(4) If the collective investment scheme is a public property collective investment scheme, the constitution of the collective investment scheme must include provisions that deal with –

(a) the manner in which the issue and redemption of units of the collective investment scheme are made to ensure that the collective investment scheme is closed-ended; and

(b) if applicable, the circumstances in which any private placements may be made.

(5) An operator of a collective investment scheme may issue, and in the case of an investment trust, the operator may instruct the trustee to issue, such classes of units as are set out in the constitution, provided the rights of any class of unit holders are not unfairly prejudicial to the interests of the unit holders of any other class of units in that collective investment scheme.

(6) An operator of a collective investment scheme may issue units whose issue may be limited, if permitted by the constitution and if in accordance with the conditions set out in the prospectus, provided that such issue will not materially prejudice any existing unit holders in the collective investment scheme.

(7) In the case of an investment trust, the trustee must take reasonable measures to ensure, before carrying out the operator's instructions that those instructions comply with the requirements referred to in sub-regulation (5).

**Name of collective investment scheme.**

90. (1) The operator of a collective investment scheme must ensure that the name of the collective investment scheme or, if applicable, the name of a sub-collective investment scheme is not undesirable, misleading or does not conflict with the name of another collective investment scheme.

(2) The operator of a collective investment scheme must ensure that the name of any class of units is not undesirable, misleading or does not conflict with the name of another collective investment scheme.

(3) If the collective investment scheme is structured as an investment trust, the trustee of the collective investment scheme must ensure compliance with the requirements under sub-regulations (1) and (2).

{4} In relation to sub-regulations {1} and {2}, the Authority, when deciding whether to make a direction under the Order and these Regulations, must take into account whether the name of the collective investment scheme —

(a) implies that the collective investment scheme has merits which are not, or might not be, justified;

(b) is inconsistent with the collective investment scheme's investment objectives or policy;

(c) might mislead unit holders or prospective unit holders into thinking that a person other than the operator is responsible for the collective investment scheme or a part of the collective investment scheme;

(d) is substantially similar to the name of another collective investment scheme in Brunei Darussalam or elsewhere; or

(e) is in the opinion of the Authority, offensive.

{5} If the name of a collective investment scheme includes the words “guaranteed”, “protected” or any other words with a similar meaning implying a degree of security in relation to capital or income, the operator of that collective investment scheme must demonstrate to the Authority's satisfaction that the matters set out in sub-regulations {6} and {7} are met.

{6} The operator of a collective investment scheme, for the purposes of sub-regulation {5}, must demonstrate that —

(a) the guarantor has the authority and resources to honour the terms of the guarantee; and

(b) the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the prospectus and that any exclusion such as *force majeure* are highlighted.

{7} The Authority will take into account whether the degree of security implied by the name fairly reflects the nature of the arrangements for providing that security.

{8} An operator of a collective investment scheme must not include the term real estate investment trust to refer to a public property collective investment scheme unless the requirements in regulations in respect of real estate investment trust are met in respect of the collective investment scheme. If at any time during the operation of the collective investment scheme the requirements are not met, the operator of the collective investment scheme and, where relevant the trustee, must immediately notify the Authority and the market operator of the

failure to meet the requirements under these Regulations and the measures that have been or will be taken to remedy the breach.

## Chapter V

### Operation and Administration of Collective Investment Scheme

#### General management duties.

91. (1) An operator of a collective investment scheme must operate the collective investment scheme in accordance with —

- (a) the constitution;
- (b) the most recently issued prospectus; and
- (c) the Order and these Regulations.

(2) An operator of a collective investment scheme must carry out such duties and functions in relation to that collective investment scheme as are necessary to ensure compliance with the Order and these Regulations that impose obligations on the operator.

(3) An operator of a collective investment scheme must make decisions as to the constituents of the collective investment scheme property that are in accordance with the investment objectives and policy stated in the prospectus.

(4) An operator of a collective investment scheme must take all steps and execute all documents to ensure that transactions are properly entered into for the account of the collective investment scheme.

(5) An operator of a collective investment scheme must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor risks in relation to the collective investment scheme it operates.

(6) In relation to a hedge fund, the operator of a collective investment scheme must demonstrate functional separation and independence between —

- (a) the functions of collective investment scheme valuation and asset pricing; and
- (b) the investment management process.

(7) Where the operator of a collective investment scheme is unable to demonstrate adequate separation and independence in accordance with sub-regulation (6), the Authority may require the operator to appoint an independent

suitably competent and experienced collective investment scheme administrator to perform the functions specified in that sub-regulation.

**Duties in relation to collective investment scheme property.**

92. (1) In the case of an investment company or an investment partnership, the operator of a collective investment scheme is responsible to the unit holders for the safekeeping of the collective investment scheme property.

(2) In the case of an investment trust —

(a) the trustee holds the collective investment scheme property in trust for the unit holders and accordingly is responsible to the unit holders for the safekeeping of the collective investment scheme property;

(b) the legal title of the collective investment scheme property must be registered with the trustee except in the case of a real property collective investment scheme where the trustee has made adequate alternative arrangements that are in accordance with sub-regulation (3); and

(c) the operator may give instructions to the trustee in accordance with the agreement creating the investment trust, the collective investment scheme's constitution, and the prospectus.

(3) In the case of a property collective investment scheme, the operator or, in the case of an investment trust, the trustee, for the purpose of meeting the legal or regulatory requirements in relation to the ownership of real property applicable in the jurisdiction in which the real property is situated, may implement alternative arrangements for safekeeping where the arrangements —

(a) in the case of an investment trust, enable the trustee to continue to control the collective investment scheme property; and

(b) in all cases, do not enable the operator to have unfettered control of the collective investment scheme property;

(4) If the operator, or in the case of an investment trust, the trustee, implements arrangements in accordance with sub-regulation (3), it must satisfy the Authority that the arrangements have the effect specified in that sub-regulation and are also legally effective in Brunei Darussalam or in the jurisdiction where the real property is situated.

**Conflict of interest.**

93. (1) The operator of a collective investment scheme, or if it is a collective investment scheme structured as an investment trust, the trustee, must take

reasonable steps to ensure that no dealings in relation to the collective investment scheme property give rise to a conflict of interest.

(2) Where a conflict of interest arises, the operator, and if appointed, the trustee, must disclose to the unit holders the nature of the conflict and how the conflict will be managed.

**Valuation of collective investment scheme.**

94. (1) An operator must —

(a) ensure that the collective investment scheme property is valued at regular intervals as appropriate to the nature of the collective investment scheme except where such valuation is suspended in any circumstances that are provided for in the collective investment scheme's constitution or prospectus;

(b) prepare a valuation in accordance with sub-regulation (3) for each relevant type of unit at each relevant valuation point; and

(c) if the collective investment scheme is a public collective investment scheme, as soon as practicable after each valuation point, both publish and make available to the unit holders and prospective unit holders of the collective investment scheme, the price of the units of the collective investment scheme.

(2) The value of the collective investment scheme property is the net value of the collective investment scheme property after deducting any expenses and debts including any capital outstanding on a mortgage of any real property.

(3) The value of the collective investment scheme property must, save as otherwise provided in these Regulations, be determined in accordance with the constitution and the prospectus.

(4) For the purposes of sub-regulation (2), any charges that were paid or would be payable, on acquiring or disposing of any asset, must be excluded from the value of that asset.

**Valuation and errors.**

95. (1) An operator of a collective investment scheme must —

(a) ensure that at each valuation point, there are at least as many units in issue of any class as there are units registered to unit holders of that class; and



*(b)* not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of unit holders or prospective unit holders.

(2) Where an operator has not complied with sub-regulation (1) or there is any other valuation error, it must rectify the error as soon as possible and must reimburse the collective investment scheme any costs it may have incurred in rectifying the position, subject to any reasonable minimum level for such reimbursement as set out in the prospectus.

(3) If the collective investment scheme is structured as an investment trust —

*(a)* the operator must notify the trustee of the matters specified in sub-regulation (2);

*(b)* the trustee must also take reasonable steps to ensure that the operator complies with the matters specified in sub-regulations (1) and (2); and

*(c)* provide any other notification required under these Regulations.

#### **Determination of single price.**

96. (1) An operator of a collective investment scheme must take all reasonable steps and exercise due diligence, to ensure that the units in the collective investment scheme are correctly priced in accordance with the accounting procedures of the International Financial Reporting Standards or the Accounting and Auditing Organisation for Islamic Financial Institutions or such other international standards as may be determined by the Authority to ascertain an accurate single price for a unit.

(2) The price of a unit must be calculated on the basis of the valuation in a manner that is fair and reasonable as between unit holders.

#### **Rectification of incorrect pricing.**

97. (1) An operator of a collective investment scheme must take immediate action to rectify any breach where such breach relates to the incorrect pricing of units.

(2) Unless the incorrect pricing in respect of issue is of minimal significance, the operator of a collective investment scheme must inform the Authority, the trustee and the custodian or other persons providing oversight functions in relation to the collective investment scheme of such rectification.

**Issue and redemption of public collective investment scheme.**

98. (1) An operator of a public collective investment scheme must, at all times during the dealing day, be willing to issue and effect the sale of units in the public collective investment scheme to any eligible client in accordance with any conditions in the constitution and the prospectus which must be fair and reasonable as between all unit holders and prospective unit holders for whom the operator does not have reasonable grounds to refuse such sale.

(2) An operator of a public collective investment scheme must, at all times during the dealing day, effect redemption of units owned by a prospective unit holder, on the request of that prospective unit holder in accordance with any conditions in the constitution and the prospectus, unless the operator has reasonable grounds to refuse such redemption.

(3) On agreeing to redemption of units under sub-regulation (2), the operator must pay the full proceeds of the redemption to the unit holder within any reasonable period specified in the constitution or the prospectus unless it has reasonable grounds for withholding the payment.

(4) The operator of the public collective investment scheme must make payment of proceeds on redemption in any manner provided for in the prospectus that must be fair and reasonable as between redeeming unit holders and continuing unit holders.

(5) If a public collective investment scheme is a closed-ended public collective investment scheme, the operator must have in place arrangements to ensure that the issue, sale and redemption of units of the public collective investment scheme are consistent with the closed-ended nature of the public collective investment scheme. The operator may also make provision for the issue of units of the public collective investment scheme through private placement provided those provisions are not inconsistent with the closed ended nature of the public collective investment scheme.

**Register of unit holders.**

99. (1) An operator of a collective investment scheme, or in the case of an investment trust, the trustee, must maintain a register of unit holders.

(2) The register must contain —

(a) the name and address of each unit holder;

(b) the number of units including fractions of a unit of each class held by each unit holder; and

(c) the date on which the unit holder was registered in the register for the units standing in his name.

(3) The operator or the trustee must take all reasonable steps and exercise all due diligence to ensure that the register is kept complete and up to date.

(4) The operator or the trustee must make the register in electronic or hard copy form available for inspection by unit holders during normal business hours at the operator's or the trustee's place of business in Brunei Darussalam.

**Meetings of board of directors and unit holders.**

100. (1) An operator of a collective investment scheme must hold at least two meetings of the board of directors of every collective investment scheme it operates in a year from the date of registration with the Authority.

(2) The two meetings referred to in sub-regulation (1) must be held in Brunei Darussalam and the periodic reports required under these Regulations must be presented at those meetings.

(3) The operator must hold an annual meeting of unit holders of every collective investment scheme it operates, in every 12-month period from the date of registration or, in the case of a private collective investment scheme, the date of issue of the initial units, and the annual report required under these Regulations must be presented at that meeting.

(4) If the collective investment scheme is an investment trust, the trustee or the operator may convene a meeting of unit holders at any time but the responsibility to make sure the meetings are convened in accordance with these Regulations rests with the operator failing which, with the trustee.

(5) The operator of the collective investment scheme must, on receipt of a request in writing of the unit holders that complies with sub-regulation (6), immediately call a meeting of the unit holders.

(6) The request referred to in sub-regulation (5) must be signed by the unit holders who, at that time, are registered as the unit holders of units representing not less than one-tenth in value of all of the units in the collective investment scheme.

(7) A meeting of unit holders of a collective investment scheme duly convened and held in accordance with these Regulations is competent, by means of a special resolution, to require, authorise or approve any act, matter or document in respect of which any such resolution is required. Such a resolution has no other powers or effect.

(8) Where no special resolution is specifically required or permitted by the Order or these Regulations, any resolution of unit holders required under these Regulations is passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of unit holders.

**Unit holders' meeting procedures for private collective investment scheme.**

101. An operator of a private collective investment scheme must set out in the collective investment scheme's constitution the procedures for holding unit holders' meetings and the conduct of such meetings including, but not limited to, the following matters —

- (a) voting rights;
- (b) right to demand a poll;
- (c) proxies;
- (d) minutes;
- (e) variation of class rights and class meetings.

**Unit holders' meeting procedures for public collective investment scheme.**

102. (1) An operator of a public collective investment scheme must produce and maintain a procedure manual in respect of unit holder meetings covering the matters set out under this regulation and including, but not limited to, the following matters —

- (a) voting rights;
- (b) right to demand a poll;
- (c) proxies;
- (d) minutes;
- (e) variation of class rights and class meetings.

(2) The operator must distribute the meeting procedures manual to all unit holders.

(3) In the case of a collective investment scheme structured as an investment trust, the operator must obtain the prior approval of the trustee in respect of the meeting procedures set out in the manual before its distribution to unit holders.

{4} In the case of a collective investment scheme structured as an investment trust, the trustee must nominate in writing a person to be the chairman of a meeting of unit holders other than the operator.

(5) In the absence of the chairman, or if no such chairman is nominated, or if at any meeting the person nominated as chairman is not present within fifteen minutes after the time appointed for holding the meeting, the unit holders present must elect another chairman.

(6) In the event of an equality of votes, the chairman or, in his absence, any other person presiding over the meeting, shall have a casting vote.

(7) The unit holders of a public collective investment scheme must be given at least 14 days written notice or any longer period of notice specified for the purpose in the constitution or these Regulations inclusive of the date on which the notice is first served and the day of the meeting.

(8) The notice must specify the place, day and hour of meeting and the terms of the resolutions to be proposed.

(9) In the case of a public collective investment scheme structured as an investment trust, unless the trustee has convened the meeting, a copy of the notice must be sent to the trustee not later than the time at which it is sent to the unit holders.

(10) Any accidental omission to give notice to, or the non-receipt of notice by any of the unit holders will not invalidate the proceedings at any meeting.

(11) Notice of any adjourned meeting of unit holders must be given to unit holders and if relevant, to the trustee.

(12) In the case of an investment trust, the *quorum* at a meeting of unit holders is the unit holders present in person or by proxy or, in the case of a body corporate, by a duly authorised representative, of one-tenth in value or any proportion more than one-tenth in value specified for this purpose in the trust deed of all the units in issue.

(13) In the case of an investment company, the *quorum* at a meeting of unit holders is two unit holders present in person or by proxy or, in the case of a body corporate by a duly authorised representative.

(14) Business must not be transacted at any meeting unless the requisite *quorum* is present at the commencement of business.

(15) If, within half an hour from the time appointed for the meeting, a *quorum* is not present, the meeting —

(a) if convened on the requisition or request of unit holders, must be dissolved; and

(b) if any other case, must stand adjourned to —

(i) another time which is 7 or more days after the day and time of the meeting; and

(ii) a place to be appointed by the chairman, if a chairman has been appointed in accordance with the constitution or otherwise by the operator.

(16) If, at an adjourned meeting under sub-regulation (15), a *quorum* is not present within 15 minutes from the time appointed for the meeting, one person entitled to be counted in a *quorum* present at the meeting is a *quorum*.

(17) Notice of any adjourned meeting of the unit holders must be given to unit holders. That notice must state that one or more unit holders present at the adjourned meeting whatever their number and whatever the number of units held by that unit holder or unit holders will form a *quorum*.

(18) No operator or other member of the board of directors of the collective investment scheme is entitled to be counted in the *quorum* of and no operator or other member of neither the board of directors of the collective investment scheme nor any associate of such a person is entitled to vote at, any meeting of the collective investment scheme.

(19) The prohibition in sub-regulation (18) does not apply to the exercise of voting rights attaching to any units which the operator or other member of the board of directors of the collective investment scheme or its associate holds on behalf of, or jointly with, another person who is not subject to the prohibition in that sub-regulation and from whom the operator or other member of the board of directors of the collective investment scheme or its associate, as the case may be, has received voting instructions.

#### **Approval and notification.**

103. An operator of a collective investment scheme must comply with the Order, these Regulations and any guidelines issued by the Authority in regard to —

(a) fundamental changes that require prior approval of the unit holders;

(b) significant changes that require prior notification to the unit holders; and

(c) any other changes that require notification to the unit holders.

**Maintenance of records.**

104. (1) An operator of a collective investment scheme must make and retain accounting and other records that are necessary —

(a) to enable it to comply with these Regulations; and

(b) to demonstrate such compliance to the Authority.

(2) An operator of a collective investment scheme must make and retain for a period of 7 years a record of the units held, acquired or disposed of, by it, including the classes of such units and a record of the balance of any acquisitions and disposals of units.

(3) An operator of a collective investment scheme must make the records available for inspection by the Authority and, if applicable, the custodian appointed by the trustee, free of charge at all times during normal office hours and must supply a copy of the records or any part of the records to the Authority.

(4) Except when the policy of an operator stated in the prospectus is neither to require a dilution levy nor to make a dilution adjustment, it must make and retain for a period of 7 years from the date each record is made on —

(a) how it calculates and estimates dilution; and

(b) its policy and method for determining the amount of any dilution levy or dilution adjustment.

(5) In this regulation —

“dealing costs” include both the costs of dealing in an investment, professional fees incurred or expected to be incurred, in relation to the acquisition or disposal of real property and, where there is a spread between the buying and selling prices of the investment, the indirect cost resulting from the differences between those prices;

“dilution levy” means, a charge of such amount or at such rate as is determined by an operator of a collective investment scheme to be made for the purpose of reducing the effect of dilution, that is, the amount of dealing costs incurred, or expected to be incurred, by an operator to the extent that these costs may reasonably be expected to result, or have resulted from the acquisition or disposal of investments by the operator as a consequence (whether or not immediate) of the increase or decrease in the cash resources of the collective investment scheme resulting from the issue or cancellation of units over a period.

**Capital.**

105. (1) If, at any time after the amount of the collective investment scheme's capital has reached the minimum as provided in its constitution and that capital falls below the minimum, the operator must immediately notify the Authority of that fact.

(2) The notification must —

(a) state the operator's grounds for believing that the collective investment scheme is still commercially viable and the purpose of the collective investment scheme may still be accomplished; and

(b) be accompanied by the relevant unit holders' resolution supporting the operator's views in paragraph (a); or

(c) state the steps the operator have taken or will take to wind up the collective investment scheme.

**Chapter VI**

**Delegation and Outsourcing**

**Application.**

106. (1) This Chapter applies to the operator and where appointed, the trustee, in relation to a collective investment scheme.

(2) An operator of a collective investment scheme or where appointed, the trustee, may, subject to any restriction in the constitution of the collective investment scheme and any provisions of these Regulations, delegate any of its investment activities or services, or outsource known collectively in these Regulations as outsourcing, any of its functions to a service provider whether that service provider is located in or outside Brunei Darussalam.

(3) Where an operator or the trustee delegates any investment activities or services, or outsources any functions, the operator or the trustee remains liable to the unit holders for any acts or omission of the service provider as if they were the acts or omission of the operator or trustee.

**Delegation by operator.**

107. (1) An operator of an investment company or investment partnership must delegate the activity of providing custody to a custodian in accordance with regulation 87.

(2) The requirement in sub-regulation (1) does not apply to —



(a) a real property collective investment scheme where the operator has made adequate alternative arrangements that are in accordance with regulation 87; or

(b) a private equity collective investment scheme where the operator has made adequate alternative arrangements.

(3) In accordance with the delegation agreement, the operator —

(a) must register the legal title of the collective investment scheme property with the custodian; and

(b) may give instructions to the custodian to deal with the collective investment scheme property.

(4) An operator of a collective investment scheme may delegate one or both of the investment activities or services of providing collective investment scheme administration and providing custody to another person where that person is licensed by the Authority to provide the service of administration or safekeeping of assets.

#### **Delegation by trustee.**

108. A trustee may, with the prior written consent of the operator, delegate one or both of the investment activities or services of providing collective investment scheme administration and providing custody to another person where that person is licensed by the Authority to provide the service.

#### **Delegation process and requirements.**

109. (1) An operator or trustee must carry out due diligence on a proposed person who is to provide the services of collective investment scheme administration or custody to ensure that person's eligibility prior to effecting any such delegation of investment services or activities and such delegation must be in the form of a written agreement.

(2) Any such delegation under sub-regulation (1) does not relieve the operator or trustee from accountability for the proper conduct of a delegated activity.

#### **Outsourcing process and requirements.**

110. (1) When an operator or trustee, as the case may be, outsources any functions it must —

(a) enter into an outsourcing agreement which complies with any requirements which the Authority may determine; and

(b) before entering into such outsourcing agreement, carry out due diligence on the proposed person who is to provide the services so as to enable it to be satisfied on reasonable grounds that the person is suitable to perform the relevant functions.

**Systems and controls.**

111. If an operator or a trustee delegates any activities or services, or outsources any function under this Chapter, it must take reasonable steps to ensure that it implements and maintains its systems and controls to monitor the person who provides the services.

**Review of activities.**

112. (1) An operator or a trustee that has delegated any investment services or activities or outsourced any functions, must conduct a review of the carrying out of the relevant activities, services or functions and present the findings of the review to either –

(a) the board of directors of the collective investment scheme every 6 months at the board meeting in Brunei Darussalam; or

(b) in the case of a collective investment scheme structured as an investment trust, the trustee or the operator, as the case may be.

(2) Notwithstanding the requirement in sub-regulation (1), if an operator or a trustee discovers any non-compliance of any term of the delegation agreement or outsourcing agreement, the operator or the trustee, as the case may be, must take immediate action to remedy the matter and to notify the Authority and where applicable, its board of directors or the trustee.

(3) For the purposes of sub-regulation (2), the operator or the trustee must notify the Authority only where the non-compliance is material.

**Chapter VII**

**Accounting Standards**

**Duty to maintain financial accounts and statements.**

113. (1) An operator of a collective investment scheme must prepare and maintain all financial accounts and statements in accordance with International Financial Reporting Standards or such other international standards as may be determined by the Authority.

(2) If a collective investment scheme is an Islamic collective investment scheme, the operator must prepare and maintain all financial accounts and

statements in accordance with the accounting standards of the Accounting and Auditing Organisation for Islamic Financial Institutions or such other international standards as may be determined by the Authority.

(3) If the operator of an umbrella collective investment scheme operates one or more Islamic sub-collective investment schemes, it must prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards and supplemented by Accounting and Auditing Organisation for Islamic Financial Institutions.

**Accounting records to be kept.**

114. (1) Every operator of a collective investment scheme must keep accounting records which are sufficient to show and explain transactions and —

(a) capable of disclosing the financial position of the collective investment scheme on an ongoing basis; and

(b) record the financial position of the collective investment scheme as at the end of its financial year.

(2) Accounting records must be maintained by an operator of a collective investment scheme so as to enable the board of directors and, if appointed, a trustee or any person providing oversight of the collective investment scheme, to ensure that any accounts prepared by the operator in relation to the collective investment scheme comply with any written laws in Brunei Darussalam.

(3) The accounting records must be —

(a) retained by the operator or collective investment scheme for at least 7 years from the date to which they relate;

(b) at all reasonable times, open to inspection by the Authority or the auditor of the collective investment scheme; and

(c) capable of reproduction, within a reasonable period not exceeding 3 business days, in hard copy and in the English language.

## **Chapter VIII**

### **Periodic Reports**

**Application.**

115. This Chapter applies to —

(a) the operator;

- (b)* the trustee;
- (c)* the auditor;
- (d)* a person providing oversight functions; and
- (e)* a person appointed to the investment committee of a collective investment scheme.

**Annual and interim reports.**

116. (1) In order to provide the unit holders with relevant and up-to-date information about the progress of a collective investment scheme, an operator must produce one annual report and one interim report in respect of each collective investment scheme it operates in accordance with these Regulations.

(2) The operator must file with the Authority —

*(a)* an annual report within 3 months after the end of each annual accounting period; and

*(b)* an interim report within 2 months after the end of each interim accounting period.

(3) For the purposes of sub-regulation (2), the first annual accounting period of a collective investment scheme begins —

*(a)* in the case of a public collective investment scheme, on the date of registration by the Authority; or

*(b)* in the case of a private collective investment scheme, on the date of notification to the Authority,

and ends 12 months later. Thereafter, the annual accounting period covers the period between each subsequent financial year-end.

(4) Notwithstanding the requirement in sub-regulation (2), an operator may, subject to the prior approval of the Authority, produce the collective investment scheme's reports and accounts in accordance with the operator's accounting periods.

(5) For the purposes of sub-regulation (2), an interim accounting period is the period covering —

*(a)* 6 months after the date on which the collective investment scheme was licensed by the Authority or in the case of a private collective

investment scheme, the date on which the collective investment scheme notified to the Authority; and

(b) 6 months after the anniversary of each annual accounting period.

(6) If a collective investment scheme intends to change its annual or interim accounting period, the operator must —

(a) obtain written confirmation from its auditor that the change of its annual accounting period would not result in any significant distortion of the financial position of the collective investment scheme; and

(b) obtain prior approval of the Authority before implementing the change.

(7) For a collective investment scheme that is an umbrella collective investment scheme, the operator must prepare an interim report for each sub-collective investment scheme, but this is not necessary for the umbrella collective investment scheme as a whole.

(8) The operator must prepare the annual report and the interim report of the collective investment scheme in accordance with the accounting standards in these Regulations.

(9) The reports must —

(a) be supplied free of charge to unit holders;

(b) be available in the English language;

(c) be sent to the Authority; and

(d) if the collective investment scheme is a public collective investment scheme, be available for inspection free of charge during normal office hours at a specified place.

(10) The operator must take reasonable steps to ensure that the annual report and the interim report for a collective investment scheme or the sub-collective investment scheme of an umbrella collective investment scheme are clear, complete and true, and contain for the relevant period —

(a) the name of the collective investment scheme or sub-collective investment scheme, its stated investment objectives, the policy of achieving those objectives and a brief assessment of its risk profile;

(b) a review of the collective investment scheme's or sub-collective investment scheme's investment activities and investment performance during the period;

(c) sufficient information to enable unit holders to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period; and

(d) any other significant information which would reasonably enable unit holders to make an informed judgment on the activities of the collective investment scheme or sub-collective investment scheme during the period and the results of those activities at the end of the accounting period.

**Annual report requirement.**

117. (1) An annual report on a collective investment scheme, which is not an umbrella collective investment scheme, must contain —

(a) the full audited accounts for the annual accounting period;

(b) the report of the auditor in accordance with these Regulations;

(c) the report of the operator in accordance with these Regulations;  
and

(d) if the collective investment scheme is a public collective investment scheme, the comparative table in accordance with regulation 121;

(e) if the collective investment scheme is a private collective investment scheme, a statement on the performance of the collective investment scheme in accordance with the constitution and prospectus;

(f) if the collective investment scheme is a public collective investment scheme, the report in accordance with regulation 122 of the person providing oversight of the collective investment scheme;

(g) if the collective investment scheme is an Islamic collective investment scheme, the report of the *syariah* advisory body which conforms to such requirements as may be determined by the Authority; and

(h) if the collective investment scheme is an investment trust, the report of the trustee in accordance with regulation 122.

(2) An annual report on a collective investment scheme, which is an umbrella collective investment scheme, must contain —

*(a)* for each sub-collective investment scheme —

- (i) the full audited accounts for the annual accounting period;
- (ii) the report of the operator in accordance with regulation 120;
- (iii) if the collective investment scheme is a public collective investment scheme, the comparative table in accordance with regulation 121; or
- (iv) if the collective investment scheme is a private collective investment scheme, a statement on the performance of the sub-collective investment scheme in accordance with the constitution and prospectus;

*(b)* an aggregation of the accounts required by paragraph *(a)*(i) for each sub-collective investment scheme;

*(c)* the report of the auditor in accordance with regulation 122; and

*(d)* if the collective investment scheme is a public collective investment scheme, the report in accordance with regulation 121 of the person providing oversight of the collective investment scheme.

(3) Where a collective investment scheme is required to appoint an investment committee, the annual report must include a report by that committee.

(4) Where a collective investment scheme is a hedge fund, the annual report must include a report of its custodian.

(5) The operator must ensure that the accounts give a true and fair view of —

*(a)* the net income, the net gains and the losses on the collective investment scheme property;

*(b)* the sub-collective investment scheme for the annual accounting period in question; and

*(c)* the financial position of the collective investment scheme or sub-collective investment scheme as at the end of that period.

**Interim report requirement.**

118. The operator must produce an interim report which must include —

- (a) the reports and matters set out in accordance with regulation 117(1);
- (b) the total expense ratio at the end of the period;
- (c) particulars of any material issues raised by the custodian and, if applicable, the trustee, the investment committee or any person providing oversight in relation to the collective investment scheme; and
- (d) if applicable, the *syariah* interim report by the *syariah* advisory body.

**Operator's report.**

119. (1) The matters set out in paragraphs (a) to (g) must be included in any operator's report, except where otherwise indicated —

- (a) a restatement of the investment objectives of the collective investment scheme;
- (b) a restatement of the policy for achieving those objectives;
- (c) a review of the investment activities, including in relation to paragraphs (a) and (b), during the period to which the report relates;
- (d) particulars of any fundamental change made requiring prior approval by unit holders' meeting since the date of the last report;
- (e) particulars of any significant change made requiring pre-event notification since the date of the last report;
- (f) any other information which would enable the unit holders to make an informed judgment on the development of the investment activities of the collective investment scheme during the period to which the report relates and the results of those investment activities as at the end of that period; and
- (g) for a collective investment scheme that invests a substantial proportion of its assets in other collective investment schemes, a statement as to the maximum proportion of management fees charged to the collective investment scheme itself and to other collective investment schemes in which that collective investment scheme invests.

(2) In the case of an umbrella collective investment scheme, the information required in sub-regulation (1) must be given for each sub-collective investment scheme if it would vary from that given in respect of the umbrella collective investment scheme as a whole.



**Comparative table for public collective investment scheme.**

120. The comparative table for the annual report for a public collective investment scheme must set out —

(a) the performance record over the last 5 calendar years, or if the collective investment scheme has only been in existence for less than 5 years, the remaining period in which it has been in existence, showing —

- (i) the highest and the lowest price of a unit of each class in issue during each of those years; and
- (ii) the net income distributed or, for accumulation units, allocated for a unit of each class in issue during each of those years, taking account of any sub-division or consolidation of units that occurred during that period;

(b) as at the end of each of the last 3 annual accounting periods or all of the collective investment scheme's annual accounting periods, if less than 3 —

- (i) the total net asset value of the collective investment scheme property at the end of each of those years;
- (ii) the net asset value per unit of each class; and
- (iii) for a report of the directors of an investment company, the number of units of each class in issue; or
- (iv) for a report of the operator of any other collective investment scheme, the number of units of each class in existence or treated as in existence; and

(c) if, in the period covered by the table —

- (i) the operator has been the subject of any event such as a transfer of a collective investment scheme having a material effect on the size of the collective investment scheme but excluding any issue or cancellation of units for cash; or
- (ii) there have been changes in the investment objectives of the collective investment scheme,

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

**Oversight report.**

121. (1) The trustee, custodian or other persons providing oversight of a public collective investment scheme must make a report to unit holders of the collective investment scheme which must be included in the annual report.

(2) The oversight report must contain —

(a) a description, which may be in summary form, of the duties of the trustee, custodian or other persons carrying out oversight functions and in respect of the safekeeping of the collective investment scheme property; and

(b) a statement whether, in any material respect —

(i) the issue, sale, redemption and cancellation, and calculation of the price of the units and the application of the collective investment scheme's income, have not been carried out in accordance with the regulations, the constitution and the prospectus; and

(ii) the investment and borrowing powers and restrictions applicable to the collective investment scheme have been exceeded.

**Auditor's report requirements.**

122. The operator must ensure that the report of the auditor to the unit holders for inclusion in the annual report includes a statement —

(a) whether the auditor is of the opinion that, the accounts have been properly prepared in accordance with the accounting standards adopted by the collective investment scheme in accordance with these Regulations, the constitution and the prospectus;

(b) whether the auditor is of the opinion that, the accounts give a true and fair view of the net income and the net gains or losses of the collective investment scheme property or, as the case may be, the collective investment scheme property attributable to the sub-collective investment scheme for the annual accounting period in question and the financial position of the collective investment scheme or sub-collective investment scheme as at the end of that period;

(c) whether the auditor is of the opinion, that proper accounting records for the collective investment scheme or, as the case may be, sub-collective investment scheme have not been kept or whether the accounts are not in agreement with those records;

*(d)* whether the auditor has been given all the information and explanation which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and

*(e)* whether the auditor is of the opinion that, the information given in the report of the directors or in the report of the operator for that period is consistent with the accounts.

## Chapter IX

### Charges and Expenses

#### Application.

123. (1) This Chapter applies to an operator and a trustee of a collective investment scheme.

(2) An operator of a collective investment scheme must not make any charge or levy in connection with the issue or sale of units except in accordance with the constitution and prospectus.

(3) The operator of a collective investment scheme must not make any preliminary or redemption charge unless —

*(a)* it is permitted by the constitution and specified in the prospectus; and

*(b)* it is expressed either as a fixed amount or calculated as a percentage of the price of a unit.

(4) The preliminary charge must not exceed the amount or rate stated in the current prospectus in respect of any class of units.

(5) No payment may be made, or no benefit may be given, to the operator out of the collective investment scheme property whether by way of remuneration for its services, reimbursement of expenses or otherwise, unless it is permitted by the constitution, and the prospectus specifies how it will be calculated, accrued, when it will be paid and the maximum and current rates or amount of such remuneration.

(6) The operator of a collective investment scheme must give not less than 90 days written notice of any increase proposed permitted by the constitution and specified in the prospectus.

(7) An operator of a collective investment scheme must not introduce a new category of remuneration for its services or make any increase in the current

rate or amount of its remuneration payable out of the collective investment scheme property unless —

(a) the operator has given not less than 90 days written notice of that introduction or increase and of the date of its commencement to the unit holders and to the persons providing oversight of the collective investment scheme; and

(b) the unit holders approve such new category by special resolution.

**Remuneration and reimbursement of expenses.**

124. (1) An operator of a collective investment scheme must take reasonable steps to ensure that no payment is to be made to a trustee, custodian or other persons providing oversight out of the collective investment scheme property whether by way of reimbursement of expenses or otherwise, except —

(a) remuneration in respect of services provided and in respect of which the following have been stated in the prospectus —

- (i) the actual amount or rate of the remuneration together with the current maximum or how these are determined;
- (ii) the periods in respect of which the remuneration is to be paid;
- (iii) how the remuneration is to accrue;
- (iv) when the remuneration is to be paid; and

(b) reimbursement of expenses properly incurred by the trustee, custodian or other persons providing oversight functions.

(2) Payment under sub-regulation 1(a) must not be made unless permitted by the constitution and specified in the prospectus.

**Promotional payments, performance fees and set up costs.**

125. (1) No promotional payment, performance fee or benefit may be made out of or given at the expense of the collective investment scheme property to the operator unless it is permitted by the constitution and specified in the prospectus.

(2) Costs of the registration, exemption and incorporation of a collective investment scheme and of its initial offer or issue of units including units in respect of a sub-collective investment scheme may, be amortised over a period not exceeding 5 years.

**Allocation of payments to capital or income.**

126. (1) The operator, the custodian, the trustee or the persons providing oversight arrangements may agree that all or any part of any permitted payments, charges and expenses of the collective investment scheme may be treated as capital expense or income expense and allocated to the capital account or income account respectively.

(2) The operator of a collective investment scheme must ensure that any agreement in sub-regulation (1) is permitted by the constitution and specified in the prospectus in sufficient detail for a unit holder or a prospective unit holder to make an informed decision in relation to the allocation of such charges and expenses to be paid from the capital property or the income property, as the case may be.

**Payments of liabilities on transfer of assets.**

127. Where the property of a body corporate or of another collective investment scheme is transferred to a collective investment scheme, or to the operator for the account of the collective investment scheme, or to the trustee to hold on trust for the unit holders, in consideration of the issue of units in the collective investment scheme to unit holders in that body corporate or in that other collective investment scheme, the operator, or in the case of an investment trust, the trustee as the successor in title to the property transferred, may pay out of the collective investment scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if –

(a) there is nothing in the constitution of the collective investment scheme expressly forbidding the payment; and

(b) the operator is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

**Chapter X**

**Responsibility for Prospectus**

**Responsibility to produce prospectus.**

128. (1) Every collective investment scheme must produce a prospectus.

(2) Any person who produces untrue, deceptive or misleading statements and makes omission in the prospectus is guilty of an offence under the Order.

**Persons responsible for prospectus.**

129. (1) In the Order and these Regulations, the following persons are responsible for a prospectus —

(a) the operator;

(b) where the collective investment scheme is a body corporate, each person who is a director of that body corporate at the time when the prospectus is filed;

(c) where the collective investment scheme is an investment undertaking, each person who is permitted to be named, and is named, in the prospectus as a director, general partner or member of the board of directors or as having agreed to become such a person of that collective investment scheme either immediately or at a future time;

(d) any person who accepts, and is stated in the prospectus as accepting responsibility for, or for any part of, the prospectus;

(e) any person who is deemed to accept responsibility for any part of the prospectus; and

(f) any person not falling within paragraphs (a) to (e) who has authorised the contents of, or of any part of, the prospectus.

(2) A person who has accepted responsibility for, or authorised, only part of the contents of any prospectus, is responsible only for that part and only if it is included in, or substantially in, the form and context to which he has agreed.

(3) Nothing in sub-regulation (1) makes a person responsible for any part of a prospectus by reason only of giving advice as to its contents in a professional capacity to a person specified in sub-regulation (1)(a) to (f).

**Exemption from liability.**

130. (1) Any person except the operator of a collective investment scheme, is not liable under the Order for any loss in respect of units, caused by any statement or omission if, at the time when the prospectus was filed for registration or submitted for notification to the Authority, he believed on reasonable grounds, having made any reasonable enquiries, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and —

(a) he continued in that belief until the time when the units were acquired;

(b) the units were acquired before it was reasonably practicable to bring a correction to the attention of the persons likely to acquire the units in question;

(c) before the units were acquired, he had taken all reasonable steps to secure that a correction was promptly brought to the attention of the persons likely to acquire the units in question; or

(d) the units were acquired after such a lapse of time that, in the circumstances, he ought to be reasonably excused.

(2) A person is not liable under the Order for any loss in respect of units, caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the prospectus with that other person's consent at the time when the prospectus was filed for registration or submitted for notification to the Authority, if he believed on reasonable grounds, that the other person was competent to make or authorise the statement, and had consented to its inclusion in the form and context in which it was included and —

(a) he continued in that belief until the time when the units were acquired;

(b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented, to the attention of the persons likely to acquire the units in question;

(c) before the units were acquired, he had taken all reasonable steps to secure that that fact was promptly brought to the attention of the persons likely to acquire the units in question; or

(d) the units were acquired after such a lapse of time that, in the circumstances, he ought to be reasonably excused.

(3) Without prejudice to sub-regulations (1) and (2), a person is not liable under the Order for any loss in respect of any units, caused by any such statement or omission if —

(a) before the units were acquired, a correction, or where the statement was such as is mentioned in sub-regulation (2), the fact that the expert was not competent or had not consented, had been published in a manner calculated to bring it to the attention of persons likely to acquire the units in question; or

(b) he has taken all reasonable steps to secure such publication and he believed on reasonable grounds that such publication had taken place before the units were acquired.

(4) A person is not liable under the Order for any loss resulting from a statement made by an official person or contained in a public official document that is included in the prospectus, if the statement is reproduced fairly and accurately.

(5) A person is not liable under the Order if the person suffering the loss acquired the units in question with the knowledge —

(a) that the statement was false or misleading;

(b) of the omitted matter or of the change; or

(c) of the new matter or inaccuracy.

**Expert's responsibility.**

131. In these Regulations, an expert is deemed to accept responsibility for any statement or report reproduced (in whole or in part) in a prospectus with his written consent.

**Chapter XI**

**Auditors**

**Application.**

132. This Chapter applies to an operator, a trustee and an auditor of a collective investment scheme.

**Appointment and termination of auditors.**

133. (1) An operator of a collective investment scheme must —

(a) notify the Authority of the appointment of an auditor to the collective investment scheme, including the name and business address of the auditor and the date of the commencement of the appointment;

(b) prior to the appointment of the auditor, take reasonable steps to ensure that the auditor has the required skills, resources and experience to audit the type of collective investment scheme for which the auditor has been appointed; and

(c) ensure that the auditor, at the time of appointment and for the duration of the engagement as auditor of the collective investment scheme, is an authorised auditor regulated under any written laws of Brunei Darussalam.



(2) An operator of a collective investment scheme must immediately notify the Authority if the appointment of the auditor is or is about to be terminated, or on the resignation of the collective investment scheme's auditor, giving the reasons for the cessation of the appointment.

(3) An operator of a collective investment scheme must appoint an auditor to fill any vacancy in the office of the auditor and ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

(4) An operator of a collective investment scheme must take reasonable steps to ensure that the relevant auditor's audit staff are independent of and not subject to any conflict of interest with respect to the operator, the trustee or the collective investment scheme.

(5) An operator of a collective investment scheme or a trustee must notify the Authority if it becomes aware, or has reason to believe, that the relevant audit staff of the auditor are no longer independent of the operator, the trustee or the collective investment scheme, or have a conflict of interest which may affect their judgment in respect of the collective investment scheme and take immediate steps to rectify the situation.

(6) If, in the opinion of the Authority, an auditor appointed by an operator of a collective investment scheme is not suitable or where an auditor has not been appointed, the Authority may direct an operator to replace or appoint an auditor to the collective investment scheme in accordance with the requirements in this Chapter.

#### **Co-operation with auditor.**

134. (1) An operator of a collective investment scheme or a trustee must take reasonable steps to ensure that it and the employees of the collective investment scheme —

(a) provide such assistance as the auditor reasonably requires to discharge his duties;

(b) give the auditor right of access at all reasonable times to relevant records and information;

(c) do not interfere with the auditor's ability to discharge its duties;

(d) do not provide false or misleading information to the auditor; and

(e) report to the auditor any matter which may significantly affect the financial position of the collective investment scheme.

(2) An operator of a collective investment scheme or a trustee must, in writing, require any person to whom the operator has delegated any activities or outsourced any functions to co-operate with the collective investment scheme's auditor in accordance with sub-regulation (1)(a) to (e).

**Functions of collective investment scheme's auditor.**

135. An operator of a collective investment scheme, where applicable, must in writing, require the collective investment scheme's auditor to —

(a) conduct an audit of the collective investment scheme's accounts in accordance with the requirements of International Financial Reporting Standards or the Accounting and Auditing Organisation of Islamic Financial Institutions in respect of any Islamic collective investment scheme, or such other international standards as may be determined by the Authority; and

(b) produce a report on the audited accounts which states —

- (i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements under this Chapter;
- (ii) in particular, whether the accounts give a true and fair view of the financial position of the collective investment scheme at the end of the annual accounting period; and
- (iii) any other matter or opinion relating to the requirements under this Chapter.

**Chapter XII**

**Specialist Funds**

***Division I***

***Fund of Funds***

**Application.**

136. (1) This Division applies to an operator of a collective investment scheme that is a fund of funds.

(2) A fund of funds may not invest in —

- (a) another fund of funds;
- (b) a feeder fund;

(c) any collective investment scheme which is dedicated to investment in a number of collective investment schemes;

(d) any collective investment scheme which is dedicated to investment in a single collective investment scheme or in a single investment trust; and

(e) any sub-collective investment scheme of an umbrella collective investment scheme or sub-collective investment scheme of any other collective investment scheme which is equivalent to a collective investment scheme within paragraphs (a) to (d).

(3) Not more than 25 *per cent* in value of the collective investment scheme property is to consist of units in any one collective investment scheme.

(4) For the purposes of sub-regulations (2) and (3), each sub-collective investment scheme of an umbrella collective investment scheme and of an equivalent collective investment scheme is to be treated as if it were a separate collective investment scheme.

## ***Division II***

### ***Feeder Fund***

#### **Application.**

137. This Division applies to an operator of a collective investment scheme that is a feeder fund.

#### **Property of feeder fund.**

138. (1) An operator of a collective investment scheme must ensure that the property of a feeder fund, except where otherwise provided in the Regulations, consists only of —

(a) units or debentures of a single master collective investment scheme;

(b) in the case of a feeder fund which is a public collective investment scheme, units or debentures of an eligible master collective investment scheme.

(2) A master collective investment scheme is eligible for the purposes of sub-regulation (1)(b) only if —

(a) the borrowing of the master collective investment scheme does not exceed 200 *per cent* of the net asset value of the master collective investment

scheme or the market value of the units of the master collective investment scheme at the mid-value share price;

(b) the units in or debentures of the master collective investment scheme are regularly offered for purchase and sale by at least three market makers who are recognised or registered as members of a regulated market operator;

(c) the feeder fund owns not more than 20 *per cent* of the units (or of any class of units in or of the debentures or of any class of debentures) of the master collective investment scheme; and

(d) the master collective investment scheme has no limit on its duration.

(3) An operator of a collective investment scheme must ensure that a feeder fund invests in a master collective investment scheme only if —

(a) the operator of the master collective investment scheme is regulated by a financial services regulator;

(b) the master collective investment scheme itself is licensed or recognised by a financial services regulator and is subject to independent oversight;

(c) the investment objectives of the master collective investment scheme are disclosed in detail in the prospectus of the feeder fund;

(d) the operator of the feeder fund has made available to prospective unit holders in the feeder fund copies of the prospectus and the last audited annual reports and accounts of the master collective investment scheme; and

(e) the operator of the master collective investment scheme has waived any initial charges which it is otherwise entitled to charge in relation to the acquisition of units in its collective investment scheme.

(4) Where the feeder fund invests in a master collective investment scheme is managed by the same management company or by an associated or related company, the operator of the master collective investment scheme in which the investment is being made may not charge subscription or redemption fees on account of the investment, and commission or rebates received by the operator of the feeder fund, by virtue of the investment into the master collective investment scheme must be paid into the property of the feeder fund.

*Division III*

*Private Equity Fund*

**Application.**

139. (1) This Division applies to an operator of a collective investment scheme that is a private equity fund.

(2) An operator of a private equity collective investment scheme must call a meeting of unit holders to vote on the election of at least three experts who are independent of the operator to sit on an investment committee of the collective investment scheme.

(3) The committee members referred to in sub-regulation (2) are appointed to review investment opportunities and must not involve themselves in the day-to-day management of the collective investment scheme.

**Investment purposes.**

140. (1) An operator of a private equity collective investment scheme must ensure that —

(a) unless the purpose of the private equity collective investment scheme is to invest in a single venture or undertaking, it does not invest more than 25 *per cent* of the collective investment scheme in one such venture or undertaking; and

(b) it does not invest in companies which are in any way connected to the private equity collective investment scheme or the operator of the private equity collective investment scheme.

(2) If an operator of a private equity collective investment scheme intends to invest in any venture, the operator must ensure that it makes adequate arrangements for the undertaking of due diligence in respect of that venture including investigating its corporate governance standards.

(3) If an operator of a private equity collective investment scheme has placed a person on the board of directors of the undertaking in which it is investing, it must take reasonable steps to ensure that it manages conflicts and follows good corporate governance.

**Division IV**

**Property Collective Investment Scheme**

**Application.**

141. This Division applies to an operator and, if appointed, a trustee, of a collective investment scheme which is a property.

**Permitted investment vehicles and listing.**

142. (1) An operator of a property collective investment scheme must use only a closed-ended legal structure for the investment vehicle.

(2) If the property collective investment scheme referred to in sub-regulation (1) is a public collective investment scheme, the operator must —

(a) use either an investment company or an investment trust as the investment vehicle; and

(b) ensure that it is listed and traded on a regulated market.

**Investment committee.**

143. (1) An operator of a property collective investment scheme must call a meeting of unit holders to vote on the election of at least three experts, who are independent of the operator, to sit on an investment committee of the property collective investment scheme.

(2) An operator of a property collective investment scheme that is constituted as an investment trust need not appoint an investment committee.

(3) The committee members referred to in sub-regulation (1) are appointed to review investment opportunities and must not involve themselves in the day-to-day management of the collective investment scheme.

**Investment requirements.**

144. (1) An operator of a property collective investment scheme must ensure that a property collective investment scheme, except where otherwise provided in these Regulations, consists only of any or all of —

(a) real property;

(b) property related assets;

(c) units in another property collective investment scheme; or

(d) up to a maximum of 40 *per cent* of cash, government and public securities.

(2) The requirements under sub-regulation (1) do not apply to an operator of a property collective investment scheme during the initial 6 months' period of the collective investment scheme's operation but in any case, may be subject to any other time period set out in the prospectus or as approved by a special resolution of the unit holders.

(3) An operator of a property collective investment scheme must ensure that —

(a) property-related assets of a property collective investment scheme are listed and traded on a securities exchange which is provided for in the constitution of the collective investment scheme; and

(b) the property collective investment scheme does not grant any person an option to acquire any property included in the collective investment scheme.

(4) An operator of a property collective investment scheme, or if appointed, a trustee, must ensure that the collective investment scheme holds good marketable legal and beneficial title in all its real property, whether directly or through special purpose vehicles controlled by the collective investment scheme. The collective investment scheme may hold such title as joint tenants or tenants-in-common with one or more third parties provided that the collective investment scheme must hold majority interest and control and have the freedom to dispose of its interest.

(5) An operator of a property collective investment scheme, or if appointed, a trustee, must take all reasonable care to ensure that the operator arranges adequate property insurance and public liability insurance coverage in relation to the real property of a collective investment scheme.

#### **Borrowing limitation.**

145. (1) An operator of a public property collective investment scheme may borrow either directly or through its special purpose vehicle for financing investment or operating purposes but aggregate borrowings must not at any time exceed 80 *per cent* of the total net asset value of the collective investment scheme.

(2) An operator of a private property collective investment scheme may borrow either directly or through its special purpose vehicle for financing investment or operating purposes but aggregate borrowings must not at any time exceed 100 *per cent* of the total net asset value of the collective investment scheme.

(3) An operator of a property collective investment scheme may pledge the collective investment scheme's assets to secure borrowings under sub-regulations (1) and (2).

(4) In the event that the borrowing limit under sub-regulations (1) and (2) is exceeded, the operator must inform the trustee, if appointed, the unit holders and the Authority of this fact, the cause of the breach and the proposed method of rectification.

(5) The operator of the property collective investment scheme must use its best endeavours to reduce as soon as reasonably possible, the excess borrowings.

(6) All borrowings by the property collective investment scheme must be conducted at arm's length.

(7) Borrowings by any special purpose vehicles held by the property collective investment scheme must be aggregated for the purpose of calculating borrowing.

**Joint ownership arrangement.**

146. (1) An operator of a property collective investment scheme must ensure that when a joint ownership arrangement is entered into, the property collective investment scheme has a majority stake or holding in respect of that arrangement, that is, more than 50 *per cent* ownership and control in each property at all times.

(2) In making any joint ownership investment under this regulation, the operator must comply with the following conditions —

(a) the operator must be able to demonstrate that the arrangement, including the decision of owning less than a 100 *per cent* interest in the property, is in the interests of the unit holders;

(b) the operator must obtain a legal opinion in accordance with sub-regulation (3).

(3) The legal opinion referred to sub-regulation 2(b) must include —

(a) a description of the significant terms of the joint ownership arrangement;

(b) a statement whether the collective investment scheme will have a good and marketable legal and beneficial interest in the property;

(c) a description of the equity and profit sharing arrangements of the parties to the agreement;



(d) a statement that the relevant contract and joint ownership arrangements are legal, valid, binding and enforceable under any written laws;

(e) a statement that all necessary licences and consents required in the location where the subject property is located have been obtained by the collective investment scheme or its special purpose vehicle;

(f) a statement of compliance with any restriction on divestment by the collective investment scheme of its interest, in whole or in part, in the property; and

(g) if applicable, the implication of foreign regulations and regulations that may prohibit full ownership of the property by the collective investment scheme.

(4) An operator of a property collective investment scheme must ensure that —

(a) proper due diligence is conducted in identifying restrictions and constraints that may limit a collective investment scheme's direct ownership of a 100 *per cent* interest in a property; and

(b) the liability of, or assumed by, the collective investment scheme does not exceed the percentage of its interest in the joint ownership arrangement and there is to be no assumption of unlimited liability by the collective investment scheme.

(5) An operator of a property collective investment scheme must disclose to unit holders —

(a) the ownership structure of the property interest and the material terms thereof, including restrictions on divestments and the impact or implication of such restrictions on the divestment value of the interest in the property;

(b) the identity, background and ownership of the remaining legal and beneficial owners in the property, and transactional history of those owners with the collective investment scheme in relation to the property;

(c) financial, remuneration, fee-sharing or other material arrangements that have been or will be entered into between the collective investment scheme and the other owners of that property or their associates;

(d) a summary of the contents of the legal opinion referred to in sub-regulation (3) in relation to the property;

(e) where appropriate —

- (i) the nature of restrictions on foreign ownership and the duration of the restrictions, and the impact of such restrictions on the operations and financial position of the collective investment scheme as a whole;
- (ii) the independent valuer's opinion and evaluation of the impact of such prohibitions on the value of the property; and
- (iii) any other information which may reasonably be relevant to a unit holder.

**Use of special purpose vehicles.**

147. (1) An operator of a property collective investment scheme may hold real property for the collective investment scheme through a special purpose vehicle if the collective investment scheme has majority ownership and control of the special purpose vehicle.

(2) A special purpose vehicle set up by the operator of a property collective investment scheme under sub-regulation (1) may itself hold real property through another special purpose vehicle (the second special purpose vehicle) for the sole purpose of directly holding real property for the collective investment scheme or arranging financing for the collective investment scheme but the second special purpose vehicle must not hold real property for the collective investment scheme through another special purpose vehicle.

(3) The operator of the property collective investment scheme must ensure that —

(a) neither the constitution of any special purpose vehicle nor the organisation, transactions or activities of such special purpose vehicles must under any circumstances contravene any requirements under this Part;

(b) the board of directors of each of the special purpose vehicles must be appointed by the operator in agreement with the trustee or persons performing oversight functions of the collective investment scheme and where elected, the investment committee; and

(c) both the collective investment scheme and the special purpose vehicles must appoint the same auditor and adopt the same accounting principles and policies.

(4) If the collective investment scheme acquires real property through the acquisition of a special purpose vehicle, the operator must comply with the following matters for the purpose of the purchase —

(a) a report made by the collective investment scheme's auditor must be on —

- (i) the profit and loss of the special purpose vehicle for each of the 3 years preceding the transaction or any shorter period as is relevant if the special purpose vehicle was in existence for less than 3 years; and
- (ii) the assets and liabilities of the special purpose vehicle as at the last date, no more than 6 months old from the date of the report to which the accounts of the special purpose vehicle were prepared;

(b) the report required under paragraph (a) must —

- (i) indicate how the profits and losses of the special purpose vehicle would, in respect of the shares to be acquired, have affected the collective investment scheme, if the collective investment scheme had at all material times held the shares to be acquired; and
- (ii) where the special purpose vehicle has subsidiaries, deal with the profits or losses and the assets and liabilities of the special purpose vehicle and its subsidiaries, either as a whole, or separately;

(c) a valuation report in respect of the special purpose vehicle's interest in real property must be prepared in accordance with the valuation requirements set out under this Part.

**Transactions with affected persons.**

148. (1) For the avoidance of doubt, this regulation applies to operators of collective investment scheme and requires them to obtain the agreement of unit holders by way of special resolution before undertaking transactions with affected persons where the total consideration or value of the transaction is 5 *per cent* or more of the net asset value of the collective investment scheme.

(2) For the purpose of these Regulations, the following are affected persons in relation to a collective investment scheme —

- (a) its operator;
- (b) its board of directors;
- (c) its custodian;

- (d) its trustee or other persons providing oversight;
- (e) any adviser;
- (f) a holder of more than 5 *per cent* of the units of the fund;
- (g) the associate of any of the persons in paragraphs (a) to (f).

(3) In relation to affected persons, the operator of the collective investment scheme, and if appointed, the trustee, must disclose the following information to the unit holders —

- (a) any beneficial interests of the affected persons, and any changes thereof, in the collective investment scheme;
- (b) any potential conflicts of interests involving the affected persons and the measures implemented to address such conflicts.

(4) If the operator of the property collective investment scheme operates more than one collective investment scheme and a transaction involves two or more of the collective investment schemes operated by the operator, such transaction between the collective investment schemes will be affected persons' transaction for each of the collective investment schemes involved in the transaction.

(5) If any affected person has an interest in an undertaking which competes or is likely to compete, either directly or indirectly, with the collective investment scheme's activities, the operator of the collective investment scheme must disclose to unit holders and if appointed, the trustee, the following —

- (a) a description of the undertaking of the affected person and its management, with an explanation as to how such undertaking may compete with the collective investment scheme to enable unit holders to assess the nature, scope and size of such business;
- (b) where applicable, a statement from the affected person that it is capable of performing, and shall perform, its duty in relation to the collective investment scheme independently of its related business and in the best interests of the collective investment scheme and its unit holders;
- (c) a statement as to whether the collective investment scheme may acquire any of the related business or assets of the affected person.

(6) If there is any change in the information required under sub-regulation (5) after initial disclosure, the operator must disclose such changes to the unit holders, and if appointed, the trustee.

(7) Where an affected person has agreed to sell real property to the collective investment scheme, for the purpose of the establishment of the collective investment scheme, the operator must disclose the following in the prospectus —

(a) a valuation report by an independent valuer of the real property that the affected person has agreed to sell;

(b) the price to be paid by the collective investment scheme for the real property and other material terms of the transaction.

(8) The operator of the property collective investment scheme must ensure that —

(a) if any cash forming part of the collective investment scheme's assets is deposited with an affected person (being an institution licensed to accept deposits), interest must be paid on the deposit at a rate not lower than the current commercial rate for a deposit of that size and term;

(b) in the event of borrowing from an affected person (being an institution licensed to lend money), interest charged on the borrowing is at a rate not higher than the current commercial rate for a borrowing of that size and term; and

(c) any affected person transactions in the nature of services provided relating to the real property of the collective investment scheme in the ordinary and usual course of estate management, including renovation and maintenance work, are contracted on normal commercial terms and subject to the prior approval of the trustee or other oversight function.

(9) The operator of the property collective investment scheme, and if appointed, the trustee, must not engage affected persons as property agents for rendering services to the collective investment scheme, including advisory or agency services in property transactions.

**Appointment of independent valuer.**

149. (1) An operator of a property collective investment scheme must, subject to the approval of the trustee or other person providing oversight function, appoint an independent valuer in accordance with these Regulations.

(2) The operator of the property collective investment scheme must ensure that the independent valuer appointed under sub-regulation (1) values each real property prior to its acquisition and disposal.

(3) The operator of the property collective investment scheme must commission the independent valuer to produce a valuation report of the collective

investment scheme each year in accordance with the reporting requirements in these Regulations. The net asset value of the collective investment scheme following this valuation must be reported in the annual report of the collective investment scheme.

(4) For the purpose of these Regulations, an independent valuer is a person who carries on the business of valuing real property and who —

(a) is key personnel or has key personnel who are fellow or associate members of a recognised professional body of surveyors or property valuers and who are qualified to perform property valuations;

(b) is determined by the operator on reasonable grounds to have the relevant expertise, that is, knowledge of and experience in the valuation of property of the relevant kind in the relevant area where the property is situated;

(c) the operator has verified to have robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;

(d) has adequate professional indemnity insurance to cover its usual risks;

(e) is independent of the operator, the trustee, the custodian or any other person providing oversight and each general partner or member of the collective investment scheme's board of directors; and

(f) has not engaged himself or any of his associates in relation to the finding of the real property for the collective investment scheme.

(5) The operator of the property collective investment scheme must ensure that any valuation by the independent valuer is on the basis of an “open market value” as defined in the constitution and prospectus.

(6) The valuation report must confirm that if the real property was acquired for the property collective investment scheme, it may be disposed of at that valuation within a reasonable period.

(7) The operator of the property collective investment scheme must ensure that the property is acquired within a reasonable period from the date of the report and in any event not later than 6 months from the date of valuation and at a price of no more than 5 *per cent* above the valuation price.

**Valuation report of independent valuer.**

150. (1) An operator must ensure that any valuation report prepared by the independent valuer —

(a) includes all material details in relation to the basis of valuation and the assumptions used;

(b) describes and explains the valuation methodologies adopted;

(c) outlines the overall structure and condition of the relevant market including an analysis of the supply and demand situation, the market trend and investment activities;

(d) includes a brief description of the property, its location, the nature of the interest the collective investment scheme holds in the property, existing use, any encumbrances concerning or affecting the property, lease expiry profile, the capital value in existing state at the date the valuation was performed, net monthly income from the property, and any other matters which may affect the property or its value;

(e) confirms the independent status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and

(f) explains the rationale for choosing the particular valuation method if more than one method is adopted.

(2) An operator of the property collective investment scheme must ensure that whenever a valuation report is prepared for the collective investment scheme, the date of the valuation report must be —

(a) the date the collective investment scheme is valued, if such report is prepared for the purpose of calculating the net asset value of the collective investment scheme; or

(b) a date which is not more than 3 months before the date on which —

(i) an offering document is issued;

(ii) a circular is issued, if the circular relates to a transaction that requires unit holders' approval; or

(iii) a sale and purchase agreement or other agreement to transfer legal title is signed, if the transaction does not require unit holders' approval.

**Retirement of independent valuer.**

151. (1) An operator of the property collective investment scheme must ensure that if an independent valuer has conducted valuations of the real property for the collective investment scheme for 5 consecutive years, the independent valuer is retired or dismissed.

(2) Upon the retirement or dismissal of the independent valuer, the operator, subject to agreement of the trustee or other person providing oversight function, must appoint a new independent valuer that meets the qualification requirements under the Order and these Regulations.

***Division V***

***Real Estate Investment Fund (REIT)***

**Real estate investment fund requirements.**

152. (1) An operator of a collective investment scheme must ensure that it does not call, or otherwise hold out, a collective investment scheme as being a real estate investment fund unless it is a public property collective investment scheme which is established in accordance with the following —

(a) it is constituted either as an investment company, partnership or as an investment trust;

(b) it is primarily aimed at investments in income-generating real property;

(c) it distributes to the unit holders at least 80 *per cent* of its audited annual net income.

(2) An operator of a real estate investment fund must ensure that it distributes to the unit holders as dividends each year an amount not less than 80 *per cent* of its audited annual net income.

(3) The persons providing oversight functions in respect of the collective investment scheme must determine if any —

(a) revaluation surplus credited to income, or

(b) gains on disposal of real property,

shall form part of net income for distribution to unit holders.

(4) If a real estate investment fund holds any real property through one or more special purpose vehicles, the operator must ensure that each special



purpose vehicle distributes to the collective investment scheme all of its income as permitted by the laws and regulations of the jurisdiction where the special purpose vehicle is established.

(5) An operator of a real estate investment fund must ensure that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the real estate investment fund intends to hold the developed property upon completion.

(6) The total contract value of the property under development in regulation 152(5) must not exceed 30 *per cent* of the net asset value of the collective investment scheme property of the real estate investment fund.

(7) An operator of a real estate investment fund may borrow either directly or through its special purpose vehicle up to 70 *per cent* of the total net asset value of the collective investment scheme.

### ***Division VI***

#### ***Hedge Fund***

##### **Application.**

153. This Division applies to an operator of a collective investment scheme that is a hedge fund.

##### **Risk management, prime brokers and net asset value calculation.**

154. (1) An operator of a hedge fund must ensure that the risks inherent in the operation of a hedge fund are adequately addressed, with due regard to the nature of strategies and investment process employed by the operator and the role of collective investment scheme administrators, custodians and if appointed, prime brokers.

(2) An operator of a hedge fund may grant authority to a prime broker to combine the assets of the collective investment scheme with any other assets held by or available to the prime broker as collateral for any financing activities to be undertaken by the prime broker if the following conditions are met —

(a) the collective investment scheme is a private collective investment scheme;

(b) the prospectus of the collective investment scheme contains, in addition to the disclosure required under these Regulations, the following mandatory disclosure and warnings —

- (i) the identity and profile of the prime broker, including where it is located and how it is regulated;
- (ii) the services which the prime broker provide to the collective investment scheme, and the nature and extent to which the prime broker has the power and authority to combine the assets of the collective investment scheme with any other assets held by or available to the prime broker as collateral for any financing activities undertaken by the prime broker;
- (iii) a prominent health risk warning in the prospectus to alert prospective unit holders to the facts that —
  - (A) the collective investment scheme's appointed prime broker has the power and authority to use as collateral, the assets of the collective investment scheme in conjunction with any other assets held by or available to the prime broker; and
  - (B) if the prime broker uses collective investment scheme assets as collateral pursuant to the power under sub-paragraph (A), the unit holders may lose all the assets of the collective investment scheme in the event of the insolvency of the prime broker;
- (c) the person appointed as the prime broker qualifies as a custodian;
- (d) the agreement between the prime broker and the operator contains mandatory contractual provisions that —
  - (i) prohibit the prime broker from using the assets of the collective investment scheme as collateral to an extent exceeding 140 *per cent* of the collective investment scheme's indebtedness to the prime broker at any given time; and
  - (ii) create an irrevocable right in favour of the collective investment scheme that enables any indebtedness of the collective investment scheme to the prime broker to be set off against any amounts that are owing by the prime broker to the collective investment scheme, including in the event of the insolvency of the prime broker;
- (e) the operator has adequate valuation procedures in place to mark positions to market daily in order to meet on an ongoing basis the restriction referred to in paragraph (d)(i) relating to the limit to which the prime broker may use the assets of the collective investment scheme as collateral.

(3) An operator of a hedge fund must ensure adequate segregation of duties in the net asset value determination process.

(4) Parties who are not involved in the investment process of the investment management entity must produce the net asset value of the collective investment scheme.

(5) The board of directors, trustee or general partner of the collective investment scheme must ensure independence in practice, which may be achieved by delegating the calculation, determination and production of the net asset value to a suitably competent and experienced third party collective investment scheme administrator.

### Chapter XIII

#### Public Collective Investment Scheme

##### *Division I*

##### *Registration of Public Collective Investment Scheme*

##### **Application.**

155. (1) This Division applies to an operator and trustee of a collective investment scheme that is a public collective investment scheme.

(2) The body corporate that is to be the operator of the public collective investment scheme must apply or if the collective investment scheme is an investment trust, the trustee and operator must jointly apply to the Authority for a licence or recognition to operate the public collective investment scheme.

(3) The operator of a public collective investment scheme and, if applicable, the trustee, must complete and submit the appropriate form or forms to the Authority.

(4) The application must be accompanied by certification by the public collective investment scheme's legal advisers to the effect that –

(a) the constitution of the public collective investment scheme complies with the requirements prescribed under the Order and under these Regulations; and

(b) the prospectus complies with the requirements prescribed under the Order and these Regulations; or

(c) where the collective investment scheme is a foreign collective investment scheme, such other documentation that demonstrates that the

matters in paragraphs (a) or (b) have been considered by a foreign regulatory authority in accordance with its law relating to securities.

(5) The Authority may require the operator, and if appointed, the trustee, to provide additional information, regarding the public collective investment scheme, as reasonably required to enable the Authority to make a decision with respect to the application for a licence or recognition.

(6) If at any time after the filing of the application for a licence or recognition, the operator, and if appointed, the trustee, becomes aware of a material change reasonably likely to be relevant to the application for a licence under consideration, it must immediately inform the Authority in writing of such change.

(7) In assessing an application for a licence or recognition the Authority may —

(a) make any enquiries which it thinks fit including enquiries independent of the operator and trustee; or

(b) require the operator or the trustee to provide further information.

**Requirements for licence or recognition.**

156. (1) Subject to these Regulations, the Authority may grant a licence to a public collective investment scheme if it satisfies the following conditions —

(a) the public collective investment scheme is constituted as one of the following legal structures —

(i) an investment company;

(ii) an investment partnership;

(iii) an investment trust;

(b) the public collective investment scheme is incorporated under any written laws of Brunei Darussalam;

(c) the public collective investment scheme has appointed an operator which is licensed by the Authority to carry on the regulated activity of operating a collective investment scheme;

(d) the public collective investment scheme, if constituted as an investment trust, has a trustee which is licensed to act as the trustee of a collective investment scheme under any written laws of Brunei Darussalam;

*(e)* the operator has made satisfactory arrangements in accordance with the Order and these Regulations in relation to oversight and delegation of the activity of providing custody;

*(f)* the name of the public collective investment scheme is not undesirable or misleading and its purpose is reasonably capable of being successfully carried into effect;

*(g)* the operator has appointed an auditor of the public collective investment scheme who complies with the requirements of these Regulations.

(2) In the case of a foreign public collective investment scheme, the Authority may recognise the collective investment scheme if it is satisfied that –

*(a)* the country or territory in which the public collective investment scheme is established has been designated for the purposes of this regulation by an order made by the Authority;

*(b)* the regulations and practice under which relevant collective investment schemes are authorised and supervised in that country or territory afford to investors in Brunei Darussalam at least equivalent to that provided for them by or under this Chapter in the case of comparable licensed collective investment schemes;

*(c)* adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the licensing and supervision of comparable licensed collective investment schemes;

*(d)* the operator of the public collective investment scheme will be responsible for ensuring compliance under these Regulations;

*(e)* the operator of the public collective investment scheme has given the Authority the address of a place in Brunei Darussalam for the service on the operator of notices or other documents required or authorised to be served on it under the Order and these Regulations;

*(f)* the provisions of sub-regulation (1) are complied with in so far as they apply to the foreign collective investment scheme; and

*(g)* the operator of the public collective investment scheme has appointed an auditor of the collective investment scheme who complies with the requirements of these Regulations.

(3) Once the Authority has granted a licence to a public collective investment scheme or recognises a public collective investment scheme, it will without undue delay inform the relevant applicant in writing of —

(a) that decision; and

(b) the date on which the registration shall be deemed to take effect.

(4) The Authority shall maintain a list of public collective investment schemes which have been licensed or recognised on its public register.

**Revocation of licence or recognition.**

157. Under Part IX of the Order, the Authority may revoke or suspend the licence or recognition of a public collective investment scheme in specified circumstances.

***Division II***

***Collective Investment Scheme Prospectus Requirements***

**Application.**

158. This Division applies to an operator and the board of directors of a licensed collective investment scheme that is a public collective investment scheme.

**Drawing up and availability of prospectus.**

159. (1) An operator of a public collective investment scheme must ensure a prospectus of the collective investment scheme is drawn up in accordance with these Regulations and contains the statements or information specified in sub-regulation (3).

(2) The prospectus must not contain any provision that is unfairly prejudicial to the interests of the unit holders generally or to the unit holders of any class of units.

(3) The information referred to in sub-regulation (1) is material information which —

(a) is within the knowledge of the operator;

(b) the directors or partners of the legal entity constituting the public collective investment scheme would have obtained by the making of reasonable enquiries; and

(c) prospective unit holders and their professional advisers, would reasonably require, and reasonably expect to find in the prospectus,

for the purpose of making an informed judgment about the merits of investing in the public collective investment scheme and the extent and characteristics of the risks accepted by so participating.

(4) The prospectus must be in the English language.

(5) The expiry date of a prospectus must be not later than 12 months after the date of the prospectus.

(6) An operator of a public collective investment scheme must make the public collective investment scheme's most recent prospectus available free of charge to any unit holder and to any person who is eligible to invest in the public collective investment scheme prior to entering into a transaction relating to any units with that person.

(7) For the purposes of the Order, a supplementary prospectus of a public collective investment scheme may be issued as a supplementary document or a replacement document.

(8) Where the supplementary prospectus is issued as a supplement, the operator must —

(a) clearly identify in the supplementary prospectus —

(i) the prospectus that it supplements;

(ii) the revision to that prospectus;

(iii) the date of any material change or any new matter giving rise to any revision; and

(iv) the date of the document which must be the date of filing with the Authority;

(b) file a copy with the Authority;

(c) provide a copy to each person or prospective unit holder who applied for units under the previous prospectus after the earliest date of any material change or any new matter giving rise to the revision; and

(d) ensure the supplementary prospectus is made available in the same media and through the same channels as, and together with, the previous prospectus.

(9) Where the supplementary prospectus is issued as a replacement, the operator must —

*(a)* clearly state in the supplementary prospectus that it is a replacement document, and identify —

- (i)* the prospectus that it replaces;
- (ii)* the date and nature of any material change or any new matter giving rise to the replacement;
- (iii)* the expiry date; and
- (iv)* the date of the document which must be the date of filing with the Authority;

*(b)* file a copy with the Authority; and

*(c)* provide a copy to each person or prospective unit holder who applied for units under the previous prospectus after the earliest date of any material change or any new matter giving rise to the replacement.

(10) The expiry date of a supplementary prospectus must be the same as that of the prospectus it supplements.

(11) Unless the context otherwise provides, any reference in these Regulations to a prospectus must be read as including a supplementary prospectus.

(12) When a supplementary prospectus of a public collective investment scheme has been filed with the Authority and made available, the operator must —

*(a)* inform any person who applied for units on the basis of the previous prospectus after the earliest date of a material change or a new matter giving rise to the issue of the supplementary prospectus, of their right to confirm or retract any application made on the basis of that prospectus and to obtain a refund of monies paid, and the manner in which to do so; and

*(b)* allow any such person a period of at least 7 days from the date of receipt of the supplementary prospectus in which to so confirm or retract his application.

**Mandatory statement for public collective investment scheme prospectus.**

160. An operator of a public collective investment scheme must state in the collective investment scheme's prospectus the following statement to be displayed prominently on its front page —



*“This prospectus relates to a Brunei Darussalam public collective investment scheme in accordance with the Order and the regulations thereunder. The Authority is not responsible for reviewing or verifying any prospectus or other documents in connection with this public collective investment scheme. The Authority has not approved this prospectus or any other associated documents nor taken any steps to verify the information set out in this prospectus, and has no responsibility for it.*

*The units to which this prospectus relates may be illiquid or subject to restrictions on their resale. Prospective purchasers of the units offered should conduct their own due diligence on the units.*

*If you do not understand the contents of this document you should consult a licensed financial adviser.”.*

**Prospectus for feeder fund.**

161. An operator of a feeder fund must ensure that the collective investment scheme prospectus discloses —

(a) a prominent risk warning to alert prospective unit holders to the fact that they will be subject to higher fees arising from the layered investment structure; and

(b) the fees arising at the level of —

(i) the feeder fund itself;

(ii) if applicable, the master collective investment scheme of the feeder fund; and

(iii) if applicable, any underlying collective investment schemes into which the master collective investment scheme invests, to the extent known.

**Prospectus for property collective investment scheme.**

162. (1) An operator of a property collective investment scheme must ensure that the following information is disclosed in the collective investment scheme prospectus —

(a) the nature of the commitment which prospective unit holders will enter into;

(b) the risks involved in this type of collective investment scheme;

(c) the prominent risk warning which makes reference to circumstances in property markets which can cause difficulties in meeting redemptions;

(d) details of the property collective investment scheme's appointed independent valuer;

(e) the redemption procedures in a prominent position in the prospectus;

(f) the dividend or income distribution policy;

(g) the insurance arrangement for the collective investment scheme;

(h) a statement with respect to any material policy regarding real property activities;

(i) details of transactions or agreements entered into with affected persons;

(j) full particulars of the nature and extent of the interest, if any, of affected persons, in the property owned or proposed to be acquired by the collective investment scheme;

(k) details of significant holders and the number of units held and deemed to be held by each of them;

(l) details of principal taxes levied on the collective investment scheme's income and capital, including tax, if any, deducted on distribution to unit holders;

(m) a statement to explain the standards according to which the property valuations are conducted; and

(n) if applicable, the collective investment scheme is a real estate investment trust and whether the investment vehicle is an investment company or an investment trust.

(2) An operator of a property collective investment scheme must disclose in the collective investment scheme's prospectus, in addition to the standard disclosure requirements, in respect of investment limits, the following information —

(a) what percentage of the property collective investment scheme's net assets may consist of property related assets which are not traded in or dealt on markets provided for in the constitution;

(b) unless the constitution and the prospectus state that the collective investment scheme invests in a single property, the maximum percentage of the collective investment scheme's net assets which may be invested in any single property or, if applicable, disclose the conditions under which the collective investment scheme may derogate from this restriction;

(c) the maximum percentage of the property collective investment scheme's net assets which may be invested in properties which are vacant, in the process of development or requiring development;

(d) the maximum percentage of the property collective investment scheme's net assets which may be invested in properties which are subject to a mortgage.

(3) Without limiting any other disclosure obligations of the operator under these Regulations, an operator of a property collective investment scheme that invests in a single property must prominently disclose in the prospectus of the collective investment scheme —

(a) that the collective investment scheme invests in a single property;

(b) details relating to the single property such as whether the property comprises individual properties or buildings, whether there are different types of uses of or businesses conducted in the property, and proportions of anticipated income to be derived from the types of uses or occupants of the property; and

(c) any risks associated with the investment in the single property, including risks arising from or affecting income to be derived from the uses or occupants of the property.

### ***Division III***

#### ***Investment and Borrowing Powers***

##### **Application.**

163. This Division applies to an operator of a collective investment scheme that is a public collective investment scheme, a custodian and, if appointed, a trustee, and persons appointed to perform oversight functions.

##### **Spread of risk and protection of public collective investment scheme property.**

164. An operator of a public collective investment scheme must —

(a) take reasonable steps to ensure that the property of a public collective investment scheme provides a spread of risk that is consistent

with the investment objectives and policy of the collective investment scheme as stated in the most recently published prospectus, and in particular, any investment objectives as regards return to the unit holders whether through capital appreciation or income or both;

*(b)* avoid the collective investment scheme property being used or invested contrary to any provision in this Division.

*(c)* if it becomes aware of any breach of a regulation in this Division, take action, at its own expense, to rectify that breach;

*(d)* take the action under paragraph *(c)* immediately, except in circumstances where doing so would not be in the best interests of unit holders, in which case the action must be taken as soon as such circumstances cease to apply;

*(e)* not delay taking action under paragraph *(c)* unless the persons providing oversight functions have given their consent.

**Investments in other collective investment schemes.**

165. (1) A public collective investment scheme may invest in units of another collective investment scheme if the operator, except in relation to a master collective investment scheme which is a fund of funds, has taken reasonable care to determine that —

*(a)* the other collective investment scheme is the subject of an independent annual audit conducted in accordance with International Financial Reporting Standards or, in the case of an Islamic collective investment scheme, in accordance with Accounting and Auditing Organisation for Islamic Financial Institutions or such similar standards as the Authority thinks fit;

*(b)* the other collective investment scheme has mechanisms in place to enable unit holders to redeem their units within a reasonable time; and

*(c)* the other collective investment scheme is prohibited from having more than 20 *per cent* of its value in the units of collective investment schemes.

(2) The operator of the public collective investment scheme must ascertain that there is a proper and disclosed basis for asset valuation and the pricing before investing in units in another collective investment scheme.

**Transactions in derivatives.**

166. (1) The total exposure of a public collective investment scheme to derivatives may not exceed the net asset value of the public collective investment scheme property.

(2) The operator must have adequate risk management processes which enable it to monitor and measure as frequently as possible the risk of a public collective investment scheme's derivative positions and their contribution to the overall risk profile of the public collective investment scheme.

**Stock lending and borrowing.**

167. (1) Subject to the constitution and the prospectus, an operator of a public collective investment scheme, or the custodian, or the trustee, at the request of the operator, may enter into —

(a) stock lending arrangements in respect of any securities forming the collective investment scheme property; and

(b) stock borrowing arrangements.

(2) The operator of the public investment scheme must ensure that the value of any collateral for the stock lending arrangement is at all times at least equal to the value of the securities transferred.

**Borrowing restrictions.**

168. (1) Subject to the constitution and the prospectus, an operator of a public collective investment scheme or the custodian on the instructions of the operator, may borrow money for the use of the public collective investment scheme on terms that the borrowing is to be repayable out of the public collective investment scheme property.

(2) The operator of the public collective investment scheme must ensure, except in the case of a property collective investment scheme, that the public collective investment scheme's borrowing does not, on any day, exceed 20 *per cent* of the net asset value of the public collective investment scheme property and must take reasonable care to ensure that arrangements are in place that enable borrowings to be repaid to ensure such compliance.

(3) Where the limit in sub-regulation (2) is breached, the operator of the public collective investment scheme must take immediate action to deal with that breach.

(4) In this regulation, "borrowing" includes any arrangement including a combination of derivatives to achieve a temporary injection of money into the

public collective investment scheme property in the expectation that the sum will be repaid.

**Investment in real property.**

169. (1) An operator of a public collective investment scheme other than a property collective investment scheme must, before investing in real property, appoint an independent valuer with relevant expertise with the approval of the custodian or other persons providing oversight and likewise, upon any vacancy to ensure that any property in the public collective investment scheme is expertly valued.

(2) The operator of the public collective investment scheme must ensure that the independent valuer appointed under sub-regulation (1) procures the proper valuation of all the property held within the public collective investment scheme, on the basis of a full valuation with physical inspection including, if the property is or includes a building, internal inspection at least once a year.

(3) For the purposes of sub-regulation (2), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property.

(4) The operator of the public collective investment scheme must ensure that the independent valuer values the property, on the basis of a review of the last full valuation, at least every 6 months.

(5) If any event occurs which may on reasonable grounds have a material effect on the valuation of the relevant property, the operator of the public collective investment scheme must consult with the independent valuer with a view to arranging a fresh valuation before any units in the public collective investment scheme are issued or redeemed after the date of the event.

(6) Any valuation by the independent valuer must be on the basis of an open market value as defined in the constitution and prospectus.

***Division IV***

***Oversight Arrangements***

**Application.**

170. This Division applies to a person in accordance with the application provisions under Chapter 1 but only in relation to a collective investment scheme that is a public collective investment scheme.

**Permitted arrangements for investment company.**

171. (1) An operator of a public collective investment scheme that is an investment company must implement and maintain one of the following oversight arrangements —

(a) a panel which consists of the independent non-executive members of the public collective investment scheme's board of directors;

(b) a supervisory board which consists of the independent non-executive directors who supervise the activities of the public collective investment scheme's board of directors;

(c) a custodian.

(2) In sub-regulation (1), the number of independent non-executive board members must form a simple majority —

(a) on the board; or

(b) on the supervisory board;

as the case may be.

(3) A person is independent of the operator of the public collective investment scheme for the purposes of this regulation if he has no material interest in the operator or the body corporate.

**Permitted arrangements for investment partnership.**

172. (1) An operator of a public collective investment scheme that is an investment partnership must implement and maintain one of the following oversight arrangements —

(a) a committee which consists of at least two limited partners each of whom is not a general partner and is independent of the operator;

(b) a custodian.

(2) In sub-regulation (1)(a), the number of independent limited partners serving on the committee must exceed the number of general partners serving on the committee in the investment partnership.

(3) A person is independent of the operator of the public collective investment scheme for the purposes of this regulation if he has no material interest in the operator or the body corporate.

**Permitted arrangements for investment trust.**

173. (1) An operator of a public collective investment scheme that is an investment trust must ensure that the public collective investment scheme's oversight function is carried out through one of the following arrangements —

(a) by the trustee of the public collective investment scheme;

(b) by having a majority of independent directors on the operator of the public collective investment scheme's board.

(2) A person is independent of the operator for the purposes of this regulation if he has no material interest in the operator or the body corporate.

**Independence of oversight functions.**

174. (1) An operator must take reasonable steps to ensure that the relevant persons providing the public collective investment scheme's oversight functions are independent of the operator and not subject to any conflict of interest with respect to the operator.

(2) An operator must notify the Authority if it becomes aware, or has reason to suspect, that a person providing the public collective investment scheme's oversight functions is no longer independent of the operator, or has a conflict of interest which may affect his judgment in respect of the operator and what corrective action it has taken.

(3) If the collective investment scheme is structured as an investment trust, the operator of the collective investment scheme must notify the trustee of the matters in sub-regulations (1) and (2) in circumstances where the trustee does not provide the oversight function.

**General oversight duties.**

175. (1) The persons providing oversight functions must take reasonable care to ensure, on a continuing basis, the proper carrying out by the operator of the management of the collective investment scheme in accordance with these Regulations in respect of single pricing and dealing, income, investment and borrowing, and reporting requirements.

(2) In monitoring the operator's activities in relation to investment and borrowing, the persons providing the oversight functions must take reasonable steps and exercise due diligence to ensure on a continuing basis that —



(a) the collective investment scheme property is being used or invested by the operator in accordance with these Regulations covering investment and borrowing; and

(b) the operator takes the necessary steps to ensure a restoration of compliance with the relevant regulations as soon as reasonably practicable having regard to the interests of the unit holders.

(3) The persons providing oversight functions must take reasonable care to ensure that the public collective investment scheme is managed without contravention of any provision of the constitution or prospectus.

(4) The persons providing oversight functions must hold at least two meetings during every annual accounting period in Brunei Darussalam.

(5) If the collective investment scheme is an investment company or an investment partnership, at least two of the meetings referred to in sub-regulation (4) must be held in Brunei Darussalam at the same time as the collective investment scheme's board meetings.

(6) The persons providing oversight functions must keep —

(a) minutes of the meetings; and

(b) records of their reports and recommendations.

(7) The records in sub-regulation (6) must be kept for a minimum of 7 years.

(8) The persons providing oversight functions must appoint a chairman from amongst themselves to manage and direct the meetings.

#### **Oversight principles.**

176. (1) An individual who is appointed to carry out oversight functions for a public collective investment scheme must comply with the following six principles in respect of every oversight function including independent directors referred to in this Part —

#### **PRINCIPLE 1 — INTEGRITY**

An individual must observe high standards of integrity and fair dealing in carrying out every oversight function and disclose to the panel, committee or supervisory board any direct or indirect pecuniary interest that he has in a matter being considered, or about to be considered by the panel, committee or supervisory board if his interest may conflict with the proper performance of his duties in relation to the consideration of the matter;

PRINCIPLE 2 – DUE SKILL, CARE AND DILIGENCE

An individual must act with due skill, care and diligence in carrying out every oversight function;

PRINCIPLE 3 – MARKET CONDUCT

An individual must observe proper standards of conduct in financial markets in carrying out every oversight function;

PRINCIPLE 4 – RELATIONS WITH AUTHORITY

An individual must deal with the Authority in an open and co-operative manner and must disclose appropriately any information that the Authority may reasonably expect to be notified of;

PRINCIPLE 5 – MANAGEMENT, SYSTEMS AND CONTROL

An individual who has been appointed chairman of the panel, committee or supervisory board must take reasonable care to ensure that the oversight of the operator for which he and the other appointees are responsible is organised so that it can be managed and controlled effectively;

PRINCIPLE 6 – COMPLIANCE

An individual who has been appointed chairman of the panel, committee or supervisory board must take reasonable care to ensure that he and the other persons carry out their duties and functions under the Order and these Regulations.

(2) The principles do not apply to an individual in respect of any other functions he may carry out, although his conduct in those functions may be relevant to his fitness and propriety.

(3) If an individual contravenes any principle, he is liable to disciplinary action and the contravention may indicate that he is no longer fit and proper to perform an oversight function and the Authority may –

(a) decide to exercise its powers to object to the appointment; and

(b) require the operator to appoint a replacement.

(4) The onus is on the Authority to show that an individual is culpable, taking into account the standard of conduct required under the principle in question.

(5) In determining whether or not the particular conduct of an individual complies with the principles, the Authority may take into account whether that conduct is consistent with the requirements and standards relevant to the individual's role and the information available to him.

**Management systems and controls for oversight.**

177. (1) An operator of a public collective investment scheme must establish and maintain systems and controls that ensure that the persons providing oversight functions can effectively monitor the operation of the public collective investment scheme.

(2) The persons providing oversight functions must be consulted on and must approve the systems and controls referred to in sub-regulation (1).

(3) The operator must ensure that its compliance officer has unrestricted access to the relevant records and to the persons providing oversight functions.

(4) The operator must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches in relation to the operation of the collective investment scheme are readily identified and reported to, and promptly acted upon to the satisfaction of, the persons providing oversight functions.

(5) The persons providing oversight functions must approve the monitoring and reporting processes and procedures in sub-regulation (4) before implementation.

(6) The operator must document the monitoring and reporting processes and procedures as well as keep records of any contravention of any written laws in Brunei Darussalam.

**Reporting on effectiveness of systems and controls for oversight.**

178. (1) The persons appointed to perform oversight functions must report to the operator on the appropriateness and effectiveness of the systems and controls for oversight, at least quarterly at a board meeting unless there is reason to report more often.

(2) The operator must ensure that the persons appointed to perform oversight functions have unrestricted access to all relevant records and recourse, when required, including the operator's board of directors or any other relevant committee established by that board.

(3) Where a custodian or a trustee has been appointed, the operator must provide the custodian, the trustee and the public collective investment scheme's

board of directors with the collective investment scheme's internal audit report and any compliance report.

**Duty to provide information and assistance for oversight.**

179. (1) An operator of a public collective investment scheme must establish and maintain arrangements to provide the persons appointed to perform oversight functions with the information necessary to organise and control their activities and to comply with any written laws in Brunei Darussalam.

(2) The information must be relevant, accurate, comprehensive, timely and reliable.

(3) The operator of the public collective investment scheme must take reasonable steps to ensure that it and its employees and the collective investment scheme's employees —

(a) provide such assistance as the persons providing oversight functions may reasonably require to discharge their duties;

(b) give the persons providing oversight functions right of access at all reasonable times to relevant records and information;

(c) do not interfere with the persons providing oversight functions' ability to discharge their duties;

(d) do not provide false or misleading information to the persons providing oversight functions; and

(e) report to the persons providing oversight functions any matter which may significantly affect the financial position of the public collective investment scheme or contravenes the Order or these Regulations.

**Criteria for appointment of persons for oversight.**

180. (1) An operator of a public collective investment scheme must ensure that any person it appoints to oversee the operation of the collective investment scheme is, and continues to be —

(a) suitably qualified;

(b) fit and proper; and

(c) independent,

in accordance with these Regulations.

(2) In the case where a public collective investment scheme has oversight arrangements referred to in sub-regulation (1), the operator must ensure that each independent director meets the criteria for persons performing oversight functions.

(3) If requested by the Authority, an operator of a public collective investment scheme must provide the Authority with information on any person it has appointed or intends to appoint to oversee the public collective investment scheme.

(4) An operator of a public collective investment scheme must not appoint any person to perform oversight functions unless that person has been assessed by the operator as competent to perform that function.

(5) In assessing the competence of a prospective appointee, the operator must –

*(a)* obtain details of the knowledge and skills of the person in relation to the knowledge and skills required for the role;

*(b)* take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;

*(c)* determine whether the person holds any relevant qualifications with respect to the functions to be performed; and

*(d)* determine the person's relevant experience.

(6) An operator of a public collective investment scheme must ensure that the persons providing oversight functions have access to sufficient resources to enable them to perform their duties objectively and independently of the operator.

(7) If a person appointed to provide oversight functions for the public collective investment scheme is unable to fulfil his duties in regard to oversight functions or is no longer fit and proper, the operator must, within 21 days of the event causing such inability, dismiss and replace that person unless the circumstances in sub-regulation (9) apply.

(8) If a person appointed to provide oversight functions for the public collective investment scheme resigns for any reason or a vacancy occurs, the operator must, within 60 days of the event causing the vacancy, appoint another person to the role unless the circumstances in sub-regulation (9) apply.

(9) The circumstances mentioned in sub-regulations (7) and (8) are that the panel, committee or supervisory board, as the case may be, of the collective

investment scheme has a simple majority of independent members after the loss of the appointee.

(10) Where the public collective investment scheme has oversight arrangements referred to in regulation 176(1), the operator must ensure that it has the ability to dismiss and replace an independent director.

**Custodian oversight functions.**

181. (1) An operator of a public collective investment scheme must ensure that there is a written agreement appointing any custodian or any person to carry out oversight functions.

(2) The agreement must provide that the appointee agrees to be subject to and bound by the Order and these Regulations that may impose obligations on the appointee.

(3) The provision of the agreement must facilitate efficient oversight of the public collective investment scheme in accordance with the Order and these Regulations.

(4) If the person providing oversight function is not the trustee, the operator must notify the Authority immediately if the appointment of the person providing oversight function is or is about to be terminated, or on the resignation of such a person giving the reasons for the cessation of the appointment.

**Record keeping.**

182. (1) An operator of a public collective investment scheme must keep records of the verification process undertaken for each person appointed to the collective investment scheme's panel, committee, or supervisory board, or the operator's board for the purposes of these Regulations including any documents which evidence competence, fitness and propriety.

(2) The records must include the analysis undertaken, the reason for the operator concluding that the person is suitably qualified to undertake the functions of his appointment.

(3) In relation to the verification process undertaken for a custodian, the operator must keep sufficient records which evidence the operator's due diligence in accordance with the requirements of this Chapter in relation to eligibility.

**Chapter XIV**

**Private Collective Investment Scheme**

**Application.**

183. (1) This Chapter applies to an operator of a collective investment scheme that is a private collective investment scheme.

(2) References to “operator” in this Chapter include a reference to a person proposing to be the operator of a collective investment scheme that is a private collective investment scheme.

**Notification to Authority.**

184. When notifying the Authority, an operator of a private collective investment scheme must include —

(a) a general description of the collective investment scheme including the nature of its investments and the intended size of the collective investment scheme in monetary terms; and

(b) if it is a hedge fund and has a prime broker appointed with authority to use as collateral the assets of the collective investment scheme in conjunction with any other assets held by or available to the prime broker —

(i) the details relating to the identity of the prime broker and its regulator; and

(ii) a legal certification that all the requirements under these Regulations relating to the use of prime brokers have been fully complied with by the operator.

**Criteria to be classified as private collective investment scheme.**

185. (1) A collective investment scheme may be classified as a private collective investment scheme if it fulfils the conditions specified in sub-regulation (2) as applicable at inception and on an on-going basis.

(2) The conditions mentioned in sub-regulation (1) are as follows —

(a) the units in the collective investment scheme are only offered for sale or issue —

(i) by means of private placement with specific classes of investors as defined by the Order; and

- (ii) in a manner which does not result in the collective investment scheme having more than fifty unit holders;
- (b) the collective investment scheme is constituted as an —
  - (i) investment company;
  - (ii) investment partnership; or
  - (iii) investment trust;
- (c) the collective investment scheme has a collective investment scheme operator which is licensed by the Authority to carry on the regulated activity of operating a collective investment scheme;
- (d) if the collective investment scheme is an investment trust, it has a trustee which is licensed to act as the trustee of a collective investment scheme under any written laws of Brunei Darussalam;
- (e) the name of the collective investment scheme is not undesirable, misleading or does not conflict with the name of any other collective investment scheme and the collective investment scheme's purpose is reasonably capable of being successfully carried into effect;
- (f) the operator has appointed an auditor of the collective investment scheme who complies with the requirements relating to auditors under these Regulations;
- (g) the operator of the collective investment scheme has produced and made available to prospective unit holders a short form prospectus in accordance with the requirements under these Regulations.

(3) If an operator of a private collective investment scheme makes arrangements with other regulated persons in other jurisdictions, to issue or sell the units, it must take reasonable steps to ensure that those regulated persons do not issue or sell the units in a manner that would result in contravention of the limitations under sub-regulation (2)(a).

(4) An operator of a private collective investment scheme which is an umbrella collective investment scheme must ensure that none of its sub-collective investment schemes invests in another of its sub-collective investment schemes.

**Short form prospectus.**

186. (1) An operator of a private collective investment scheme must ensure that a short form prospectus of the collective investment scheme is drawn up in



accordance with regulation 189 and contains the mandatory statement required under regulation 188.

(2) The short form prospectus must not contain any provision that is unfairly prejudicial to the interests of the unit holders generally or to the unit holders of any class of units.

(3) The information referred to in sub-regulation (1) is material information —

(a) that is within the knowledge of operator;

(b) that the directors or partners of the legal entity constituting the collective investment scheme would have obtained by the making of reasonable enquiries; and

(c) that the prospective unit holders and their professional advisers would reasonably require and reasonably expect to find in the short form prospectus,

for the purpose of making an informed judgment about the merits of investing in the collective investment scheme and the extent and characteristics of the risks accepted by so participating.

(4) If the collective investment scheme is permitted by its constitution and the regulations to borrow money in excess of 200 *per cent* of the net asset value of the collective investment scheme, full details of the manner in which the risk posed by such borrowing is to be managed must be set out.

(5) The short form prospectus must be in the English language.

(6) The expiry date of a short form prospectus must not be later than 12 months after the date of the short form prospectus.

(7) An operator of a private collective investment scheme must make the collective investment scheme's most recent short form prospectus available free of charge to any unit holder and to any person who is eligible to invest in the private collective investment scheme prior to the purchase of any units.

#### **Supplementary prospectus.**

187. (1) A supplementary prospectus of a private collective investment scheme may be issued as a supplementary document or a replacement document.

(2) Where the supplementary prospectus is issued as a supplement, the operator must —

- (a) clearly identify in the supplementary prospectus —
  - (i) the short form prospectus that it supplements;
  - (ii) the revision to that short form prospectus;
  - (iii) the date of any material change or any new matter giving rise to any revision; and
  - (iv) the date of the document;

(b) provide a copy to each person or unit holder who applied for units under the previous short form prospectus after the earliest date of any material change or any new matter giving rise to the revision; and

(c) ensure the supplementary prospectus is made available in the same media and through the same channels as, and together with, the previous short form prospectus.

(3) Where the supplementary prospectus is issued as a replacement, the operator must —

- (a) clearly state in the supplementary prospectus —
  - (i) that it is a replacement document;
  - (ii) the short form prospectus that it replaces;
  - (iii) the date and nature of any material change or any new matter giving rise to the replacement;
  - (iv) the expiry date; and
  - (v) the date of the document; and

(b) provide a copy to each prospective unit holder who applied for units under the previous short form prospectus after the earliest date of any material change or any new matter giving rise to the replacement.

(4) The expiry date of a supplementary prospectus must be the same as that of the short form prospectus it supplements.

(5) Unless the context otherwise requires, any reference in these Regulations to a short form prospectus must be read as including a supplementary prospectus.

(6) When a supplementary prospectus has been made available in accordance with this regulation, the operator must —

(a) inform any person who applied for units on the basis of the previous short form prospectus after the earliest date of a material change or a new matter giving rise to the issue of the supplementary prospectus, of their right to confirm or retract any application made on the basis of that prospectus and to obtain a refund of monies paid, and the manner in which to do so; and

(b) allow any such person a period of at least 7 days from the date of receipt of the supplementary prospectus to confirm or retract his application.

**Prospectus warning statement.**

188. An operator of a private collective investment scheme must state in the prospectus the following statement displayed prominently on its front page —

*“This prospectus relates to a private collective investment scheme under the Securities Markets Order, 2013 and the regulations thereunder.*

*This prospectus is intended for distribution only to specific classes of investors as specified in the Order and must not, therefore, be delivered to, or relied on by, a retail client.*

*The Authority is not responsible for reviewing or verifying any prospectus or other documents in connection with this collective investment scheme. The Authority has not approved this prospectus or any other associated documents nor taken any steps to verify the information set out in this prospectus, and has no responsibility for it.*

*The units to which this prospectus relates may be illiquid or subject to restrictions on their resale. Prospective purchasers of the units offered should conduct their own due diligence on the units.*

*If you do not understand the contents of this document you should consult an licensed financial adviser.”.*

**Contents of short form prospectus.**

189. A short form prospectus must contain the following information —

(a) the name of the collective investment scheme;

(b) the particulars of the operator and if appointed, the trustee and its regulatory status;

(c) the details of the custodian, any independent investment committee or other similar arrangements in respect of the collective investment scheme;

(d) a detailed description of the collective investment scheme, its investment objectives and policy, and the nature of its investments;

(e) particular risks to a prospective unit holder associated with the type of collective investment scheme and its investments;

(f) the particulars of the management of the collective investment scheme and other service providers including —

(i) the name of any service provider;

(ii) which financial services regulator regulates that person; and

(iii) details of the arrangements;

(g) any applicable charges and the basis upon which such charges will be calculated;

(h) the details of dealing and redemption or other exit arrangements and any costs to the unit holders as a result thereof;

(i) details of investment and borrowing powers;

(j) a statement that the document is the prospectus of the private collective investment scheme valid as at a particular date which shall be the date of the prospectus;

(k) a statement that no units are issued on the basis of the prospectus after the expiry date specified in the prospectus;

(l) if the collective investment scheme is an umbrella collective investment scheme, information relating to its sub-collective investment schemes and any costs or restrictions relating to switching between sub-collective investment schemes.

**Prospectus for private feeder fund.**

190. An operator of a private feeder fund must ensure that the collective investment scheme's prospectus discloses —

(a) a prominent risk warning to alert prospective unit holders to the fact that they will be subject to higher fees arising from the layered investment structure; and

- (b)* the fees arising at the level of —
  - (i)* the feeder fund itself;
  - (ii)* if applicable, the master collective investment scheme into which the feeder fund invests; and
  - (iii)* if applicable, any underlying collective investment schemes into which the master collective investment scheme invests, to the extent known.

**Prospectus for private property collective investment scheme.**

191. (1) An operator of a private property collective investment scheme must ensure that the following information is disclosed in the collective investment scheme's prospectus —

- (a)* the nature of the commitment that the unit holders enter into;
- (b)* the risks involved in this type of collective investment scheme;
- (c)* a prominent risk warning which makes reference to circumstances in property markets which can cause difficulties in meeting redemptions;
- (d)* the details of the property collective investment scheme's appointed independent valuer;
- (e)* the redemption procedures in a prominent position in the prospectus;
- (f)* the dividend or income distribution policy;
- (g)* the insurance arrangement for the collective investment scheme property;
- (h)* a statement with respect to any material policy regarding real property activities;
- (i)* the details of transactions or agreements entered into with affected persons;
- (j)* the full particulars of the nature and extent of the interest, if any, of affected persons, in the property owned or proposed to be acquired by the collective investment scheme;
- (k)* the details of significant unit holders and the number of units held and deemed to be held by each of them;

(l) the details of principal taxes levied on the collective investment scheme's income and capital, including tax, if any, deducted on distribution to the unit holders;

(m) a statement to explain the standards according to which the property valuations are conducted.

(2) An operator of a private property collective investment scheme must disclose in the collective investment scheme's prospectus, in addition to the standard disclosure requirements in respect of investment limits, the following information —

(a) what percentage of the property collective investment scheme's net assets may consist of property related assets which are not traded in or dealt on markets provided for in the constitution;

(b) unless the constitution and the prospectus state that the collective investment scheme invests in a single property, the maximum percentage of the collective investment scheme's net assets which may be invested in any single property or, if applicable, disclose the conditions under which the collective investment scheme may derogate from this restriction;

(c) the maximum percentage of the property collective investment scheme's net assets which may be invested in properties which are vacant, in the process of development or requiring development;

(d) the maximum percentage of the property collective investment scheme's net assets which may be invested in properties which are subject to a mortgage;

(e) a statement that borrowing may not exceed 100 *per cent* the value of the net assets of the property collective investment scheme, which borrowing may be generally secured on the properties of the collective investment scheme.

**Prospectus for private equity collective investment scheme.**

192. An operator of a collective investment scheme that is a private equity collective investment scheme must provide the following in the collective investment scheme's prospectus —

(a) a description of the arrangements in place for the safekeeping of monies raised from the unit holders but not yet invested in the proposed undertaken or venture; and

(b) a description of the exit arrangements for the unit holders.

**Prospectus for hedge fund.**

193. An operator of a private collective investment scheme that is a hedge fund must prominently disclose to the unit holders in the prospectus and any other financial promotions relating to the collective investment scheme, the following disclosure statement —

*“When considering investment in a hedge fund you should consider the fact that some hedge fund products use leverage and other speculative investment practices that may increase the risk of investment loss, can be illiquid, may involve complex tax structures, often charge high fees, and in many cases the underlying investments are not transparent and are known only to the hedge fund investment manager.*

*Returns from hedge funds can be volatile and you may lose all or part of your investment. With respect to single manager products, the manager has total trading authority and this could mean a lack of diversification and higher risk. The hedge fund may be subject to substantial expenses that are generally offset by trading profits and other income. A portion of those fees is paid to the hedge fund manager and operator.”.*

**Chapter XV**

**General Enforcement**

**Application.**

194. This Chapter applies to an operator and, if appointed, a trustee of a collective investment scheme, a member of the collective investment scheme’s board of directors, the collective investment scheme’s custodian, or other persons appointed to oversee the collective investment scheme and the collective investment scheme’s auditor.

**Suspension and termination.**

195. (1) An operator of a collective investment scheme may suspend the issue, sale and redemption of units in a collective investment scheme if due to exceptional circumstances, it is in the interest of the unit holders in the collective investment scheme.

(2) An operator of a collective investment scheme may, within any parameters which are fair and reasonable in respect of all unit holders in the collective investment scheme and which are set out in the prospectus, suspend dealings in units of the collective investment scheme, a sub-collective investment scheme or a class.

(3) Any suspension in sub-regulation (1) must only be implemented where the operator has determined on reasonable grounds that there are good and sufficient reasons in the interests of unit holders or prospective unit holders, and the operator must have regard to the interests of all unit holders in the collective investment scheme in reaching such a determination.

(4) In the case of an investment trust, any suspension in sub-regulation (1) must only be implemented with the prior approval of the trustee.

(5) At the commencement of any suspension under sub-regulation (1), the operator must immediately inform the Authority, the custodian or other persons appointed to provide oversight of the collective investment scheme and the auditor of the collective investment scheme of the suspension and the reasons for it.

(6) Subject to sub-regulation (8), the suspension of dealings in the units must cease within 28 days of its commencement or, if earlier, as soon as sub-regulation (3) no longer applies.

(7) The operator of the collective investment scheme must immediately inform the Authority of the resumption of any dealings.

(8) The Authority may, on request by the operator or on its own initiative, extend the period referred to in sub-regulation (6) by written notice.

#### **Winding up collective investment scheme.**

196. (1) Upon the occurrence of any of the events specified in sub-regulation (2), the operator of the collective investment scheme or the trustee, as the case may be, must cease to issue, sell, cancel or redeem units in the collective investment scheme, or to invest or borrow for the collective investment scheme and proceed to wind up the collective investment scheme in accordance with the Order and this regulation.

(2) The events referred to in sub-regulation (1) are —

(a) in response to a request to the Authority by the operator, trustee or other member of its board for the removal of a collective investment scheme from the list of registered collective investment schemes, the Authority has agreed, *albeit* subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the collective investment scheme, the Authority may accede to that request;

(b) the collective investment scheme is not commercially viable or the purpose of the collective investment scheme cannot be accomplished;



*(c)* the expiration of any period specified in the constitution as the period at the end of which the collective investment scheme is to terminate;

*(d)* the effective date of a duly approved transfer of the collective investment scheme, which is to result in the collective investment scheme that is subject to the transfer collective investment scheme being left with no property; or

*(e)* in the case of a private collective investment scheme, the collective investment scheme is failing, or has failed, to satisfy the criteria specified in these Regulations to remain classified as a private collective investment scheme, unless the collective investment scheme is applying for a licence as a public collective investment scheme.

(3) In a case falling within sub-regulation (2)(d), the operator or, if the collective investment scheme is an investment trust, the trustee, must wind up the collective investment scheme in accordance with the approved transfer collective investment scheme.

(4) In any other case falling within sub-regulation (2) or as specified in the Order —

*(a)* the operator or the trustee, as the case may be, must, as soon as practicable after the collective investment scheme falls to be wound up, realise the collective investment scheme property;

*(b)* after paying therefrom or retaining adequate provision for all liabilities properly so payable and for the costs of the winding up, the operator must distribute the proceeds of that realisation to the unit holders (upon production by them of such evidence as the operator may reasonably require as to their entitlement thereto) proportionately to their respective interests in the collective investment scheme as at the date of the relevant event referred to in sub-regulation (2); and

*(c)* any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the operator or trustee after the expiration of 12 months from the date on which they became payable must be paid by the operator or trustee into court, subject to the operator or trustee having a right to retain any expenses incurred by it relating to that payment.

(5) If the operator or trustee, as the case may be, and one or more unit holders agree that the requirement under sub-regulation (4) to realise the collective investment scheme property does not apply to that part of the property proportionate to the entitlement of that unit holder or those unit holders, the operator or trustee may distribute that part in the form of property, after making adjustments or retaining provisions as the operator or the trustee thinks fit for

ensuring that, that unit holder or those unit holders bear a proportional share of the liabilities and costs.

(6) The operator or the trustee, as the case may be, must as soon as practicable, after the winding up or termination has commenced —

*(a)* if the unit holders have not initiated the winding up under the Order, inform the unit holders of the winding up or termination; and

*(b)* publish a notice of the winding up or termination in the English language in a national newspaper and if the collective investment scheme has a website, on the collective investment scheme's website.

(7) On completion of the winding up in respect of the events referred to in sub-regulation (2)(b), (c) or (d), the operator or trustee must notify the Authority in writing of that fact and at the same time the operator or trustee must request to the Authority to revoke the relevant licence or recognition.

**Accounting and reports during winding up.**

197. (1) Subject to any court order and subject to sub-regulations (2) and (3), while a collective investment scheme is being wound up, whether under regulation 196 or otherwise —

*(a)* the annual and half-yearly accounting periods continue to run;

*(b)* the provisions concerning annual and interim allocation of income continue to apply; and

*(c)* annual and half-yearly reports continue to be required.

(2) Where, for any annual or half-yearly accounting period, the operator, after consulting the auditor and the Authority has taken reasonable care to determine that timely production of an annual or half-yearly report is not required in the interests of the unit holders or the Authority, the operator or the trustee may direct that immediate production of the report by the auditor may be dispensed with.

(3) The period mentioned in sub-regulation (2) must be reported on together with the following period in the next report prepared for the purposes of sub-regulation (1) or (4).

(4) At the conclusion of the winding up, the accounting period then running is regarded as the final annual accounting period.

(5) Within 2 months after the end of the final accounting period, the annual reports of the operator must be published and sent to each person who was a unit holder immediately before the end of the final accounting period.

**Funds that are not commercially viable.**

198. (1) If the operator of a collective investment scheme believes on reasonable grounds that the collective investment scheme is not commercially viable or the purpose of the collective investment scheme cannot be achieved, the operator must notify the Authority and include the information specified in sub-regulation (2).

(2) The information referred to in sub-regulation (1) is —

(a) the name of the collective investment scheme;

(b) the size and type of collective investment scheme;

(c) the number of unit holders;

(d) whether dealing in the collective investment scheme's units has been suspended;

(e) why the request is being made;

(f) what consideration has been given to the collective investment scheme entering into a transfer collective investment scheme with another collective investment scheme and the reasons why a transfer collective investment scheme is not possible;

(g) whether unit holders have been informed of the intention to seek winding up or revocation and if not, when they will be informed;

(h) the details of any proposed preferential switching rights offered or to be offered to unit holders;

(i) details of any proposed rebate of charges to be made to the unit holders who recently purchased the units;

(j) where the costs of winding up will fall —

(i) that the operator, having taken reasonable care in considering the matter, is certain that a transfer collective investment scheme is not practical;

- (ii) an explanation of what steps have been considered that would result in the collective investment scheme not requiring to wind up;
  - (iii) confirmation that the operator has carried out its functions and duties in accordance with the Order and these Regulations; and
  - (iv) whether the collective investment scheme's investment and borrowing powers have been exceeded;
- (k) the preferred date for the commencement of the winding up; and
- (l) any additional information that may be relevant to the Authority's consideration.

(3) The Authority may request further information after receipt of the notification.

**Fund transfer requirements.**

199. (1) A collective investment scheme may be transferred in whole or in part to another body in accordance with this regulation.

(2) If, for the purposes of a transfer collective investment scheme, it is proposed that the property of a collective investment scheme should become the property of another collective investment scheme or the property of a sub-collective investment scheme of an umbrella collective investment scheme, the proposal must not be implemented without the sanction of a special resolution of the unit holders in the collective investment scheme, unless sub-regulation (3) applies.

(3) If, for the purposes of a transfer collective investment scheme, it is proposed that collective investment scheme property attributable to a sub-collective investment scheme of an umbrella collective investment scheme should become the property of another collective investment scheme or of another sub-collective investment scheme of a collective investment scheme, whether or not of that umbrella collective investment scheme, the proposal must not be implemented without the sanction of —

(a) a special resolution of the unit holders in the sub-collective investment scheme of that umbrella collective investment scheme; and

(b) a special resolution of the unit holders of units in that umbrella collective investment scheme, unless implementation of the transfer collective investment scheme is not likely to result in any material prejudice

to the interests of the unit holders in any other sub-collective investment scheme of that umbrella collective investment scheme.

(4) If it is proposed that a collective investment scheme or a sub-collective investment scheme of an umbrella collective investment scheme should receive property, other than its first property, as a result of a transfer collective investment scheme, or an arrangement equivalent to a collective investment scheme arrangement, which is entered into by some other collective investment scheme or sub-collective investment scheme, or by a body corporate, the proposal must not be implemented without the sanction of —

(a) a special resolution of the unit holders in the collective investment scheme; or

(b) the class or classes of units related to the sub-collective investment scheme,

unless sub-regulation (5) applies.

(5) If the operator, the trustee or other persons providing oversight functions for the collective investment scheme, or the auditor of the collective investment scheme agree that the receipt of the property referred to in sub-regulation (4), for the account of the collective investment scheme —

(a) is not likely to result in any material prejudice to the interest of the unit holders of the collective investment scheme;

(b) is consistent with the objectives of the collective investment scheme or sub-collective investment scheme of an umbrella collective investment scheme; and

(c) may be affected without any breach of any investment and borrowing powers,

the transfer may be effective and the issue of units in exchange for assets as part of a transfer collective investment scheme may be undertaken.

Dated this 21st. day of Rabiulawal, 1436 Hijriah corresponding to the 12th. day of January, 2015.

AWANG YUSOF BIN HJ ABD RAHMAN  
Managing Director,  
Autoriti Monetari Brunei Darussalam.