



REPUBLIC OF SINGAPORE
GOVERNMENT GAZETTE
ACTS SUPPLEMENT

Published by Authority

NO. 31]

FRIDAY, OCTOBER 7

[2005

First published in the *Government Gazette*, Electronic Edition, on 4th October 2005 at 5:00 pm.

The following Act was passed by Parliament on 18th February 2005 and assented to by the President on 28th February 2005:—

THE TRUST COMPANIES ACT 2005

(No. 11 of 2005)

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REPUBLIC OF SINGAPORE

No. 11 of 2005.

I assent.

(LS)

S R NATHAN,
President.
28th February 2005.

An Act to repeal and re-enact with amendments the Trust Companies Act (Chapter 336 of the 1985 Revised Edition) so as to provide for the licensing and regulation of trust companies and for matters connected therewith, and to make consequential amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Trust Companies Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

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

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

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“book” includes any record, register, account, deed, writing and information, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

“controller”, in relation to a licensed trust company, means a 20% controller, a 50% controller or an indirect controller as defined in section 16(3);

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

“director” has the same meaning as in section 4(1) of the Companies Act;

“exempt person” means a person who is exempt under section 15 from holding a licence for the carrying on of any trust business;

“futures contract” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“licensed trust company” means a corporation holding a trust business licence;

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

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- “parent supervisory authority”, in relation to a licensed trust company incorporated outside Singapore, means the supervisory authority which is responsible, under the laws of the country or territory where the licensed trust company is incorporated, formed or established, for supervising the licensed trust company;
- “protected party”, in relation to a trust company, means a trust for which the trust company provides trust business services and includes the settlor and beneficiary under the trust;
- “related corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);
- “resident manager” means an individual resident in Singapore who, under the immediate authority of the directors of a licensed trust company, is responsible for the conduct of the trust business of the licensed trust company;
- “securities” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);
- “substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act;
- “trust business” means any business specified in the First Schedule;
- “trust business licence” means a licence granted by the Authority under section 5 that authorises the holder thereof to carry on trust business;
- “trust business service” means any service in respect of any business specified in the First Schedule;
- “written directions” means written directions issued by the Authority under section 76.

PART II

LICENSING OF TRUST COMPANIES

Restriction on carrying on trust business

3.—(1) Subject to subsection (3), no person shall carry on any trust business or hold himself out as carrying on any trust business in or from within Singapore unless that person is a licensed trust company.

(2) No licensed trust company shall, without the prior approval of the Authority, establish a place of business outside Singapore to carry on any business which, if carried on in Singapore, would constitute trust business.

(3) Subsection (1) shall not apply to any person specified in the Second Schedule.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

Application for trust business licence

4.—(1) An application for a trust business licence shall —

- (a) be made to the Authority in such form and manner as the Authority may require; and
- (b) be accompanied by the prescribed application fee, which shall be non-refundable and which shall be paid in the manner specified by the Authority.

(2) The Authority may require an applicant to furnish it with such information or documents as it considers necessary in relation to the application.

Grant of trust business licence

5.—(1) The Authority shall not grant a trust business licence to an applicant therefor unless the applicant is —

- (a) a company incorporated under the Companies Act (Cap. 50); or
- (b) a foreign company registered under Division 2 of Part XI of the Companies Act.

(2) A trust business licence shall only be granted if the applicant meets such minimum financial and other requirements as the Authority may prescribe.

(3) Subject to regulations made under this Act, where an application is made for the grant of a trust business licence, the Authority may refuse the application if —

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- (a) the applicant has not provided the Authority with such information or document as the Authority may require in relation to —
 - (i) the applicant or any person employed by or associated with the applicant for the purposes of its trust business; or
 - (ii) any circumstances likely to affect the manner in which the applicant conducts its trust business;
 - (b) any information or document that is furnished by the applicant to the Authority is false or misleading;
 - (c) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (d) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
 - (e) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant or its substantial shareholder;
 - (f) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
 - (g) the applicant or its substantial shareholder, or any officer of the applicant —
 - (i) has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that it or he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
 - (h) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform if the applicant were granted the trust business licence;

- (i) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;
 - (j) the Authority has reason to believe that the applicant may not be able to act in the best interests of any protected party having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;
 - (k) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's trust business is to be conducted;
 - (l) the Authority is not satisfied as to the record of past performance or expertise of the applicant, having regard to the nature of the trust business which the applicant may carry on if granted the trust business licence;
 - (m) there are other circumstances which are likely —
 - (i) to lead to the improper conduct of the applicant's trust business by the applicant or any of its officers, employees or substantial shareholders; or
 - (ii) to reflect discredit on the manner in which the applicant or its substantial shareholders conducts its trust business;
 - (n) the Authority has reason to believe that the applicant, or any of its officers or employees, will not efficiently, honestly or fairly perform any of the activities or provide any of the services for which the applicant seeks to be licensed; or
 - (o) the Authority is of the opinion that it would be contrary to the interests of the public to grant the trust business licence to the applicant.
- (4) The Authority shall not refuse an application for a trust business licence without giving the applicant an opportunity to be heard, except in the following circumstances:
- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or

elsewhere, in relation to or in respect of any property of the applicant; or

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

Licence fee

6.—(1) Every licensed trust company shall pay to the Authority such licence fee as may be prescribed.

(2) Any licence fee paid to the Authority under this Act shall not be refunded or remitted if—

- (a) the licence is revoked or suspended or lapses during the period to which the licence fee relates; or
- (b) the licensed trust company ceases to carry on trust business during the period to which the licence fee relates.

(3) Notwithstanding subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any licence fee paid to it.

Power of Authority to impose conditions or restrictions

7.—(1) The Authority may grant a trust business licence subject to such conditions or restrictions as it thinks fit.

(2) The Authority may, at any time, by notice in writing to a licensed trust company, vary or revoke any condition or restriction or attach such further condition or restriction as it thinks fit.

(3) Any licensed trust company which contravenes any condition or restriction attached to its trust business licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

False statements in relation to application for grant of licence

8. Any person who, in connection with an application for a trust business licence and without reasonable excuse—

- (a) makes any statement which is false or misleading in a material particular; or
- (b) omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

Notification of change of particulars

9.—(1) Where —

- (a) a licensed trust company ceases to carry on any trust business;
- (b) any person has ceased to be a resident manager or a controller of a licensed trust company;
- (c) any civil or criminal proceedings have been instituted against a licensed trust company or any officer thereof;
- (d) any change occurs in the name of a licensed trust company or the address of the principal place of business at which the licensed trust company carries on its trust business;
- (e) a licensed trust company has ceased to fulfil the minimum financial or other requirements prescribed by the Authority; or
- (f) any change occurs in relation to such other matters as may be prescribed,

the licensed trust company shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.

(2) Where a licensed trust company ceases to carry on any trust business, it shall surrender to the Authority within 14 days of the date of the cessation of its trust business the trust business licence that has been granted to it.

(3) Any licensed trust company which contravenes subsection (1) or (2) shall be guilty of an offence.

Lapsing, revocation and suspension of licence

10.—(1) The trust business licence of a licensed trust company shall lapse —

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- (a) if the licensed trust company is wound up or otherwise dissolved, whether in Singapore or elsewhere; or
 - (b) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke or suspend the trust business licence of a licensed trust company in respect to all or any of the trust business services that are provided by the licensed trust company if —

- (a) there exists a ground on which the Authority may refuse an application under section 5(3);
- (b) the licensed trust company fails or ceases to carry on any trust business;
- (c) the Authority has reason to believe that the licensed trust company, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;
- (d) the licensed trust company has contravened or is contravening —
 - (i) any condition or restriction attached to its trust business licence;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision of this Act;
- (e) any information or document that is furnished by the licensed trust company to the Authority is false or misleading; or
- (f) the interests of the public or of the protected parties of the licensed trust company are in any way prejudiced.

(3) The Authority shall not revoke or suspend the trust business licence of a licensed trust company under subsection (2) without giving the licensed trust company an opportunity to be heard, except in the following circumstances:

- (a) the licensed trust company is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the licensed trust company; or

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

Restriction on cessation of business or surrender of licence

11.—(1) No licensed trust company shall, without the sanction of the court and for so long as any trust in respect of which the licensed trust company is a trustee remains in whole or in part unadministered —

- (a) cease to carry on its trust business; or
(b) surrender its trust business licence to the Authority.

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

General provisions as to winding up

12.—(1) The persons who may petition under the Companies Act (Cap. 50) for the winding up of the affairs of a licensed trust company, or for the continuance of the winding up of the affairs of a licensed trust company subject to the supervision of the court, shall include the Authority.

(2) The Authority may, in accordance with the provisions of the Companies Act, present a petition for the winding up of a licensed trust company if the licensed trust company has contravened any provision of this Act.

(3) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of a licensed trust company.

(4) The liquidator in any winding up referred to in subsection (3) shall give to the Authority such information as it may, from time to time, require about the affairs of the licensed trust company.

(5) Any liquidator who contravenes subsection (4) shall be guilty of an offence.

Approval of resident manager and director of licensed trust company

13.—(1) No licensed trust company shall appoint a person as —

- (a) its resident manager; or
- (b) its director where, upon appointment, the person —
 - (i) resides or is to reside in Singapore, whether or not he is directly responsible for its business in Singapore or any part thereof; or
 - (ii) is directly responsible for its business in Singapore or any part thereof, whether he resides in Singapore or elsewhere,

unless it has obtained the approval of the Authority.

(2) Where a licensed trust company has obtained the approval of the Authority to appoint a person as its resident manager or director under subsection (1), the person may be re-appointed as resident manager or director, as the case may be, of the licensed trust company immediately upon the expiry of the earlier term without the approval of the Authority.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such requirements as may be prescribed or as may be specified in written directions.

(4) The Authority shall not refuse an application for approval under subsection (1) without giving the licensed trust company an opportunity to be heard, except where the person proposed to be appointed —

- (a) is an undischarged bankrupt, whether in Singapore or elsewhere; or
- (b) has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(6) Any licensed trust company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Removal of officer of licensed trust company

14.—(1) Where the Authority is satisfied that an officer of a licensed trust company —

- (a) has wilfully contravened or wilfully caused the licensed trust company to contravene this Act;
- (b) has, without reasonable excuse, failed to enforce compliance with this Act;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public or of the protected parties of the licensed trust company, by notice in writing direct that licensed trust company to remove the officer from office or employment, and that licensed trust company shall comply with such notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a licensed trust company has failed to discharge the duties or functions of his office for the purposes of subsection (1)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) The Authority shall not direct a licensed trust company to remove an officer from office or employment under subsection (1) without giving

that licensed trust company an opportunity to be heard, except in the following circumstances:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(4) Where the Authority directs a licensed trust company to remove an officer from office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

(5) No criminal or civil liability shall be incurred by —

- (a) a licensed trust company; or
- (b) any person acting on behalf of the licensed trust company,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(6) Any licensed trust company which fails to comply with a notice issued by the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Exempt persons

15.—(1) Subject to subsection (9), the following persons shall be exempt from the requirement to hold a trust business licence in respect of the carrying on of trust business:

- (a) any bank licensed under the Banking Act (Cap. 19) in respect of —
 - (i) the provision of services in relation to the creation of an express trust;
 - (ii) the arrangement for any person to act as trustee in relation to an express trust; or

- (iii) the provision of trust administration services which are procedural and non-discretionary;
 - (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of—
 - (i) the provision of services in relation to the creation of an express trust;
 - (ii) the arrangement for any person to act as trustee in relation to an express trust; or
 - (iii) the provision of trust administration services which are procedural and non-discretionary;
 - (c) any holder of a capital markets services licence, or any person who is exempt from holding a capital markets services licence, for providing fund management or custodial services for securities under the Securities and Futures Act (Cap. 289), in respect of the provision of fund management or custodial services for securities;
 - (d) such other person or class of persons as may be prescribed; and
 - (e) any other person not falling within the description of paragraphs (a) to (d) whom the Authority may, on the application of the person, by notice in writing so exempt.
- (2) Any bank providing any trust business service referred to in subsection (1)(a)(i) or (ii) shall —
- (a) within 3 months from the date of commencement of this Act or one month from the date of commencement of its trust business, whichever is the later, notify the Authority in writing that it is providing such service; and
 - (b) as soon as practicable, notify the Authority if it ceases to provide such service, but in any case no later than 14 days from the date of cessation.
- (3) Any merchant bank providing any trust business service referred to in subsection (1)(b)(i) or (ii) shall —
- (a) within 3 months from the date of commencement of this Act or one month from the date of commencement of its trust business, whichever is the later, notify the Authority in writing that it is providing such service; and

(b) as soon as practicable, notify the Authority if it ceases to provide such service, but in any case no later than 14 days from the date of cessation.

(4) The Authority may prescribe the provisions of this Act that apply to persons referred to in subsection (1)(a), (b) and (c).

(5) The Authority may prescribe or specify in written directions the provisions of this Act that apply to persons referred to in subsection (1)(d) and (e).

(6) The Authority may prescribe or specify in written directions such conditions or restrictions as it thinks fit to impose on an exempt person in relation to the conduct of trust business or any related matter as the Authority thinks fit and the exempt person shall comply with such conditions or restrictions.

(7) The Authority may at any time vary, rescind or revoke any written direction issued under subsection (5) or (6).

(8) Any exempt person who contravenes —

(a) subsection (2) or (3);

(b) any applicable provision of this Act as prescribed under subsection (4) or (5) in relation to him; or

(c) any condition or restriction imposed under subsection (6),

shall be guilty of an offence and shall be liable on conviction —

(i) in the case of a contravention of any applicable provision of this Act, to the same penalties as are prescribed under this Act for any such contravention; and

(ii) in the case of a contravention of subsection (2) or (3) or a contravention of any condition or restriction imposed under subsection (6), to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(9) The Authority may revoke an exemption conferred on any person by this section if —

- (a) the person contravenes any applicable provision of this Act or any condition or restriction imposed on that person under subsection (6);
- (b) the person contravenes any written direction issued to it by the Authority; or
- (c) the Authority considers that the person is carrying on trust business in a manner that is, in the opinion of the Authority, contrary to the public interest.

(10) Where the Authority revokes an exemption conferred on any person by this section, the Authority need not give the person an opportunity to be heard.

(11) The revocation under subsection (9) of the exemption conferred on any person by this section shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any trust business entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the revocation of the exemption; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(12) Any person who is aggrieved by a decision of the Authority made under subsection (9) may, within 30 days after being notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

PART III

CONTROL OF VOTING POWERS AND SHAREHOLDINGS

Control of shareholdings and voting power in licensed trust company

16.—(1) No person shall become —

- (a) a 20% controller;
- (b) a 50% controller; or
- (c) an indirect controller,

of a licensed trust company incorporated in Singapore without obtaining the prior approval of the Authority in accordance with section 17.

(2) Where any person becomes a controller of a licensed trust company that is incorporated outside Singapore, the licensed trust company shall notify the Authority in writing as soon as practicable after the acquisition of the control.

(3) In this section —

“20% controller” means a person who, alone or together with his associates —

- (a) holds 20% or more but less than 50% of the total number of issued shares in the licensed trust company; or
- (b) is in a position to control voting power of 20% or more but less than 50% in the licensed trust company;

“50% controller” means a person who, alone or together with his associates —

- (a) holds 50% or more of the total number of issued shares in the licensed trust company; or
- (b) is in a position to control voting power of 50% or more in the licensed trust company;

“indirect controller” means any person, whether acting alone or together with any other person and whether with or without holding shares or controlling voting power in a licensed trust company —

- (a) in accordance with whose directions, instructions or wishes the directors of the licensed trust company are accustomed or under an obligation, whether formal or informal, to act; or
- (b) who is in a position to determine the policy of the licensed trust company,

but does not include any person —

- (i) who is a director or other officer of the licensed trust company whose appointment has been approved by the Authority; or
- (ii) in accordance with whose directions, instructions or wishes the directors of the licensed trust company are accustomed to act by reason only that they act on advice given by him in his professional capacity.

(4) For the purposes of subsection (3) —

(a) a person holds a share if —

- (i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or
- (ii) he otherwise has a legal or an equitable interest in that share except for such interest as is to be disregarded under section 7(6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the voting power in a licensed trust company is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the licensed trust company; and

(c) a person, *A*, is an associate of another person, *B*, if —

- (i) *A* is the spouse or a parent, remoter lineal ancestor or step-parent or a son, daughter, remoter issue, step-son or step-daughter or a brother or sister, of *B*;
- (ii) *A* is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*, or where *B* is a corporation, of the directors of *B*;
- (iii) *B* is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A*, or where *A* is a corporation, of the directors of *A*;
- (iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;
- (v) *B* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A*;
- (vi) *A* is a related corporation of *B*;
- (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the voting power in *A*;

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- (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the voting power in *B*; or
 - (ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their voting power in relation to, the licensed trust company.

Application for approval of Authority to become controller of licensed trust company

17.—(1) An application for the approval of the Authority as required under section 16(1) shall be made to the Authority in such form and manner as the Authority may require and the Authority may, in its discretion, grant such approval to the applicant therefor if the Authority is satisfied that —

- (a) the applicant is a fit and proper person; and
- (b) having regard to the applicant's likely influence, the licensed trust company is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder.

(2) Any approval under this section may be granted to any person subject to such conditions as the Authority may determine, including but not limited to any condition —

- (a) restricting the person's disposal or further acquisition of shares or voting power in the licensed trust company; or
- (b) restricting the person's exercise of voting power in the licensed trust company.

(3) Any condition imposed under subsection (2) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the licensed trust company.

Objection to existing control

18.—(1) The Authority may serve a written notice of objection on any person referred to in section 16 if the Authority is satisfied that —

- (a) any condition of approval imposed on the person under section 17(2) has not been complied with;
- (b) the person is not or ceases to be a fit and proper person;
- (c) having regard to the likely influence of the person, the licensed trust company is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (d) the person has furnished false or misleading information or documents in connection with an application under section 17; or
- (e) the Authority would not have granted its approval under section 17 had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved, or in the case of an individual, in the course of bankruptcy proceedings, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

(3) Any person served with a notice of objection under this section shall comply with the requirements of the notice.

Licensed trust company to furnish to Authority information relating to controllers, etc.

19. A licensed trust company shall furnish to the Authority, in such form and manner as the Authority may prescribe, information relating to its controllers and the quantity of their control in the licensed trust company.

Offences, penalties and defences

20.—(1) Any person who contravenes section 16(1), 18(3) or 19 or any condition imposed under section 17(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Where a person is charged with an offence in respect of a contravention of section 16(1), it shall be a defence for the person to prove that —

- (a) he was not aware that he had contravened that provision; and
- (b) he has, within 14 days of becoming aware that he had contravened that provision, notified the Authority of the contravention and, within such time as determined by the Authority, taken such actions in relation to his shareholding or control of the voting power in the licensed trust company as the Authority may direct.

(3) Where a person is charged with an offence in respect of a contravention of section 16(1), it shall also be a defence for the person to prove that, even though he was aware of the contravention —

- (a) the contravention occurred as a result of an increase in the shareholding as described in section 16(4)(a) or in the voting power controlled by any of his associates described in section 16(4)(c)(i);
- (b) he has no agreement or arrangement, whether oral or in writing and whether express or implied, with that associate with respect to the acquisition, holding or disposal of shares or other interests in, or under which they act together in exercising their voting power in relation to, the licensed trust company; and
- (c) he has, within 14 days of the date of the contravention, notified the Authority of the contravention and, within such time as may be determined by the Authority, taken such action in relation to

his shareholding or control of the voting power in the licensed trust company as the Authority may direct.

(4) Except as provided in subsections (2) and (3), it shall not be a defence for a person charged with an offence in respect of a contravention of section 16(1) to prove that he did not intend to or did not knowingly contravene that provision.

Shareholding or control in other corporations

21.—(1) No licensed trust company shall, without obtaining the prior approval of the Authority, acquire or hold more than —

- (a) 20% of the total number of issued shares; or
- (b) 20% of the voting power,

in a corporation, unless it acquires or holds such shares or voting power in the course of acting as a trustee.

(2) Any licensed trust company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

PART IV

PROBATE AND ADMINISTRATION

Licensed trust company may act as executor

22. Where a licensed trust company is appointed executor of the will of any testator, the licensed trust company may apply to the court for probate of the will and, if probate is granted, to exercise and discharge all the powers and duties of an executor.

Licensed trust company may be authorised to apply for probate or administration

23.—(1) Subject to subsection (3), where any person is entitled to apply for probate of the will of any testator without leave being reserved to any other person to apply for probate, it shall be lawful for the person, whether absent from Singapore or not, and notwithstanding the provisions of any other written law, instead of himself applying for probate, to authorise a licensed trust company to apply to the court for a grant of administration

with the will of the testator annexed, and such a grant may be made to the licensed trust company upon its own application, when so authorised.

(2) Subject to subsection (3), where any person is entitled to apply for letters of administration with the will of any testator annexed, it shall be lawful for the person, whether absent from Singapore or not, and notwithstanding the provisions of any other written law, to authorise a licensed trust company, either alone or jointly with any other person, to apply to the court for a grant of letters of administration with the will of the testator annexed, and such a grant may be made to the licensed trust company upon its own application, when so authorised.

(3) Subsections (1) and (2) shall not apply to a case in which a will provides that the licensed trust company shall not act as executor or in the trusts thereof.

(4) Notwithstanding the provisions of any other written law, any person or persons entitled to apply for letters of administration of the estate of any intestate, whether the person or persons are absent from Singapore or not, may authorise a licensed trust company to apply to the court for such letters of administration, either alone or jointly with any other person, and administration of the estate of the intestate may be granted to the licensed trust company, either alone or jointly, upon its own application, when so authorised.

(5) For the purposes of any application to the court for letters of administration of the estate of any deceased person, the court shall consider a licensed trust company, when authorised under subsection (4), to be in law entitled equally with any other person or class of persons to apply for and obtain a grant, but a licensed trust company, being so entitled, shall not on that account alone be preferred to the widower, widow or next of kin of any intestate.

(6) No grant of probate or of letters of administration shall be made to an agent or a nominee on behalf of a licensed trust company.

Procedure as to petitions

24.—(1) In all cases in which a licensed trust company is empowered under this Act to apply for probate or for letters of administration, any petition, declaration, account or affidavit or other necessary document may be made or sworn by any officer of the company duly authorised by the licensed trust company in that behalf.

(2) Subject to subsection (3), any officer of a licensed trust company appointed by the licensed trust company for that purpose may, on behalf of the licensed trust company, sign any petition, account or statement, take any oath, swear any affidavit, make any declaration, verify any act, give personal attendance at any court or place, and do any act or thing whatsoever, which may be required to be signed, taken, sworn, made, verified, given or done on behalf of the licensed trust company.

(3) Nothing in this Act shall confer upon any person, not otherwise entitled thereto, any right to appear or be heard before or in any court on behalf of a licensed trust company or to do any act whatsoever on behalf of a licensed trust company which could otherwise be lawfully done only by an advocate and solicitor.

Licensed trust company not to furnish security

25.—(1) Notwithstanding the provisions of the Probate and Administration Act (Cap. 251), no licensed trust company to which a grant of letters of administration has been made shall be required to furnish security for the due administration of the estate.

(2) Notwithstanding the provisions of the Probate and Administration Act or any other written law, no licensed trust company appointed by the court to perform the duties of receiver, guardian, committee or any other office or trust shall be required to furnish security for the due performance of such duties.

Guardianship of person prohibited

26.—(1) No licensed trust company shall be appointed to be guardian of the person of an infant or committee of the person of a mentally disordered person.

(2) Any licensed trust company which accepts any appointment in contravention of subsection (1) shall be guilty of an offence.

PART V

CONDUCT OF BUSINESS

Priority to orders of protected parties

27.—(1) A licensed trust company or any of its employees involved in the management of the assets of an express trust shall not enter into any transaction for the purchase or sale of securities or futures contracts for its or his own account unless all instructions to purchase or sell securities or futures contracts of the same class for the account of the trust have been fulfilled.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

PART VI

BOOKS, ACCOUNTS AND AUDIT

Division 1 — Books and accounts

Keeping of books and furnishing of returns

28.—(1) Where a licensed trust company acts as a trustee of any express trust, the licensed trust company shall keep, or cause to be kept, such books as will sufficiently explain the transactions entered into by the licensed trust company on behalf of the trust and the financial position of such trust.

(2) A licensed trust company shall keep, or cause to be kept, the books relating to the company as will —

- (a) sufficiently explain the transactions and financial position of its business; and
- (b) enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time,

and its books shall be kept in such a manner as will enable them to be conveniently and properly audited.

(3) An entry in the books of a licensed trust company required to be kept in accordance with this section shall be deemed to have been made by, or with the authority of, the licensed trust company.

(4) A licensed trust company shall retain such books as may be required to be kept under this Act for a period of not less than 6 years.

(5) A licensed trust company shall —

- (a) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Authority in writing; and
- (b) provide such information relating to its business as the Authority may require.

(6) The Authority may, without prejudice to the generality of section 82(1), make regulations in respect of all or any of the matters in this section, including the keeping of such books, by a licensed trust company, in such form and manner as the Authority may prescribe.

(7) Any licensed trust company which, without reasonable excuse, contravenes subsection (1), (2) or (4) or any regulations made under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) Any licensed trust company which, without reasonable excuse, contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Division 2 — Audit

Appointment of auditors

29.—(1) A licensed trust company shall appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such licensed trust company, the licensed trust company shall, as soon as practicable thereafter, appoint another auditor.

(2) Notwithstanding any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a licensed trust company —

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- (a) at any time direct the licensed trust company to remove the auditor; and
 - (b) direct the licensed trust company, as soon as practicable thereafter, to appoint another auditor,

and the licensed trust company shall comply with such direction.

(3) Any licensed trust company which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Lodgment of annual accounts, etc.

30.—(1) A licensed trust company shall, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance-sheet in relation to its business made up to the last day of the financial year; and
- (b) lodge that profit and loss account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the profit and loss account and balance-sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a licensed trust company to the Authority and the Authority is satisfied that there is a special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority may think fit to impose.

(3) A licensed trust company shall submit to the Authority, at such intervals and in such manner as the Authority may specify, consolidated statements or information relating to the trusts that are administered by the licensed trust company or for which it provides trust administration services.

(4) Any licensed trust company which contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum fine of \$50,000.

(5) Any licensed trust company which contravenes any condition or restriction imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Reports by auditor to Authority in certain cases

31.—(1) Where the auditor of a licensed trust company, in the performance of his duties as such auditor, becomes aware of—

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the licensed trust company to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the moneys or other assets of any protected party of the licensed trust company,

the auditor shall immediately thereafter send a report in writing of the matter or irregularity to the Authority.

(2) Any auditor who contravenes subsection (1) shall be guilty of an offence.

Power of Authority to appoint auditor

32.—(1) Where —

- (a) a licensed trust company fails to lodge an auditor's report under section 31; or
- (b) the Authority receives a report under section 31,

the Authority may, without prejudice to its powers under section 36, if it is satisfied that it is in the interests of the licensed trust company, any protected party of the licensed trust company or the public, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the licensed trust company.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the licensed trust company, the Authority may by notice in writing, direct the licensed trust company to

pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a licensed trust company fails to comply with a direction under subsection (2), the amount specified in the direction may be recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) shall, on the conclusion of the examination and audit, submit a report to the Authority.

(5) Any auditor who contravenes subsection (4) shall be guilty of an offence.

Offence to destroy, conceal, alter, etc., books

33.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any audit under this Part —

- (a) destroys, conceals or alters any book relating to the business of a licensed trust company or any trust that is administered by the licensed trust company; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of a licensed trust company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

- (a) destroyed, concealed or altered any book referred to in subsection (1)(a); or
- (b) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1)(b),

the onus of proving that, in so doing, he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

Safeguarding of books

34.—(1) A licensed trust company shall take reasonable precautions —

- (a) to prevent falsification of the books required to be kept by it under this Act; and
- (b) to facilitate the discovery of any falsification of any such book.

(2) Any licensed trust company which contravenes subsection (1) shall be guilty of an offence.

Restriction on auditor's and employee's right to communicate certain matters

35.—(1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 32 or carrying out any duty imposed under section 36, and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

(2) Any auditor who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any employee of an auditor who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Additional powers of Authority in respect of auditors

36.—(1) The Authority may impose all or any of the following duties on an auditor of a licensed trust company:

- (a) a duty to submit to the Authority such additional information in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the licensed trust company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;

- (d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such additional duty or duties.

(2) A licensed trust company shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

(3) Any auditor who contravenes subsection (1) shall be guilty of an offence.

(4) Any licensed trust company which contravenes subsection (2) shall be guilty of an offence.

Defamation

37.—(1) No auditor of a licensed trust company or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of—

- (a) any statement made orally or in writing in the discharge of his duties under this Part; or
- (b) the submission of any report to the Authority under section 31(1), 32(4) or 36(1)(d).

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

PART VII

SUPERVISION AND INVESTIGATION

Division 1 — General

Self-incrimination

38.—(1) A person is not excused from disclosing any information to the Authority, pursuant to a requirement made of him under this Part, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing any information that he is required to disclose by a requirement made of him under this Part, that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings under this Act.

Savings for advocates and solicitors

39.—(1) Nothing in this Part shall —

- (a) compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
- (b) authorise the taking of any such document or other material which is in his possession.

(2) An advocate and solicitor who refuses to disclose the information or produce the document or other material referred to in subsection (1) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

(3) Any advocate and solicitor who contravenes subsection (2) shall be guilty of an offence.

Division 2 — Inspection powers of Authority

Inspection by Authority

40.—(1) The Authority may, for the purpose of ensuring that the provisions of this Act have been or are being complied with, from time to time inspect, under conditions of secrecy, the books in the possession, custody or control of a licensed trust company and of any branch, agency or office outside Singapore opened by a licensed trust company that is incorporated in Singapore.

(2) For the purposes of an inspection under this section —

- (a) the licensed trust company, or any person who is in possession of the books of the licensed trust company, shall produce such books to the Authority and give such information or facilities as may be required by the Authority;

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- (b) the licensed trust company shall procure that any person who is in possession of its books produce the books to the Authority and give such information or facilities as may be required by the Authority; and
- (c) the Authority may —
- (i) make copies of, or take possession of, any of such books;
 - (ii) use, or permit the use of, any of such books for the purposes of any proceedings under this Act; and
 - (iii) retain possession of any of such books for so long as is necessary —
 - (A) for the purposes of exercising a power conferred by this section (other than subsection (4));
 - (B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
 - (C) for such proceedings to be commenced and carried on.
- (3) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.
- (4) Subject to Part VIII, while the books of a licensed trust company are in the possession of the Authority, the Authority —
- (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled (whether under any written law, rule of law or contract) to inspect if they were not in the possession of the Authority; and
 - (b) may permit any other person to inspect any of the books.
- (5) The Authority may require a person who produced any book to the Authority to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.
- (6) Any person who, without reasonable excuse, contravenes subsection (2) or any requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not

exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Division 3 — Investigative powers of Authority

Investigation by Authority

41.—(1) The Authority may conduct such investigation, under conditions of secrecy, as it considers necessary or expedient for any of the following purposes:

- (a) to perform any of the Authority's functions under this Act;
- (b) to ensure compliance with this Act or any written direction; or
- (c) to investigate any alleged or suspected contravention of any provision of this Act.

(2) The Authority may exercise any of its powers for the purposes of conducting an investigation under this Division notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Division shall have effect notwithstanding any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 46, shall lie against any person for —

- (a) providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or

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- (b) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

Power to order production of books

42. For the purpose of an investigation under this Division, the Authority may by notice in writing require any person to provide information or produce any book relating to any matter under investigation at a specified time and place, and such person shall immediately comply with that requirement.

Application for warrant to seize books not produced

43.—(1) Where the Authority has reasonable grounds to suspect that there is, on any particular premises, any book the production of which has been required under section 42, and —

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,

the Authority may apply to a Magistrate for the issue of a warrant to search the premises for such book.

(2) Whenever it appears to a Magistrate, upon an application made under subsection (1) and after such enquiry as he may think necessary, that there are reasonable grounds for suspecting that there is, on any particular premises, any book the production of which has been required under section 42, and —

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,

the Magistrate may issue a warrant authorising the Authority or any person named therein, with or without assistance —

- (i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and

(ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.

(3) The powers conferred under subsections (1) and (2) are in addition to, and are not in derogation of, any other power conferred by any other written law or rule of law.

(4) In this section, “premises” includes any structure, building, aircraft, vehicle, vessel or place.

Powers where books are produced or seized

44.—(1) This section shall apply where —

- (a) books are produced to the Authority under a requirement imposed under section 42;
- (b) under a warrant issued under section 43, the Authority or a person named therein —
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
- (c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by the Authority to receive them.

(2) If subsection (1)(a) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —

- (a) inspect, and make copies of, or take extracts from, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings; and
- (c) retain possession of any of the books for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such book; or

(iii) for such proceedings to be commenced and carried on.

(4) No person shall be entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b), to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) Subject to Part VIII, while the books are in the possession of the Authority or, where applicable, a person referred to in subsection (1)(b), the Authority or the person —

(a) shall permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person would be entitled (whether under any written law, rule of law or contract) to inspect if they were not in the possession of the Authority or the first-mentioned person; and

(b) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, a person referred to in subsection (1)(b) may deliver any of the books into the possession of the Authority or of a person authorised by the Authority to receive them.

(7) If subsection (1)(a) or (b) applies, the Authority, a person referred to in subsection (1)(b) or a person into whose possession the books are delivered under subsection (6) may require —

(a) if subsection (1)(a) applies, a person who so produced any of the books; or

(b) in any other case, a person who was a party to the compilation of any of the books,

to explain, to the best of his knowledge and belief, any matter about the compilation of any of the books or to which any of the books relate.

Powers where books not produced

45. Where a person fails to comply with a requirement imposed by the Authority under section 42 to produce any book, the Authority may require the person to state, to the best of his knowledge and belief —

(a) the place where such book may be found; or

- (b) the person who last had possession, custody or control of such book and the place where that person may be found.

Offences under this Division

46.—(1) Any person who, without reasonable excuse, refuses or fails to comply with a requirement imposed under section 42, 44(7) or 45 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any person who, in purported compliance with a requirement imposed under section 42, 44(7) or 45, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person who conceals, destroys, mutilates or alters any book relating to a matter that the Authority is investigating or about to investigate under this Division or, where such a book is within the territory of Singapore, takes or sends the book out of Singapore shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) Any person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under section 42, 44 or 45, or obstructs or hinders a person who is executing a warrant issued under section 43, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any occupier, or person in charge, of the premises that a person enters under a warrant issued under section 43 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

PART VIII

DISCLOSURE OF INFORMATION

Inspection in Singapore by parent supervisory authority

47.—(1) In relation to a licensed trust company that is incorporated outside Singapore, the parent supervisory authority may, with the prior written approval of the Authority and under conditions of secrecy, conduct an inspection in Singapore of the books, accounts and transactions of any branch or office of that licensed trust company in Singapore in accordance with this section if the following conditions are satisfied:

- (a) the inspection is required by the parent supervisory authority for the sole purpose of carrying out its supervisory functions;
- (b) the parent supervisory authority —
 - (i) is prohibited by the laws applicable to the parent supervisory authority from disclosing information obtained by it in the course of the inspection to any other person; or
 - (ii) has given to the Authority such written undertaking, as to the confidentiality of the information obtained, as the Authority may determine; and
- (c) the parent supervisory authority has given a written undertaking to the Authority to comply with the provisions of this Act and such conditions as the Authority may impose under subsection (2).

(2) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, require the parent supervisory authority to comply with conditions relating to —

- (a) the classes of information to which the parent supervisory authority shall or shall not have access in the course of the inspection;
- (b) the conduct of the inspection;
- (c) the use or disclosure of any information obtained in the course of the inspection; and
- (d) such other matters as the Authority may determine.

(3) Subject to compliance by a parent supervisory authority with such conditions as the Authority may impose under subsection (2), a licensed trust company under inspection —

- (a) shall afford the parent supervisory authority access to such books, accounts and documents of the branch or office of the licensed trust company under inspection, and provide such information (including information relating to the licensed trust company's internal control systems) and facilities as may be required to conduct the inspection; and
- (b) shall not be required to afford the parent supervisory authority access to its books, accounts and documents or to provide information or facilities at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the licensed trust company.

(4) A parent supervisory authority may, with the prior written approval of the Authority, appoint another body to conduct the inspection under subsection (1), and in such event the provisions of this section shall apply to the appointed body as they apply to the parent supervisory authority.

(5) For the purposes of ensuring the confidentiality of any information obtained in the course of an inspection by a parent supervisory authority under this section, section 49(1) shall apply, with the necessary modifications, to any official of the parent supervisory authority as if the official were an officer of a licensed trust company.

(6) Any licensed trust company which refuses or neglects, without reasonable excuse, to afford access to any book, account or document or provide any information or facility as may be required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

Confidentiality of inspection and investigation reports

48.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced in respect of any licensed trust company in Singapore —

- (a) by the Authority upon an inspection under section 40 or an investigation under section 41; or

-
- (b) by a parent supervisory authority upon an inspection under section 47,

the report shall not be disclosed by the licensed trust company, or any officer or auditor of the licensed trust company, to any other person except in the circumstances provided under subsection (2).

- (2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the licensed trust company in Singapore to any officer or auditor of that licensed trust company solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that licensed trust company;
- (b) by any officer or auditor of the licensed trust company in Singapore to any other officer or auditor of that licensed trust company, solely in connection with the performance of their duties in that licensed trust company;
- (c) to the Authority if requested by the Authority, where the report has been produced by a parent supervisory authority; or
- (d) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions as it considers appropriate.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the licensed trust company.

(5) Any person who contravenes subsection (1) or any condition imposed by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$150,000.

(6) Any person who solicits or procures the disclosure to himself or to any other person of any report or any part thereof in contravention of subsection (1) shall be guilty of an offence.

(7) If any person to whom any report or any part thereof is disclosed knows or has reasonable grounds for believing, at the time of the

disclosure, that the report was disclosed to him in contravention of that subsection, he shall report the disclosure to the Authority and take any one or more of the following actions, as appropriate, as soon as is practicable:

- (a) where the disclosure was made in any written form, to surrender or take all reasonable steps to surrender the report and all copies thereof to the Authority;
- (b) where the disclosure was made in an electronic form, to take all reasonable steps to ensure that all electronic copies of the report received by him are deleted;
- (c) to take such other action as the Authority may direct.

(8) Any person who contravenes subsection (7) shall be guilty of an offence.

Confidentiality

49.—(1) Information regarding a protected party or the business or other affairs of the protected party (referred to in this section as protected information) shall not, in any way, be disclosed by a licensed trust company in Singapore or any of its officers to any other person except as expressly provided in this Act.

(2) A licensed trust company in Singapore or any of its officers may, for such purpose as may be specified in the first column of the Third Schedule, disclose protected information to such persons or class of persons as may be specified in the second column of that Schedule, and in compliance with such conditions as may be specified in the third column of that Schedule.

(3) Where any protected information is likely to be disclosed in any proceedings referred to in item 3 or 4 of Part I of the Third Schedule, the court may, either of its own motion or on the application of any party to the proceedings or the protected party to which the information relates —

- (a) direct that the proceedings be held in camera; and
- (b) make such further orders as the court may consider necessary to ensure the confidentiality of the information.

(4) Where an order has been made by a court under subsection (3), any person who, contrary to such an order, publishes any information that is likely to lead to the identification of any party to the proceedings shall be

guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000.

(5) Any person (including, where the person is a body corporate, an officer of the body corporate) who receives any protected information referred to in Part II of the Third Schedule shall not, at any time, disclose the information or any part thereof to any other person, except as authorised under that Schedule or if required to do so by an order of court.

(6) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$150,000.

(7) In this section and in the Third Schedule, unless the context otherwise requires —

(a) where disclosure of any protected information is authorised under the Third Schedule to be made to any person which is a body corporate, such information may be disclosed to such officers of the body corporate as may be necessary for the purpose for which the disclosure is authorised under that Schedule; and

(b) the obligation of any officer or other person who receives any protected information referred to in Part II of the Third Schedule shall continue after the termination or cessation of his appointment, employment, engagement or other capacity or office in which he had received such information.

(8) For the avoidance of doubt, nothing in this section shall be construed to prevent a licensed trust company from entering into an express agreement with a protected party of that licensed trust company for a higher degree of confidentiality than that prescribed in this section and in the Third Schedule.

(9) Where, in the course of an inspection under section 40 or an investigation under section 41 or the carrying out of the Authority's function of supervising or regulating a licensed trust company, the Authority incidentally obtains any protected information and such protected information is not necessary for the supervision or regulation of

the licensed trust company by the Authority, then, such information shall be treated as secret by the Authority.

(10) Nothing in subsection (9) shall prevent the Authority from disclosing or publishing consolidated statements aggregating any information obtained by the Authority under section 30(3).

PART IX

APPEALS

Appeals

50. Any applicant or licensed trust company which is aggrieved by —

- (a) the refusal of the Authority to grant a trust business licence;
- (b) the revocation or suspension of a trust business licence by the Authority;
- (c) the refusal of the Authority to grant an approval to a licensed trust company to appoint a person as its director or resident manager; or
- (d) the direction of the Authority to a licensed trust company to remove an officer from office or employment,

may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

Appeals to Minister

51.—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(2) Where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

Appeal Advisory Committees

52.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 51, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to any trust business or any licensed trust company and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and
- (b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(5) Every Appeal Advisory Committee shall have regard to —

- (a) the interest of the public;
- (b) the interest of the protected parties of licensed trust companies; and
- (c) the safeguarding of sources of information.

(6) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

Disclosure of information

53. Nothing in this Act shall require the Minister or any public servant to disclose any information which he considers to be against the interest of the public to disclose.

Regulations for purposes of this Part

54.—(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act shall be made;
- (c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

PART X**MISCELLANEOUS****Registration of trust company as shareholder, etc., not notice of trust**

55.—(1) Neither the application by a licensed trust company for registration as a member or shareholder in the books of any company or corporation nor the entry of the name of a licensed trust company in the books of any company or corporation shall constitute a notice of trust.

(2) No company or corporation shall be entitled to object to the entering of the name of a licensed trust company in its books by reason only that the licensed trust company may be or is a trustee.

(3) In dealings with property, the fact that the person or one of the persons dealt with is a licensed trust company shall not of itself constitute a notice of trust.

Trusteeship

56.—(1) Subject to subsection (2), in all cases in which the court or any person or persons has or have power to appoint a trustee, whether as an original or a new or an additional trustee, to perform any legal trust or duty, a licensed trust company may be appointed in the same manner as if the licensed trust company were a private individual.

(2) No licensed trust company shall be appointed in any case in which the instrument creating the trust, or the power authorising the appointment, forbids the appointment of a company.

Joint tenancy

57. A licensed trust company, acting in a fiduciary capacity, shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were a private individual.

Licensed trust company may act as agent

58.—(1) Subject to subsection (2), a licensed trust company may act under any deed or instrument by which the licensed trust company is appointed agent or attorney for any person, and all the powers conferred upon the licensed trust company by any such deed or instrument may be exercised by such officer of the licensed trust company as the licensed trust company may appoint for that purpose.

(2) Nothing in this section shall be deemed to authorise any person to confer upon a licensed trust company any power which may not lawfully be delegated by him.

Trust funds to be kept separate

59.—(1) Every licensed trust company shall ensure that all moneys, property and securities received or held by the licensed trust company in a fiduciary capacity are always kept distinct and in separate accounts from its own moneys, property and securities and marked in its books for each particular trust, so that they may be distinguished from any other assets shown in the registers and other books of account kept by it and so that

the trust moneys do not form part of, or are not mixed with, its general assets.

(2) Every licensed trust company shall ensure that all investments made by it as trustee shall be designated so that the trusts to which the investments belong may be readily identified at any time.

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

Unclaimed money to be paid into court

60.—(1) All moneys and assets which remain in the hands of a licensed trust company, as trustee of a trust constituted in Singapore, and unclaimed by the person entitled to them for a period of 6 years after the time when they became payable to that person (except where payment has been restrained by order of a court of competent jurisdiction), together with such interest, if any, as has been received by the licensed trust company in respect thereof, less any commission or other charges properly chargeable by the licensed trust company, shall be paid by the licensed trust company into court —

- (a) under and in accordance with section 62 of the Trustees Act (Cap. 337); and
- (b) within such time or at such intervals as may be prescribed.

(2) It shall not be necessary for a licensed trust company to obtain the concurrence or consent of any person to make payment into court in accordance with subsection (1).

Falsification of records by officer, auditor, employee or agent of licensed trust company

61. Any officer, auditor, employee or agent of any licensed trust company who —

- (a) wilfully makes, or causes to be made, a false entry in any book of the licensed trust company;
- (b) wilfully omits to make, or causes to be omitted, an entry in any such book; or

- (c) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any such book,

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

Duty not to furnish false information to Authority

62.—(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority shall use due care to ensure that the document is not false or misleading in any material particular.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

Jurisdiction of court

63. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

Offences by bodies corporate

64.—(1) Where an offence under this Act committed by a body corporate is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In this section, “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity.

(4) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate formed or recognised under the law of a territory outside Singapore.

Offences by officers

65.—(1) Any person, being an officer of a licensed trust company, who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

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

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the officer to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

General penalty

66. Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$12,500.

Penalty for corporations

67.—(1) Subject to subsections (2) and (3), where a corporation or body corporate is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that the court could, but for this subsection, impose as a fine for that offence.

(2) Subsection (1) shall not apply to —

- (a) offences under section 7(3), 11(2), 13(6), 14(6), 21(2), 28(7) or (8), 29(3), 30(4) or (5), 47(6), 48(5)(b) or 49(6)(b); and
- (b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

(3) Where an individual is convicted of an offence under this Act by virtue of section 64, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall not apply.

Proceedings with consent of Attorney-General

68. Proceedings for an offence under this Act may be taken only with the consent of the Attorney-General.

Composition of offences

69.—(1) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the maximum fine prescribed for that offence.

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

(3) The Authority may make regulations to prescribe the offences which may be compounded.

(4) All sums collected under this section shall be paid to the Authority.

Power to make regulations giving effect to treaty, etc., relating to trust business

70.—(1) Without prejudice to the generality of section 82(1), the Authority may make regulations prescribing the matters necessary or

expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to trust business, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

- (a) exemptions from any requirement relating to —
 - (i) the licensing or approval of any person; or
 - (ii) the lodgment or registration of any document, under this Act;
- (b) exemptions from any other requirement in this Act;
- (c) the application of this Act with such modifications as may be necessary;
- (d) the revocation or withdrawal of any exemption granted; and
- (e) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

Opportunity to be heard

71. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

Power to reprimand for misconduct

72.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public or of the protection of the protected parties of licensed trust companies, reprimand the relevant person.

(2) In this section —

“misconduct” means —

- (a) the contravention of —
 - (i) any provision of this Act;
 - (ii) any condition or restriction of a licence or an exemption granted under this Act;

-
- (iii) any written direction issued by the Authority under this Act; or
 - (iv) any code, guideline, policy statement or practice note issued or published under section 74;
- (b) the failure by an officer of a licensed trust company or an exempt person to discharge any duty or function of his office; or
- (c) the commission of an offence under section 64 or 65(1);
- “officer” —

- (a) in relation to a body corporate, means a director, chief executive, manager, resident manager, secretary or other similar officer of the body corporate, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“relevant person” means any licensed trust company or exempt person, or any employee, officer or partner of such licensed trust company or exempt person.

Appointment of assistants

73.—(1) Subject to subsection (2), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(2) The Authority may, by notification published in the *Gazette*, appoint one or more of its officers to exercise the power to grant an exemption to any person (not being an exemption granted to a class of persons) under any of the provisions of this Act as specified in the Fourth Schedule, or to revoke any such exemption.

(3) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

Codes, guidelines, etc., by Authority

74.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any provision of this Act; or
- (c) in relation to the operation of any provision of this Act.

(2) The Authority may publish any such code, guideline, policy statement, practice note or no-action letter in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

- (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and
- (b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter however expressed shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) Any failure of a person to comply with any provision of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter shall not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(7) Any code, guideline, policy statement or practice note issued under this section —

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- (a) may be of general or specific application; and
 - (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) For the avoidance of doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(9) In this section, “no-action letter” means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

Power of Authority to publish information

75.—(1) The Authority may, where it thinks it necessary or expedient in the interest of the public, a section of the public or the protected parties of licensed trust companies, publish in such form and manner as it thinks fit —

- (a) any information relating to —
 - (i) any licensed trust company;
 - (ii) any exempt person; or
 - (iii) any other person or class of persons granted an exemption under section 80; or
- (b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to —

- (a) the lapsing, revocation or suspension of the approval, licence or exemption granted to any person referred to in subsection (1);
- (b) the removal of an officer of any person referred to in subsection (1);
- (c) the commission of any offence —
 - (i) under this Act committed by any person; or

- (ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);
- (d) any civil or criminal proceedings brought —
 - (i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
 - (ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;
- (e) any disciplinary proceedings brought against any person referred to in subsection (1) by the Authority and the outcome of such proceedings; and
- (f) any other action as may have been taken by the Minister or the Authority against any person referred to in subsection (1).

Power of Authority to issue written directions

76.—(1) The Authority may, if it thinks it necessary or expedient in the interest of the public or the protected parties of licensed trust companies, issue written directions, either of a general or specific nature, to —

- (a) any licensed trust company;
- (b) any exempt person;
- (c) any officer of a licensed trust company or an exempt person; or
- (d) any class of the persons referred to in paragraphs (a), (b) or (c),

to comply with such requirements as the Authority may specify in the written directions.

(2) Without prejudice to the generality of subsection (1), any written direction may be issued with respect to —

- (a) the standards to be maintained by the licensed trust company or exempt person concerned in the conduct of its or his business;
- (b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

- (c) the qualifications, experience and training of the officers of the licensed trust company or exempt person,

and the person to whom such direction is issued shall comply with the direction.

(3) Any person who contravenes any direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

(5) The Authority may at any time vary, rescind or revoke any written direction under subsection (1).

Power of court to make certain orders

77.—(1) Where on the application of the Authority, it appears to the court that a person —

- (a) has committed an offence under this Act;
- (b) has contravened any condition or restriction of a trust business licence; or
- (c) is about to do an act that, if done, would be such an offence or contravention,

the court may, without prejudice to any order it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing breach of this Act or of any condition or restriction of a licence, an order restraining a person from carrying on all or any of the trust business or from holding himself out as so carrying on all or any of the trust business or so acting;
- (ii) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (iii) any ancillary order deemed to be necessary or desirable in consequence of the making of any of these orders.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as the court thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) Any person who, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Subsection (3) shall not affect the powers of the court in relation to the punishment for contempt of court.

(5) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by the court under this section or suspend the operation of such an order.

Injunctions

78.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of the Authority, grant an injunction restraining the person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act to do, the court may, on the application of the Authority, make an order requiring the person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(5) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(6) Any person who contravenes an injunction, order, interim injunction or interim order that is granted or made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

- (a) if the court is satisfied that the person has engaged in conduct of that kind referred to in that subsection, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind referred to in that subsection, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(8) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

- (a) if the court is satisfied that the person has refused or failed to do that act or thing referred to in that subsection, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing referred to in that subsection, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(9) Where the Authority makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(10) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.

Service of documents

79.—(1) Any notice or direction to be given or served by the Authority on a person shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(2) In the case of a corporation, the last known address referred to in subsection (1) shall be —

- (a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or
- (b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

Exemption

80.—(1) The Authority may, by regulations, exempt any person or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) The Authority may, on the application of any person, by notice in writing exempt the person from all or any of the provisions of this Act or the requirements specified in any written direction made by the Authority under this Act if the Authority considers it appropriate to do so in the circumstances of the case.

(3) An exemption granted under subsection (2) —

- (a) may be granted subject to such conditions or restrictions as the Authority may specify by notice in writing;
- (b) need not be published in the *Gazette*; and

(c) may be withdrawn at any time by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (1) or (3)(a) shall be guilty of an offence.

Amendment of Schedules

81.—(1) The Minister may, by order published in the *Gazette*, amend, add to or vary any of Schedules.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

Regulations

82.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to —

- (a) applications for the grant of licences under this Act and matters incidental thereto;
- (b) the minimum financial and other requirements that an applicant must fulfil for it to be issued a licence under this Act;
- (c) the activities of, and standards to be maintained by, a licensed trust company, an exempt person or any person who is granted an exemption under section 80, including the manner, method and place of conducting trust business;
- (d) the particulars to be recorded in, or in respect of, books kept by a licensed trust company; and
- (e) the requirements and restrictions relating to the granting of any unsecured advance, unsecured loan or unsecured credit facility by a licensed trust company.

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

- (a) may be of general or specific application;

- (b) may provide that a contravention of any specified provision thereof shall be an offence; and
- (c) may provide for penalties not exceeding a fine of \$25,000 or imprisonment for a term not exceeding 12 months or both for each offence.

Repeal

83. The Trust Companies Act (Cap. 336) is repealed.

Consequential amendments to other written laws

84. The provisions of the Acts specified in the first column of the Fifth Schedule are amended in the manner set out in the second column thereof.

Transitional and savings provisions

85. The Minister may, within 2 years of the date of commencement of this Act, prescribe such transitional and savings provisions as he may consider necessary or expedient.

FIRST SCHEDULE

Section 2

TRUST BUSINESS

The following businesses constitute trust business for the purposes of this Act:

- (a) the provision of services with respect to the creation of an express trust;
- (b) acting as trustee in relation to an express trust;
- (c) arranging for any person to act as trustee in respect of an express trust;
- (d) the provision of trust administration services in relation to an express trust.

SECOND SCHEDULE

Section 3(3)

SPECIFIED PERSONS

1. The following persons are specified persons for the purposes of section 3(3):

- (a) a bare trustee;
- (b) a person acting as a trustee or an administrator of a business trust;
- (c) the trustee-manager of a registered business trust;
- (d) a person preparing or advising on a will;
- (e) a person acting as the executor or as the administrator of the estate of a deceased person (including his acting in any matter that arises in consequence of the execution of the will or the administration of the estate of the deceased person, as the case may be).

2. In this Schedule —

“bare trustee” means a trustee who has a nominal interest in the subject matter of a trust;

“business trust” has the same meaning as in section 2 of the Business Trusts Act 2004 (Act 30 of 2004);

“trustee-manager” has the same meaning as in section 2 of the Business Trusts Act 2004.

THIRD SCHEDULE

Section 49

PURPOSES FOR WHICH AND PERSONS TO WHOM PROTECTED INFORMATION MAY BE DISCLOSED

PART I

FURTHER DISCLOSURE NOT PROHIBITED

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purposes for which confidential information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
1. Disclosure —		
(a) is permitted in writing by a settlor or a protected party about whom the information regards, or if he is deceased, his appointed personal representative; or	Any person as permitted by the settlor or a protected party or, if he is deceased, his appointed personal representative.	
(b) is solely in connection with a matter which a licensed trust company deems necessary in carrying out its duties in a case where a settlor is deceased and there is no personal representative, unless otherwise provided in the trust deed.	Any person whom the licensed trust company deems necessary.	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
2. Disclosure is solely in connection with an application for a grant of probate or letters of administration in respect of a deceased protected party's estate.	Any person whom the licensed trust company in good faith believes is entitled to the grant of probate or letters of administration.	
3. Disclosure is solely in connection with — (a) where the protected party is an individual, the bankruptcy of the protected party; or (b) where the protected party is a body corporate, the winding up of the protected party.	All persons to whom the disclosure is necessary for the purpose specified in the first column.	Note: Court may order the proceedings to be held in camera [see section 49(3) and (4)].
4. Disclosure is solely with a view to the institution of, or solely in connection with, the conduct of proceedings relating to a trust that is administered by a licensed trust company.	All persons to whom the disclosure is necessary for the purpose specified in the first column.	Note: Court may order the proceedings to be held in camera [see section 49(3) and (4)].
5. Disclosure is necessary for — (a) compliance with an order or request made under any specified written law to furnish information, for the purposes of an investigation or prosecution, of an offence alleged or	Any police officer or public officer duly authorised under the specified written law to carry out the investigation or prosecution or to receive the complaint or report, or any court.	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
<p>suspected to have been committed under any written law; or</p> <p>(b) the making of a complaint or report under any specified written law of an offence alleged or suspected to have been committed under any written law.</p>		
<p>6. Disclosure is necessary for compliance with a garnishee order served on a licensed trust company attaching assets in a trust.</p>	<p>All persons to whom the disclosure is required to be made under the garnishee order.</p>	
<p>7. Disclosure is in compliance with any provision of this Act, or any notice or directive issued by the Authority to licensed trust companies.</p>	<p>The Authority or any person authorised or appointed by the Authority.</p>	

PART II

FURTHER DISCLOSURE PROHIBITED

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
1. Disclosure is solely in connection with the performance of duties as an officer, a professional adviser or a service provider appointed or engaged by a licensed trust company.	Any — (a) officer of the licensed trust company in Singapore; (b) officer designated in writing by the head office of the licensed trust company; or (c) auditor, lawyer, consultant or other professional adviser or service provider appointed or engaged by the licensed trust company under a contract for service.	
2. Disclosure is solely in connection with the conduct of internal audit or the performance of risk management of a licensed trust company.	In the case of — (a) a licensed trust company incorporated outside Singapore — (i) the head office or parent company of the licensed trust company;	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
	<ul style="list-style-type: none"> (ii) any branch of the licensed trust company outside Singapore designated in writing by the head office of the licensed trust company; or (iii) any related corporation of the licensed trust company designated in writing by the head office of the licensed trust company; or 	
	<ul style="list-style-type: none"> (b) a licensed trust company incorporated in Singapore — <ul style="list-style-type: none"> (i) the parent company; or 	

<i>First column</i> <i>Purposes for which confidential information may be disclosed</i>	<i>Second column</i> <i>Persons to whom information may be disclosed</i>	<i>Third column</i> <i>Conditions</i>
3. Disclosure is solely in connection with the performance of operational functions of a licensed trust company where such operational functions have been out-sourced.	<p>(ii) any related corporation of the licensed trust company designated in writing by the head office of the licensed trust company.</p> <p>Any person, including the head office of the licensed trust company or any branch thereof outside Singapore, who is engaged by the licensed trust company to perform the out-sourced functions.</p>	If any out-sourced function is to be performed outside Singapore, the disclosure shall be subject to such conditions as may be specified in a written direction issued by the Authority or otherwise imposed by the Authority.
4. Disclosure is solely in connection with — (a) the merger or proposed merger of a licensed trust company or its holding company with another company; or	Any person participating or otherwise involved in the merger, acquisition or issue, or proposed merger, acquisition or issue, including any of his lawyers or other professional advisers (whether or not the merger or acquisition is subsequently entered into or completed).	

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purposes for which confidential information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
<p>(b) any acquisition or issue, or proposed acquisition or issue, of any part of the share capital of a licensed trust company or its holding company,</p> <p>whether or not the merger, acquisition or issue is subsequently entered into or completed.</p>		

PART III

INTERPRETATION

In this Schedule, unless the context otherwise requires —

“appointed personal representative”, in relation to a deceased person, means a person appointed as executor or administrator of the estate of the deceased person;

“lawyer” means an advocate and solicitor of the Supreme Court of Singapore, a foreign lawyer or any person who is duly authorised or registered to practise law in a country or territory other than Singapore by a foreign authority having the function conferred by law of authorising or registering persons to practise law in that country or territory;

“public officer” includes any officer of a statutory board;

“specified written law” means the Companies Act (Cap. 50), the Criminal Procedure Code (Cap. 68), the Goods and Services Tax Act (Cap. 117A), the Income Tax Act (Cap. 134), the Internal Security Act (Cap. 143), the Kidnapping Act (Cap. 151) and the Prevention of Corruption Act (Cap. 241).

FOURTH SCHEDULE

Section 73(2)

SPECIFIED PROVISIONS

1. Section 15(1)(e)
2. Section 80(2).

FIFTH SCHEDULE

Section 84

**CONSEQUENTIAL AMENDMENTS TO
OTHER WRITTEN LAWS***First column**Second column*

- | | |
|---|---|
| (1) Accounting and Corporate
Regulatory Authority Act 2004
(Act 3 of 2004)

Second Schedule | Delete item 4. |
| (2) Companies Act
(Chapter 50, 1994 Ed.)

Section 130A | (i) Delete the words “(registered under the Trust Companies Act)” in the 2nd and 3rd lines of the definition of “depository agent” and substitute the words “(licensed under the Trust Companies Act 2005)”.

(ii) Delete the marginal reference “Cap. 336.” in the definition of “depository agent”. |
| (3) Financial Advisers Act
(Chapter 110, 2002 Ed.)

First Schedule, paragraph 2 | Delete the words “registered under the Trust Companies Act (Cap. 336)” and substitute the words “licensed under the Trust Companies Act 2005”. |

<i>First column</i>	<i>Second column</i>
<p>(4) Income Tax Act (Chapter 134, 2004 Ed.)</p> <p>(a) Section 10(20A)</p> <p>(b) Section 43J(2)</p>	<p>Delete sub-paragraph (x) of paragraph (c) and substitute the following sub-paragraph:</p> <p style="padding-left: 40px;">“(x) a trust company licensed under the Trust Companies Act 2005;”.</p> <p>Delete paragraph (a) and substitute the following paragraph:</p> <p style="padding-left: 40px;">“(a) a company licensed as a trust company under the Trust Companies Act 2005; or”.</p>
<p>(5) Probate and Administration Act (Chapter 251, 2000 Ed.)</p> <p>Section 6(6)</p>	<p>Delete the words “registered as a trust company under the Trust Companies Act (Cap. 336)” and substitute the words “licensed as a trust company under the Trust Companies Act 2005”.</p>
<p>(6) Residential Property Act (Chapter 274, 1985 Ed.)</p> <p>(a) Section 2(1)</p> <p>(b) Section 16(1)</p>	<p>(i) Delete the words “registered under the Trust Companies Act” wherever they appear in the definitions of “converted society” and “Singapore society” and substitute in each case the words “licensed under the Trust Companies Act 2005”.</p> <p>(ii) Delete the marginal reference “Cap. 336.” in the definitions of “converted society” and “Singapore society”.</p> <p>(i) Delete the words “registered under the Trust Companies Act” in paragraph (b) and substitute the words “licensed under the Trust Companies Act 2005”.</p> <p>(ii) Delete the marginal reference “Cap. 336.”.</p>

<i>First column</i>	<i>Second column</i>
(c) Section 18	(i) Delete the words “registered under the Trust Companies Act” in paragraph (c) and substitute the words “licensed under the Trust Companies Act 2005”. (ii) Delete the marginal reference “Cap. 336.”.
(7) Securities and Futures Act (Chapter 289, 2002 Ed.)	Delete the words “registered under the Trust Companies Act (Cap. 336)” wherever they appear and substitute in each case the words “licensed under the Trust Companies Act 2005”.
(8) Trustees Act (Chapter 337, 1999 Ed.) Section 3	Delete the words “registered as a trust company under the Trust Companies Act (Cap. 336)” in the definition of “trust corporation” and substitute the words “licensed as a trust company under the Trust Companies Act 2005”.
