

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
3. Approval in principal by Minister.
4. Unit Trust to have manager and trustee.
5. Restriction as to manager.
6. Restrictions as to trustee.
7. Nomination of company by trustee.
8. Prospectus.
9. Appointment of trustee.
10. Copy of deed to be lodged with Registrar.
11. Removal of trustee.
12. Trustee to keep accounts.
13. Implied provisions in trust deed.
14. Certificate of interest to be issued.
15. Duty of manager with respect to subscriptions.
16. Subscriptions, etc., to become subject to trusts.
17. Trust deed to state conditions for buying back interests.
18. Interests in unit trusts to be transferable.
19. Meeting of unit holders.
20. Removal of manager.
21. Accounts, etc. to be filed.
22. Appointment of inspectors.
23. Court may confer additional powers of management.
24. Temporary managers.
25. Trust deed not to exempt trustee or manager from liability.
26. Offences.
27. Restriction on personal benefits by directors or officers.
28. Powers of Court to assess damages against delinquent directors or manager.
29. Regulations.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT, CONTROL AND
REGULATION OF UNIT TRUSTS

[1st March, 1978.]

Short title

1. This Act may be cited as the Unit Trusts Act.

Interpretation

2. In this Act, unless the context otherwise requires— (Cap. 212.)
 - “bank” means a bank within the meaning of the Banking Act;
 - “company” means a company within the meaning of the Companies Act; (Cap. 247.)
 - “Court” means the Supreme Court;
 - “interest in a unit trust” means a beneficial interest in the money, investments, and other property that are subject to the trusts governing that unit trust;
 - “manager”, in relation to a unit trust, means the company (howsoever described) in which is vested the powers and functions of the manager of a unit trust under this Act;
 - “nominated company”, in relation to any trustee, means a company nominated by that trustee under section 7;
 - “Registrar” means the Registrar of Companies;
 - “trust” means a trust within the meaning of the Trustee Act; (Cap. 65.)
 - “trust deed”, in relation to any unit trust, means the trust deed that sets out the trusts governing the unit trust, and includes every instrument that varies those trusts, or affects the powers, duties, or functions of the trustee or manager of the unit trust;
 - “trustee”, in relation to any unit trust, means the trustee in which or in the nominated company of which is vested the money, investments, and other property that are for the time being subject to the trusts governing the unit trust;
 - “unit holder”, in relation to any unit trust, means any person (other than the manager) who is the lawful holder of a certificate evidencing that he has an interest in the unit trust and includes a purchaser of or a subscriber for such an interest who is entitled to have a certificate issued to him in accordance with section 14;
 - “unit trust” means any scheme or arrangement that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers or purchasers as members of the public, in income and gains (whether in the nature of capital or income) arising from the money, investments, and other property that are for the time being subject to the trust, but does not include—
 - (a) a trust for the benefit of debenture holders; or
 - (b) any credit union registered under the Credit Unions Act; or (Cap. 251.)

- (c) any friendly society registered under the Friendly Societies Act; or (Cap. 253.)
- (d) any investments by a trustee corporation under the provisions of the Trustee Corporations Act; or (Cap. 66.)
- (e) any fund, scheme or plan which has been approved by the Commissioner of Inland Revenue under section 109 of the Income Tax Act. (Cap. 201.)

Approval in principle by Minister

3.—(1) Without prejudice to any of the other provisions of this Act, no unit trust may be established under this Act without the prior approval in principle of the Minister, which approval, if granted, shall be notified in the Gazette.

(2) The Minister in deciding whether or not to grant approval in principle under the provisions of subsection (1) may have regard to any factors which he considers to be material and, in particular, but without limiting the generality of the foregoing, shall take into account the number of unit trusts already established under this Act.

Unit trust to have manager and trustee

4—(1) There shall be a manager and a trustee of every unit trust.

(2) Subject to the provisions of this Act, the company that is the manager of any unit trust—

- (a) shall have vested in it the powers of management of the investments and other property that are subject to the trusts governing that unit trust; and
- (b) shall have the function (whether as principal or by an agent) of issuing or offering interests in the unit trust to the public for subscription or purchase, or of inviting the public to subscribe for or purchase such interests, or both of those functions; and
- (c) shall have the same liability for its acts and omissions in the exercise of its powers and functions as manager of the unit trust as it would if it exercised those powers and functions as a trustee.

(3) Subject to the provisions of this Act, the trustee of a unit trust shall have vested in it or in its nominated company the investments and other property that are for the time being subject to the trusts governing the unit trust, and the trustee shall hold the register of unit holders, which shall be available for inspection at all reasonable times on payment of the prescribed fee.

(4) No trustee corporation or company or bank shall act as trustee of a unit trust, and no company shall act as manager of a unit trust, if, for the purpose of the Income Tax Act, the manager or proposed manager and the trustee corporation or company or bank acting or proposed as trustee are deemed to be under the control of substantially the same persons or to consist of substantially the same shareholders. (Cap. 201.)

Restriction as to manager

5.—(1) Every manager of a unit trust shall be a company.

(2) No company shall act as manager of a unit trust unless a person approved by the Minister has given a bond to the Government in the sum of forty thousand dollars conditioned to secure the due discharge by the manager of its obligations.

(3) The sum of forty thousand dollars named in a bond given under this section shall not be deemed to be a penalty, but shall be liquidated damages, and

shall accordingly be recoverable in full as a debt due by the surety to the Government unless the surety proves performance of every condition upon which the bond is defeasible.

(4) Every sum so recovered shall be paid into the Consolidated Fund, and the residue, after the deduction of costs and other expenses shall, without further appropriation than this section, be paid to the trustee and applied by it towards the discharge of the obligations of the manager, and any balance not required for that purpose shall be refunded to the surety.

Restrictions as to trustee

6. Every trustee of a unit trust shall be—

- (a) a trustee corporation within the meaning of the Trustee Act; or (*Cap. 65.*)
- (b) a company or bank approved for that purpose by the Minister either generally or in respect of a particular unit trust:

Provided that the Minister may, in his discretion, require a bond to the Government in the sum of forty thousand dollars conditioned to secure the due discharge by the trustee of its obligations to be put up on behalf of such trustee.

Nomination of company by trustee

7.—(1) Any trustee of a unit trust shall have power to nominate another company in which shall be vested the investments and other property referred to in subsection (3) of section 4.

(2) No company shall be so nominated by the trustee unless the trustee is the registered holder or beneficial owner of all the shares in that company.

(3) Upon the nomination of any such company by the trustee, the trustee, in addition to its own obligations as trustee in relation to the unit trust, shall thenceforth be jointly and severally liable with the nominated company for the due and faithful performance and observance by the nominated company of all the duties and obligations imposed on the nominated company in relation to the unit trust either by this Act or any other written law.

Prospectus

8.—(1) Before any interest in a unit trust is issued or offered to the public for subscription or purchase, or the public is invited to subscribe for or purchase such an interest, the manager of the unit trust shall, within the immediately preceding three years, have issued a statement in writing setting out the matters specified in the Schedule.

(2) It shall not be lawful to issue any form of application for any interest in a unit trust unless the form is issued with a statement in respect of the unit trust that complies with the requirements of this section and the statement was issued within the immediately preceding three years:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the interests in the unit trust; or
- (b) in relation to interests in the unit trust which were not offered to the public.

(3) Every statement that is issued pursuant to the preceding provisions of this section, and every notice, circular, advertisement, or other invitation offering to

the public for subscription or purchase any interest in a unit trust, shall be deemed to be a prospectus within the meaning of section 2 of the Companies Act and to have been issued by the manager and all of the provisions of that Act and any other written law relating to prospectuses and to liability in respect of statements in and omissions from prospectuses shall, with the necessary modifications, apply accordingly as if the interests in the unit trust were shares, and the required contents of any prospectus were those specified in the Schedule. (Cap. 247.)

(4) This section shall not apply in connection with any interest in a unit trust at any time after that interest has first been subscribed for or purchased by a member of the public.

(5) The trustee shall not be liable for any omissions or mis-statements by the manager in any such statement. (Section amended by 22 of 1978, s. 2.)

Appointment of trustee

9. No manager of a unit trust, and no person as agent of such a manager shall issue or offer to the public for subscription or purchase any interest in a unit trust, or invite the public to subscribe for or purchase such an interest, unless—

- (a) provision has been made in a deed for the appointment of a trustee of the unit trust and for such other matters as are prescribed by this Act and by any regulations made thereunder; and
- (b) a trustee eligible in accordance with section 6 has accepted appointment as trustee of the unit trust and has executed the trust deed; and
- (c) the trust deed has been approved for the purposes of this Act by the Registrar and an authenticated copy thereof has been lodged with him as required by the next succeeding section.

Copy of deed to be lodged with Registrar

10.—(1) Notwithstanding anything to the contrary in section 102 of the Companies Act, the manager of each unit trust shall lodge an authenticated copy of the trust deed in respect thereof and of every amendment of that deed with the Registrar. (Cap. 247.)

(2) Every such copy shall be authenticated by a director or responsible officer of the company that is trustee of the unit trust.

(3) Where an authenticated copy of an amendment of the trust deed in respect of any unit trust has to be lodged with the Registrar as aforesaid, it shall be so lodged within fourteen days after the date of the execution of the amendment or (if the trust deed has not been so lodged at that date) within fourteen days after the date on which the trust deed is so lodged.

Removal of trustee

11.—(1) Notwithstanding the provisions of any other written law or anything to the contrary in the trust deed governing any unit trust, the manager of the unit trust shall not have power to remove the trustee thereof but may apply to the Court for an order providing for the removal of that trustee.

(2) The Minister shall have power—

- (a) to remove the trustee of any unit trust in any case where the trustee was approved by the Minister under paragraph (b) of section 6; or
- (b) to apply to the Court for the removal of the trustee of any unit trust.

(3) Notwithstanding anything to the contrary in the trust deed governing the unit trust, no trustee of a unit trust shall, except as provided in subsection (2), be

discharged or retire from that trust until another trustee has been appointed to and assumed that office in accordance with the provisions of the trust deed or the Trustee Act. (Cap. 65.)

Trustee to keep accounts

12. Every trustee of a unit trust shall cause proper books of account to be kept, either by the trustee or the manager, in respect of the unit trust, and shall cause to be sent annually, to every person who is a unit holder at the date of the statement, an audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed that have been made since the date of the last statement.

Implied provisions in trust deed

13.—(1) The following provisions shall be implied in every trust deed relating to a unit trust, notwithstanding anything to the contrary in the deed:—

✓ (a) that the manager of the unit trust shall use its best endeavours to ensure that the unit trust is carried on in a proper and efficient manner;

(b) that the manager of the unit trust shall—

✓ (i) make available upon demand to the trustee thereof or to its nominated company for inspection the whole of the manager's books and papers and all books and papers relating to the unit trust;

(ii) give to the trustee of the unit trust or to its nominated company such information as that trustee or nominated company requires with respect to all matters relating to the unit trust or to any property of the manager (whether acquired before or after the date of the trust deed), or otherwise relating to the affairs of the manager;

✓ (c) that the trustee of the unit trust shall not act on any direction of the manager to acquire any property for the unit trust or dispose of any property of the unit trust if, in the trustee's opinion conveyed in writing to the manager, the proposed acquisition or disposal is manifestly not in the interests of the unit holders, and the trustee shall not be liable to the unit holders or to the manager for so refusing to act on any direction of the manager;

(d) that the manager of a unit trust shall—

✓ (i) on request in writing of the trustee, or of either at least one-tenth in number of the unit holders, or of a unit holder or unit holders holding (at the date of the receipt by the manager of the request) at least one-tenth of the value of the interests in the unit trust then held by unit holders, summon a meeting of unit holders to be held in accordance with section 19, by sending by post a notice specifying the time and place of the meeting to every unit holder at his last known address not later than fourteen days before the date of the proposed meeting;

✓ (ii) lay before the meeting copies of the last statement and summaries filed with the Registrar in accordance with paragraph (b) of subsection (1) of section 21 and subsection

(2) of that section.

(2) Every provision implied in the trust deed relating to any unit trust in accordance with this section shall be enforceable by the trustee or any unit holder of the unit trust.

Certificate of interest to be issued

14.—(1) Upon the purchase of an interest in any unit trust from the manager, or upon a subscription for an interest in the unit trust, the manager of the unit trust shall as soon as practicable issue or cause to be issued to the purchaser or subscriber a certificate as evidence of that interest, which certificate shall be given by the trustee of the unit trust or by someone other than the manager authorised in writing by that trustee.

(2) On any such certificate, a facsimile of the signature of any person, by whatever process it is produced, shall be deemed to be the signature of that person.

Duty of manager with respect to subscriptions

15.—(1) The manager of any unit trust shall pay into a separate bank account all money received by that manager in respect of purchases of or subscriptions for interests in that unit trust.

(2) The manager of any unit trust shall, within such period not exceeding seven days as the trust deed provides, pay to the trustee or its nominated company all money received by that manager or any agent of that manager in respect of purchases of or subscriptions for interests in that unit trust, except so much thereof as the manager is entitled to deduct or retain in accordance with the trust deed.

Subscriptions, etc., to become subject to trusts

16. All money required to be paid to the trustee or its nominated company in accordance with subsection (2) of section 15 shall, upon receipt by the manager or any agent of the manager, become subject to the trusts declared in the trust deed governing the unit trust.

Trust deed to state conditions for buying back interests

17.—(1) The trust deed in respect of each unit trust shall state whether the manager has an obligation to buy back interests in the unit trust if requested to do so.

(2) Where the manager has such an obligation, the trust deed shall also state the manner in which and the conditions on which such interests are to be bought back, including the method of calculating the minimum price at which interests are to be bought back.

Interests in unit trust to be transferable

18. Every interest in a unit trust shall be transferable and the trust deed in respect of the unit trust shall state the manner in which transfers of interests in the unit trust shall be made and recorded.

Meeting of unit holders

19.—(1) Where a meeting of the unit holders of any trust is held in accordance with sub-paragraph (i) of paragraph (d) of subsection (1) of section 13, the meeting shall be under the chairmanship of a nominee of the trustee, and shall be conducted

in accordance with any provisions in that connection in the trust deed and otherwise as directed by the chairman of the meeting.

(2) A unit holder or unit holders holding at least three-quarters of the value of the interests in the unit trust held by the unit holders, who are present in person or by proxy at any such meeting and vote, and who hold at least one-quarter of the value of all the interests in the unit trust held by unit holders, shall have the power by resolution to give such directions to the trustee of the unit trust as they think proper concerning the unit trust, being directions that are consistent with the provisions of the trust deed and this Act.

(3) Where any direction is so given to the trustee of a unit trust, the trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following that advice or direction.

(4) In any case where the trustee of a unit trust is of opinion that any direction so given conflicts with the trusts or any written law or is otherwise objectionable, the trustee may apply to the Court for directions in the matter, and the decision and order therein shall be final:

Provided that nothing in this subsection shall make it necessary to apply to the Court for directions.

(5) Where a unit holder is a company or other corporation its properly appointed representative may be its proxy.

Removal of manager

20.—(1) The Court may, on the application of the trustee of a unit trust, or at least one-tenth in number of the unit holders, or of the Minister, order that the manager be removed from that office.

(2) The manager of any unit trust shall cease to hold that office if—

(a) the trustee certifies that it is in the interest of the unit holders that the manager should do so; or

(b) the unit holders, at a meeting held pursuant to section 19, so direct.

(3) If the Court orders the removal of the manager of any unit trust, or if any manager of a unit trust ceases to hold office under the provisions of subsection (2), that manager shall immediately desist from all activities related to the unit trust.

Accounts etc., to be filed

21.—(1) The manager of each unit trust shall, before the thirty-first day of March in every year, or such other date as the Registrar may approve, file or cause to be filed with the Registrar—

(a) a list of the names and addresses of all persons who on the thirty-first day of December of the preceding year, or such other date as the Registrar may approve, were unit holders of the unit trust, which list shall show the extent of the interests held by every such unit holder;

(b) a statement setting out the number and dates of distributions to unit holders in respect of each unit of interest in the unit trust during the immediately preceding five years, the amount of each such distribution, and the extent to which each such distribution consisted of anything other than dividends, interest or bonuses, with particulars of the nature and amount of the other components.

(2) The manager of each unit trust shall file or cause to be filed with the Registrar annually an audited statement of the accounts of the trust, and a

summary of purchases and sales of property under the unit trust, and a list of all the investments of the unit trusts as at the end of the period to which the accounts relate, together with particulars of the cost and the estimated market value as at that date of the investments and other property.

(3) Where a new trustee or a new manager of a unit trust is appointed at any time after the commencement of the trust, that trustee or manager shall give notice of the appointment to the Registrar within twenty-eight days after the date of the appointment.

(4) The documents lodged with the Registrar pursuant to section 10 and the preceding provisions of this section shall be open for public inspection on payment of the prescribed fee.

(5) Every list, statement, summary, and document filed with the Registrar under this section shall be verified by a statutory declaration made by a director of the company that is manager of the unit trust or by a responsible officer of the company.

Appointment of inspectors

22.—(1) One or more of the inspectors to investigate and report on the affairs of any unit trust and its manager may be appointed by—

(a) the Minister; or

(b) the Court on application made either at least one-tenth in number of the unit holders of the unit trust or by a unit holder or unit holders holding at the date of the application at least one-tenth of the value of the interests in the unit trusts then held by unit holders.

(2) Every such inspector shall have in relation to the unit trust and its manager and affairs all the powers conferred on an inspector in relation to a company and its affairs by section 136 of the Companies Act (except subsection (5) of that section) and those provisions so far as they are applicable and with the necessary modifications, shall apply accordingly. The report of every such inspector who is appointed by the Minister shall be made to the Minister and the report of every such inspector who is appointed by the Court shall be made to that Court.

(Cap. 247.)

(3) If any officer or agent of a company that is manager of a unit trust in respect of which an inspector has been appointed under this section refuses to produce to the inspector any book or paper which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company or unit trust, that officer or agent shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months.

(4) No such officer or agent shall be excused from answering any question put to him by an inspector with respect to the affairs of the company or unit trust on the ground that the answer may incriminate or tend to incriminate him, but no statement made by him in answer to any such question shall be admissible against him in criminal proceedings, except proceedings under section 118 of the Penal Code for making a false statement upon oath.

(Cap. 17.)

Court may confer additional powers of management

23.—(1) Subject to any contrary intention expressed in the trust deed in respect of any unit trust, where in the opinion of the Court any sale or other

disposition, or any purchase, investment, acquisition, retention, expenditure, or other transaction is expedient in the management or administration of any money, investments, or other property for the time being subject to the trusts governing a unit trust or would be in the best interests of the unit holders of the unit trust, but it is inexpedient or difficult or impracticable to effect the same without the assistance of the Court, or the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee or manager of the unit trust by the trust deed or by any written law, the Court may by order confer upon the trustee or manager, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions (if any) as that Court may think fit, and may give such directions as it thinks fit to the trustee or manager in respect of the exercise of any power conferred by the order.

(2) An application to the Court under this section may be made by either the manager or the trustee or at least one-tenth in number of the unit holders.

Temporary managers

24.—(1) If any vacancy occurs in the office of manager of a unit trust, the trustee thereof shall have the power to appoint a qualified company as temporary manager thereof, which temporary manager shall have all the powers conferred on the manager by the trust deed or by law until a manager is appointed.

(2) Upon any such vacancy occurring, the trustee of the unit trust shall summon a meeting of the unit holders of the unit trust, and shall take such steps as that meeting or any subsequent meeting of those unit holders may require to secure the appointment of that company or some other qualified company as manager of the unit trust.

Trust deed not to exempt trustee or manager from liability

25.—(1) The trustee of a unit trust and the manager thereof shall each have the same duty to observe care and diligence in the performance of its duties as any other trustee, and shall each be entitled to the same indemnities and relief as any other trustee.

(2) Any provision in a trust deed governing a unit trust or in any other instrument shall be void so far as it would have the effect of—

- (a) exempting the trustee or manager or any director or officer of the trustee or manager from liability for breach of trust where it or he fails to show the degree of care and diligence required of it or him in that capacity, having regard to the provisions of the trust deed and the powers, authorities, or discretions conferred thereby;
- (b) indemnifying the trustee or manager or any such director or officer from any such liability.

Offences

26.—(1) Every person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand dollars who—

- (a) issues any interest in a unit trust or offers any such interest to the public for subscription or purchase, or invites the public to subscribe for or purchase such an interest, in contravention of any provision of this Act; or
- (b) issues any form of application for an interest in a unit trust in contravention of subsection (2) of section 8, or continues any

regulations may be made for all or any of the following purposes:—

- (a) prescribing the maximum commission that may be charged, and the maximum charge for administration and other expenses that may be made, by the manager or trustee of any unit trust;
- (b) prescribing the fees to be paid on the lodging or filing of any documents in respect of a unit trust with the Registrar and on the inspection of any such documents;
- (c) prescribing the manner in which the accounts of the unit trust are to be kept.

SCHEDULE

(Section 8)

PARTICULARS TO BE INCLUDED IN STATEMENT BY MANAGER

1. The date of the statement.
2. The date of and parties to the trust deed under this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the trust deed has been amended or abrogated.
4. The name of the trustee and the address of the trustee's registered office, and the name of any nominated company of the trustee and the address of that nominated company's registered office.
5. A summary of the provisions of the trust deed and of this Act regulating the retirement, removal, and replacement of the trustee.
6. The name of the manager and the address of its registered office, and the names of the directors of the company that is the manager.
7. A summary of the provisions of the trust deed and of this Act regulating the retirement, removal, and replacement of the manager.
8. The name and address of the auditor of the trust.
9. A summary of the provisions (if any) of the trust deed regulating the appointment, retirement, removal and replacement of the auditor.
10. The period of the trust, if that is declared by the trust deed, and a summary of the provisions (if any) of the trust deed for the winding up of the trust on its termination.
11. The method of calculation (if any) provided by the trust deed of the price at which the manager may sell any interest.
12. Whether or not the trust deed imposes upon the manager any obligation to buy back the interest of any unit holder, and if so a summary of the conditions attaching to that obligation and the method provided by the trust deed for the calculation of the minimum purchase price of an interest in the unit trust payable by the manager.
13. A summary of the investments and property and classes of investments and property that may be held or acquired under the trust, including particulars of the companies and classes of companies whose securities be so held or acquired, and a statement of the percentage of the assets of the trust that may be invested in any one company or class of companies or investments or property. If there is no such percentage limitation, this shall be expressly stated.

14. Full information regarding the remuneration of the trustee and the manager, and the provisions (if any) of the trust deed governing the manner in which provision is made for their remuneration, and regarding the charges (if any) that are made in respect of their remuneration upon the sale or subscription for or purchase of an interest in the unit trust and upon the distribution of income and capital under trust deed.
15. A summary of the provisions (if any) of the trust deed regulating the distribution to the unit holders of the income and gains (whether in the nature of capital or income) of the unit trust.
16. If any reference is made in the statement to the yield of income obtained by unit holders, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest, or bonuses has been taken into account in calculating the yield.
17. A summary of the provisions of the trust deed and of this Act regulating the convening of meetings of unit holders.
18. The names and the date of commencement of operation of any other unit trusts conducted by the manager during the five years immediately preceding the date of the statement.
19. If the statement by the manager of the unit trust is issued after any date on which the manager is required to file a statement under paragraph (b) of subsection (1) of section 21 with the Registrar, the statement by the manager shall set out the particulars required to be set out in the last statement required to be so filed under that paragraph.

Controlled by Ministry of Finance