

**THE COLLECTIVE INVESTMENT  
SCHEMES ACT 2008**

**- A Draft (for the Maldives)-**

*BILL*

*THE COLLECTIVE INVESTMENT SCHEMES ACT 2008*

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## PART I – PRELIMINARY

Commencement      **1.** This Act shall come into effect on [                      ].

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

“ACD” means the director of an investment company which is appointed in accordance with section 14(1)(a) and the requirements of the CIS regulations;

“CIS licensed person” means a person holding a licence granted by the CMDA under Part III of this Act;

“CIS regulation” means any regulation made by the CMDA and/or the Minister under any provision of this Act;

“close-ended investment company” means an investment company which is not an open-ended investment company;

“CMDA” means the Capital Market Development Authority established by the Securities Act;

“collective investment scheme” or “CIS” has the meaning given in section 3;

“Companies Act” means The Companies Act No. 10/96;

“company” means a company incorporated or registered under the Companies Act or any company formed and registered under any other law in the Maldives or any other jurisdiction;

“constitutive document” means, in respect of an investment company, its instrument of incorporation and, in respect of a unit trust, the trust deed constituting the same;

“controller” means, in respect of any company:

- (a) any person holding or interested in, directly or indirectly, 50% of the share capital of such company;
- (b) any person entitled to exercise or direct the exercise of more than 50% of the votes at any meeting of shareholders of the company;
- (c) any person entitled directly or indirectly to receive 50% of any income distributions of the company;
- (d) any person entitled to appoint or remove a majority of the directors of that company; and

- (e) any person who is a controller of any other company which is a controller of the first mentioned company.

“Court” means any duly established and recognised court of the Maldives;

“depository” means, in relation to an investment company, the person appointed as depository in accordance with this Act and the CIS regulations, with whom the property of the investment company is entrusted for safekeeping and, in relation to a unit trust, the trustee;

“director” means a person occupying the position of a director of the company concerned by whatever name called;

“formation documents” means the constitutive document and the prospectus of any licensed scheme;

“instrument of incorporation” means the instrument of incorporation of an investment company prepared in accordance with the CIS regulations;

“investment adviser” means a person who is retained by a scheme (or its manager) in accordance with any relevant CIS regulations, under a commercial arrangement which is not a contract of service:

- (a) to supply the scheme or the manager with advice in relation to the scheme as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities; or
- (b) to exercise for it any function concerning the management of scheme property (including discretionary investment management);

“investment company” means a company incorporated in the Maldives which is a collective investment scheme;

“licensed bank” means a bank which has been licensed to operate in the Maldives pursuant to the Maldives Monetary Authority Act 1981 or any successor thereto;

“licensed scheme” means a collective investment scheme for the time being licensed by the CMDA pursuant to Part IV of this Act;

“manager” means, in respect of a unit trust, the person appointed as such in the trust deed or, in the case of an investment company, the ACD;

“Minister” means the Minister of Finance and Treasury or where the President transfers the responsibility for finance and treasury to

another person, that person;

“officer” of a company means any director, secretary or other executive officer of that company;

“open-ended investment company” is defined in section 14(1)(f)(i);

“operator” means, in relation to an investment company, that company and, in relation to a unit trust, the manager;

“participants” has the meaning given in section 3(1);

“partnership” means a partnership constituted under the law of the Maldives or a country or territory outside the Maldives;

“principal” means any person who is likely to have significant influence over a CIS licensed person or its business activities;

“prospectus” means a document containing information about a licensed scheme published in accordance with the CIS regulations;

“recognised scheme” means a collective investment scheme recognised under Part VI of this Act;

“recognised stock exchange” means the Maldives Stock Exchange or any other stock exchange recognised for the purposes of this Act and the CIS regulations by the CMDA;

“Registrar” means the authority to which the functions of the Registrar have been assigned by the President, pursuant to the Companies Act;

“scheme” means a collective investment scheme;

“scheme advertisement” means an invitation or inducement to any person or persons to participate in a collective investment scheme;

“Securities Act” means The Securities Act No. 02/06;

“trustee” means the person acting as trustee of the property of a unit trust and holding such property on trust for the unitholders;

“umbrella scheme” means a collective investment scheme, the constitutive document of which provides for such segregation of the scheme property as is mentioned in section 3(5);

“unit” means, in relation to a unit trust, a unit representing the rights or interests of the participants in the unit trust and, in relation to an investment company, a share in that investment company;

“unitholder” means a holder of units;

“unit trust” means a collective investment scheme established pursuant to section 21, under which the property is held on trust for the participants.

Meaning of  
collective  
investment  
scheme

**3.** (1) In this Act, a collective investment scheme (or “CIS”) means, subject to this section, any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement (the “participants”), whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that:

- (a) the participants do not have day-to-day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and
- (b) the arrangements have either or both of the characteristics mentioned in subsection (3); and
- (c) the arrangements satisfy the condition set out in subsection (4).

(3) The characteristics referred to in subsection (2)(b) are:

- (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
- (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.

(4) The condition referred to in subsection 2(c) is that the property belongs beneficially to, and is managed by or on behalf of, a company, the trustee of a trust or some other entity or arrangement having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that company, trust, entity or arrangement.

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(5) Where any arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property in question, and each such part is maintained in a portfolio segregated in the books of the scheme from the other assets of the scheme, then the arrangements shall nevertheless be regarded as constituting a collective investment scheme which shall be regarded as an umbrella scheme.

(6) The following are not collective investment schemes:

- (a) an arrangement operated by a person other than by way of

business;

- (b) an arrangement where each of the participants carries on a business other than a business concerned with dealing in, arranging deals, managing or advising on securities or similar financial investments and enters into the arrangement for commercial purposes related to that business;
- (c) an arrangement where each of the participants is a company in the same group as the manager of the scheme;
- (d) an arrangement where—
  - (i) each of the participants is a bona fide employee or former employee, or the wife, husband, widow, widower, child or stepchild under the age of 18 years of such an employee or former employee, of a company in the same group as the manager; and
  - (ii) the property to which the arrangement relates consists of shares or stock, debentures, loan stock or any other instrument creating or acknowledging indebtedness or warrants or certificates conferring rights in relation to any such investment, in each case being an investment in or in a member of that group;
- (e) a franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
- (f) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (g) an arrangement under which the rights or interests of the participants consist of the benefit of certificates or other instruments conferring rights in relation to securities other than shares in an investment company;
- (h) a contract of insurance;
- (i) an occupational pension scheme;
- (j) a close-ended investment company which is established by the operator of another collective investment scheme:
  - (i) for the purposes of holding investments, directly or indirectly, on behalf of that scheme (being either a single collective investment scheme, or a series of collective

investment schemes established by a single sponsor to invest in parallel with one another (the "owning schemes"); and

(ii) the shares of which are not marketed to or otherwise available to any participant other than the owning schemes.

- (k) any other arrangement as may be specified by the CMDA in any CIS regulation.

## PART II - UNLICENSED PERSONS AND SCHEMES

Restrictions on  
unlicensed  
persons

### 4. (1) No person shall:

- (a) establish or operate a collective investment scheme in the Maldives, or purport to establish or operate such a scheme, or act or purport to act as a depositary or manager of a collective investment scheme in the Maldives unless that person is a CIS licensed person and the scheme is a licensed scheme;
- (b) issue or cause to be issued in the Maldives a scheme advertisement, unless the scheme is a licensed scheme or a recognised scheme, and that person is a CIS licensed person or the contents of the scheme advertisement have been approved by a CIS licensed person; or
- (c) advise or procure any person in the Maldives to become a participant in a collective investment scheme unless that person is a CIS licensed person or an investment adviser authorised under the Securities Act and the scheme is a licensed scheme or a recognised scheme.

(2) The CMDA may pass CIS regulations specifying activities which are to be treated as subject to or excluded from control under subsection (1) or any part thereof, or that this section shall not apply in respect of any CIS whose participants are restricted by number and/or by criteria specified in such CIS regulations and/or where such participants are limited to persons resident outside the Maldives.

(3) The CMDA may also, on a case by case basis, permit a collective investment scheme which will limit its participants to persons resident outside the Maldives to be established or operated in the Maldives without requiring it to be a licensed scheme and/or to be operated by CIS licensed persons<sup>1</sup>.

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<sup>1</sup> Impact on existing Maldivian funds industry etc to be discussed.

Arrangements  
made by or  
through  
unlicensed  
persons

**5.** (1) Subject to subsection (3), any agreement which is entered into by a person in the course of, or in consequence of, a contravention by that person of section 4 shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result.

(2) The compensation recoverable under subsection (1) shall be such as the parties may agree or as the Court may, on the application of either party, determine.

(3) The Court may allow an agreement to which subsection (1) applies to be enforced, or money and property paid or transferred under that agreement to be retained; if the Court is satisfied that the person mentioned in that subsection reasonably believed that his entering into the agreement did not constitute a contravention of section 4.

(4) Where a person elects not to perform an agreement which, by virtue of this section is unenforceable against him, or by virtue of this section recovers money paid or other property transferred by him under an agreement, he shall repay any money and return any other property received by him under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party, the references to that property in subsections (1), (3) and (4) shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of section 4 shall not make an agreement illegal or invalid to any greater extent than is provided in this section.

Injunctions and  
restrictions orders

**6.** (1) The Court may, on the application of the CMDA, grant an injunction where it is satisfied that:

- (a) there is a reasonable likelihood that a person will contravene section 4; or
- (b) any person has contravened section 4 and that there is a reasonable prospect that the contravention will continue or be repeated.

(2) If, on the application of the CMDA, the Court is satisfied that a person has entered into any transaction in contravention of section 4, the Court may order that person and any other person who appears to the Court to have been knowingly concerned in the contravention, to take such steps as the Court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) The Court may, on the application of the CMDA, make an order under subsection (4) if satisfied that a person has been carrying on business in

contravention of section 4 and:

- (a) that profits have accrued to that person as a result of carrying on that business; or
- (b) that one or more investors have suffered loss or been otherwise adversely affected in consequence, requiring that person to pay such sum as appears to the Court to be just, to such persons as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with that person as a result of which the profits mentioned in subsection (3)(a) have accrued to him, or the loss or other adverse effect mentioned in subsection (3)(b) has been suffered.

(4) The Court may, under this subsection, order the person concerned to pay into Court, or appoint a receiver to recover from him, such sum as appears to the Court to be just having regard:

- (a) in a case within subsection (3)(a), to the profits appearing to the Court to have accrued;
- (b) in a case within subsection (3)(b), to the extent of the loss or other adverse effect; or
- (c) in a case within both subsection (3)(a) and (3)(b), to the profits and to the extent of the loss or other adverse effect.

(5) Nothing in this section affects the right of any person, other than the CMDA, to bring proceedings in respect of any of the matters to which this section applies.

### PART III - LICENSED PERSONS

Application for a licence

**7.** (1) An application for a licence to become a CIS licensed person under this Part may only be made by a company incorporated in the Maldives and, in the case of an application to be licensed as a depositary, may only be made by a licensed bank or such other financial institution as the CMDA may prescribe.

(2) An application under this section shall:

- (a) be made in such manner as the CMDA may direct and be accompanied by the payment of such fee as the CMDA may from to time prescribe pursuant to section 27 hereof<sup>2</sup>;

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<sup>2</sup> NB no particular forms or fees are provided for currently in the Regulations.

- (b) specify whether the applicant seeks to be licensed as a manager or depositary;
- (c) contain or be accompanied by:
  - (i) information relating to the scheme or schemes with which the applicant proposes to be involved; and
  - (ii) such other information as the CMDA may reasonably require for the purpose of determining the application; and
- (d) contain the address of a place in the Maldives for the service on the applicant of any notice or other document required or authorised to be served on him under this Act.

(3) At any time before determining an application, the CMDA may require the applicant to furnish such additional information as the CMDA may reasonably require for the purpose of determining the application (which may differ as between different applications).

[(4) Any person acting as the manager or depositary of a collective investment scheme in the Maldives on the date on which this Act comes into force shall have a period of [12 months] from the date on which this Act comes into force to apply for a licence to become a CIS licensed person.<sup>3</sup>]

Grant and refusal  
of licence

**8.** (1) The CMDA may, on an application duly made in accordance with section 7 and after being furnished with the information required under that section or any CIS regulations, grant or refuse the application and will give the applicant written notice of its decision not later than six months after the date on which the CMDA received the application and further information required.

(2) The CMDA shall grant the application if it appears to it from the information furnished by the applicant, and having regard to any other information in its possession, that the applicant and its directors, controllers and any other principals are fit and proper persons to carry on the activities described in the application. The CMDA may specify in CIS regulations certain conditions which must be satisfied for a person to be a fit and proper person for these purposes.

(3) The CMDA may, in determining whether to grant or refuse an application, also have regard to any other business which the applicant proposes to carry on in connection with its activities as a CIS licensed person.

(4) The CMDA shall give the applicant for a licence written notice of the

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<sup>3</sup> To be discussed.

grant or refusal of the licence. Where the licence is granted the notice shall specify the date on which the licence takes effect.

(5) The CMDA may attach such conditions to the grant of a licence as the CMDA may determine is reasonably necessary and may, on the application of the relevant CIS licensed person, vary such conditions from time to time.

(6) The CMDA may, on the application of any CIS licensed person, direct that all or any of the requirements set out in the CIS regulations are not to be applied to him in respect of a particular licensed scheme or are to apply to him in respect of that scheme with such modifications as may be specified by it.

(7) Where the CMDA refuses to grant a licence, the provisions of section 33 shall apply.

Withdrawal of applications and licences by consent

**9.** (1) An application under section 7 or section 11 may be withdrawn before it is granted or refused and, subject to subsection (2), a licence granted under section 8 or section 12 may be withdrawn by the CMDA at the request, or with the consent, of the relevant CIS licensed person(s).

(2) Notwithstanding the withdrawal of a licence, the CMDA shall retain the right to take action against any person who was previously a CIS licensed person for breach of any provision of this Act or any CIS regulations.

(3) The CMDA shall give public notice of any withdrawal of a licence under subsection (1).

#### PART IV - LICENSED SCHEMES

Types of licensed scheme

**10.** A unit trust or an investment company may apply to the CMDA to become a licensed scheme.

Application for scheme licence

**11.** (1) An application for a licence in respect of a collective investment scheme:

- (a) shall be made in such manner as the CMDA may direct and be accompanied by the payment of such fee as the CMDA may from time to time prescribe pursuant to section 27 hereof<sup>4</sup>;
- (b) shall be accompanied by the scheme's formation documents;
- (c) shall state the corporate name and registered or principal office of the manager and of the depositary of that scheme; and
- (d) shall specify any activities other than in relation to the scheme in which the manager or depositary are or are proposed to be engaged.

(2) At any time before determining an application, the CMDA may require the applicant to furnish such additional information as the CMDA may reasonably require for the purpose of determining the application (which may differ as between different applications).

(3) Any collective investment scheme in existence in the Maldives on the date on which this Act comes into force shall have a period of [12 months] from the date on which this Act comes into force to apply for a licence to

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<sup>4</sup> NB no particular forms or fees are provided for currently in the Regulations.

become a licensed scheme.<sup>5]</sup>

Licences

**12.** (1) The CMDA may, on an application made in accordance with section 11 and after being furnished with all information it may require under that section, grant a licence in respect of a unit trust or an investment company if it appears to the CMDA that the criteria mentioned in sections 13 and 14 are satisfied in relation to the scheme and the scheme complies with the requirements of any CIS regulations applicable to it.

(2) The CMDA may, on the application of any scheme applying for a licence under section 11 or any licensed scheme, direct that all or any of the requirements set out in the CIS regulations are not to apply to that scheme or are to apply with such modifications as may be specified by it.

(3) The CMDA shall give the applicant written notice of its decision, not later than six months after the date on which the CMDA received the application and the other information required under this Part IV or any CIS regulations, including, where the licence is granted, the date on which the licence takes effect.

(4) The CMDA may attach such conditions to the grant of a licence as the CMDA may determine is reasonably necessary and may, on the application of the manager of the scheme, vary such conditions from time to time.

Names

**13.** No scheme shall be permitted which has a name which is the same as any other name appearing in the Registrar's index of company names or the CMDA's CIS register maintained in accordance with section 52 (disregarding the words "the", "company", "investment company", "open-ended", "close-ended", "unit trust" or abbreviations thereof) or which is undesirable or misleading.

Criteria for licensing

**14.** (1) The criteria referred to in section 12(1) are as follows:

- (a) the scheme has a manager and a depositary who are independent of each other;
- (b) the manager and the depositary are each:
  - (i) a company incorporated in and with its registered and head office in the Maldives; and
  - (ii) a CIS licensed person;
- (c) the scheme complies with any CIS regulations applicable to it;
- (d) the aims of the scheme are reasonably capable of being

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<sup>5</sup> To be discussed.

achieved;

(e) in the case of a unit trust, the unitholders are entitled to have their units redeemed or repurchased in accordance with its formation documents and any relevant CIS regulations at a price related to the net value of the scheme property;

(f) in the case of an investment company either:

(i) the unitholders are entitled to have their units redeemed or repurchased in accordance with its formation documents and any relevant CIS regulations at a price related to the net value of the scheme property (an "open-ended investment company"); or

(ii) it is listed on a recognised stock exchange; or it is incorporated for a set period of time after which the scheme will be wound up and the proceeds distributed to the participants.

(2) The criteria prescribed by subsection (1)(b), shall be treated as satisfied if they will become so upon incorporation.

Representation  
against refusal

**15.** Where on an application for a licence, the CMDA refuses to grant the licence, the provisions of section 33 shall apply.

Alterations

**16.** (1) The manager of a licensed scheme shall give written notice to the CMDA of any proposed alteration to the scheme.

(2) The following shall be treated as a proposal to alter any licensed scheme:

(a) any proposed alteration to the formation documents of the scheme;

(b) any proposed alteration to any CIS licensed person who acts as depository, manager or investment adviser to or for the scheme;

(c) any proposed reconstruction or amalgamation involving the scheme; and

(d) any proposal to wind up the scheme.

(3) No alteration to a licensed scheme shall be made if any of the criteria set out in sections 13 or 14 would not be satisfied if the alteration or replacement were made.

(4) Effect shall not be given to a proposal for alteration of a licensed scheme as set out in paragraph (1) unless:

- (a) the CMDA has given its approval to the proposal; or
- (b) three months have elapsed since the date on which the notice was given under subsection (1) without the CMDA having notified the manager or the depositary that the proposal is not approved.

(5) In addition to the requirement under subsection (4), where the proposed alteration relates to a change or event which changes the purpose or nature of the scheme, may materially prejudice a unitholder, alters the risk profile of the scheme or introduces any new type of payment out of scheme property, prior approval to the change must be obtained by way of resolution of the unitholders. In all other cases, the unitholders must be given at least one month's notice of the amendment.

Restrictions on retirement

**17.** Neither the depositary nor the manager of any licensed scheme may retire except upon the appointment of a replacement in accordance with CIS regulations passed by the CMDA.

Avoidance of exclusion clauses

**18.** Any provision of the constitutive document of a scheme shall be void in so far as it would have the effect of exempting the manager or the depositary from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the scheme.

#### PART V - ESTABLISHMENT OF INVESTMENT COMPANIES AND UNIT TRUSTS

Establishment of schemes

**19.** (1) An investment company may be established pursuant to the provisions of section 20, subject to the additional requirements of this Act and the CIS regulations.

(2) A unit trust may be established pursuant to the provisions of section 21, subject to the additional requirements of this Act and the CIS regulations.

Incorporation of investment companies

**20.** (1) Where the CMDA grants a licence in respect of an investment company then, immediately upon the coming into effect of the licence, a body shall be deemed to have been incorporated, notwithstanding that at the time of its incorporation under this section, the body will not have any shareholders or property, and the investment company so formed shall be a legal entity distinct from its unitholders, capable of exercising all the powers and functions specified in this Act and its constitutive document.

(2) Once a licence has been granted in respect of an investment company, no amendments may be made to any statements contained in the investment company's instrument of incorporation, other than in compliance with section 16.

(3) The provisions of an investment company's instrument of incorporation shall be binding on the officers and depositary of the investment company and on each of its shareholders; and those persons shall

be taken to have notice of the provisions of the instrument.

(4) An investment company has power to do such things as are incidental or conducive to the carrying on its business.

(5) A contract may be made by an investment company by any person acting under its authority.

(6) The Companies Act shall not apply to investment companies, save for:

(a) the following sections, which will apply to all investment companies as if incorporated into this Act: [10(e), 10(f), 12, 13, 14, 32, 38 and 74]; and

(b) the following sections, which will apply to all close-ended investment companies as if incorporated into this Act: [40 and 41].

(7) Subject to any restriction in their constitutive documents, investment companies may issue fractions of shares.

Establishment of unit trusts

**21.** (1) Where the CMDA grants a licence in respect of a unit trust then, immediately upon the coming into effect of the licence, a trust will be deemed to exist, notwithstanding that at the time of its establishment under this section, the unit trust will not have any unitholders or property.

(2) Subject to this Act, a unit trust shall be recognised by the law of the Maldives as valid and enforceable.

(3) A trustee shall exercise its powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(4) Subject to subsection (5), where in any transaction or matter affecting a unit trust the trustee informs another party to the transaction or matter that it is acting as trustee, a claim by such other party in relation to that transaction or matter shall extend only to the scheme property.

(5) Nothing in subsection (4) shall affect the liability of a trustee for breach of trust.

(6) Where in any transaction or matter referred to in subsection (4) the trustee fails to inform such other party that it is acting as trustee and that party is otherwise unaware of it, the trustee shall be personally liable to such other party in respect thereof and have a right of recourse to the scheme property by way of indemnity against such personal liability.

(7) Subject to any restriction in their constitutive documents, unit trusts may issue fractions of units.

Registration

**22.** (1) As soon as is reasonably practicable after the coming into effect of a

licence in respect of an investment company, the CMDA shall send a copy of the licence and the investment company's instrument of incorporation to the Registrar.

(2) The Registrar shall, upon receipt of the documents provided under subsection (1), immediately register—

- (a) the instrument of incorporation of the investment company; and
- (b) a statement of the address of the company's head office and of the name and registered or principal office of the persons named in the licence application as the ACD and depositary of the investment company.

(3) An investment company shall not carry on any business unless its instrument of incorporation has been registered under subsection (2).

(4) The entry on the Registrar's register shall note whether the company concerned is an open-ended investment company or a close-ended investment company.

Safekeeping of  
scheme property  
by depositary

**23.** (1) Subject to subsection (3), all the scheme property of an investment company shall be entrusted for safekeeping to a depositary.

(2) On the granting of a licence pursuant to section 12, the person named in the application as the depositary of the investment company is deemed to be appointed as the investment company's first depositary. Any subsequent appointment of a depositary must be made by the investment company's manager on behalf of the investment company.

(3) The CMDA may pass CIS regulations making provision in relation to the safekeeping of scheme property of an investment company by the depositary.

Auditors

**24.** Each scheme shall be required to appoint an auditor, which may not be an officer or employee of the scheme itself or its manager or depositary. The CMDA may pass CIS regulations specifying certain other eligibility requirements for auditors and their appointment, rights and remuneration.

Register of units

**25.** (1) Each scheme must keep a register of persons who hold units in that scheme. This register is prima facie evidence of any matters which are by this Act or any CIS regulations directed or authorised to be contained in it.

(2) No notice of any trust, express, implied or constructive, is to be entered on the scheme's register or be receivable by the scheme.

## PART VI - RECOGNITION OF FOREIGN SCHEMES

General  
recognition

**26.** (1) The CMDA may pass CIS regulations providing for collective investment schemes which are managed in and licensed or authorised under the law of a country or territory outside the Maldives to be recognised schemes for the purposes of this Act.<sup>6</sup>

(2) The CMDA shall not make an order designating any country or territory for the purposes of this section unless it is satisfied that the law under which collective investment schemes of the class to be specified by the order are licensed or authorised and supervised in that country or territory, affords to investors in the Maldives protection at least equivalent to that provided for them by this Act.

## PART VII - FEES

Application fees

**27.** (1) Every application made under sections 7 and 11 shall be accompanied by such fee as prescribed by the CMDA in CIS regulations made by it under this section from time to time.

(2) An application referred to in subsection (1) shall not be regarded as duly made or given unless this section is complied with.

Annual fees

**28.** The operator of each licensed scheme shall pay such annual fee as may be prescribed by the CMDA by way of CIS regulations made by it under this section from time to time.

## PART VIII - POWERS OF CMDA TO MAKE REGULATIONS

General  
regulations

**29.** (1) The CMDA shall have the power to make CIS regulations, providing for:

- (a) the constitution and management of licensed schemes and the contents of constitutive documents of licensed schemes;
- (b) the publication and contents of the prospectus of licensed schemes;
- (c) the powers, obligations and duties of CIS licensed persons, including regulations relating to the conduct of business and the financial resources to be maintained;
- (d) the rights and obligations of the unitholders in any licensed scheme;

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<sup>6</sup> NB no provisions relating to Recognised Schemes are provided for currently in the Regulations.

- (e) the nature of records to be maintained pursuant to this Act;
- (f) the winding up of a licensed scheme; and
- (g) any other matter that this Act contemplates may be provided for by CIS regulations passed by the CMDA.

(2) Without prejudice to the generality of subsection (1), CIS regulations under this section may provide for:

- (a) the issue and redemption of the units under the scheme;
- (b) the expenses of the scheme and the means of meeting them;
- (c) the appointment, removal, powers and duties of an auditor for the scheme;
- (d) restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
- (e) the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
- (f) the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the unit holders and to the CMDA;
- (g) the reconstruction or amalgamation of schemes; and
- (h) the amendment of the scheme.

Statements of principle and codes of practice

**30.** (1) The CMDA may pass CIS regulations dealing with statements of principle with respect to the conduct and financial standing expected of CIS licensed persons<sup>7</sup>.

(2) If the CMDA issues a statement of principle under subsection (1), it [may/must]<sup>8</sup> also issue a code of practice for the purposes of helping to determine whether or not a person's conduct complies with the statement of principle.

(3) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person under any such code or standard.

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<sup>7</sup> NB no statements of principle or codes of conduct are provided for currently in the Regulations.

<sup>8</sup> NB FSMA provides that the FSA must accompany any statements of principle with a code of practice.

(4) Failure to comply with a statement of principle or code of practice under this section is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not of itself give rise to any right of action by investors or other persons affected or affect the validity of any transaction.

(5) The disciplinary action which may be taken under subsection (4) is—

- (a) withdrawal or suspension of a licence under section 32;
- (b) giving of a direction under section 34 or 41;
- (c) making of a public statement under section 35; or
- (d) application by the CMDA for an injunction or other order under section 36,

and the reference in subsection (3) to powers of intervention is a reference to the powers conferred by section Part IX.

(6) The CMDA shall exercise its powers in such manner as appears to it appropriate to secure compliance with statements of principle under this section.

(7) The CMDA may on the application of any person:

- (a) modify a statement of principle issued under subsection (1) or code of practice issued under subsection (2) so as to adapt it to the applicant's circumstances or to any particular kind of business carried on by him; or
- (b) exempt the applicant from compliance with any such statement of principle or code of practice, generally or in relation to any particular kind of business carried on by him.

(8) The powers conferred by subsection (7) shall not be exercised unless it appears to the CMDA:

- (a) that compliance with the statement of principle or code of practice in question would be unduly burdensome for the applicant, having regard to the benefit which compliance would confer on unitholders; and
- (b) that the exercise of those powers will not result in any undue risk to unitholders.

(9) The powers conferred by subsection (7) may be exercised unconditionally or subject to conditions; and subsection (4) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle or code of practice.

Alterations to  
CIS regulations

**31.** The CMDA may, by further CIS regulation, amend, modify, supplement or replace any CIS regulations passed by it under this Act in whole or in part.

## PART IX - POWERS OF INTERVENTION

Withdrawal or  
suspension of  
licence

**32.** (1) The CMDA may at any time withdraw or suspend any licence granted by it under Part III of this Act if it appears to it:

- (a) that the holder of the licence is not a fit and proper person to carry on any activity in relation to a scheme which he is carrying on or proposes to carry on; or
- (b) without prejudice to paragraph (a), that:
  - (i) the holder of the licence has contravened any provision of this Act or any CIS regulations;
  - (ii) in purported compliance with this Act or any CIS regulations, the holder of the licence has furnished the CMDA with false, inaccurate or misleading information; or
  - (iii) the holder of the licence has contravened any prohibition or requirement imposed under this Act or any conditions attached to the licence.

(2) For the purposes of subsection (1)(a), the CMDA may take into account the fitness and propriety of any director, controller or other principal of the CIS licensed person in question.

(3) The CMDA may at any time withdraw or suspend any licence granted by it under Part IV of this Act if it appears to it:

- (a) that any requirement for the granting of the licence is no longer satisfied;
- (b) that the scheme or its manager or depositary has contravened any relevant provision or has, in purported compliance with any such provision, knowingly or recklessly given the CMDA information which is false or misleading in a material particular; or
- (c) it is desirable to revoke the licence in order to protect the interests of unitholders or potential unitholders in the scheme.

(4) The CMDA may from time to time attach conditions to any licence granted by it under this Act if it determines it reasonably necessary to do so.

(5) The suspension of a licence under this section shall be for a specified period, or until the occurrence of a specified event, or until specified conditions are complied with; and, for the avoidance of doubt, while a licence is suspended the holder is not a CIS licensed person or a licensed scheme (as applicable).

(6) The CMDA may, on the application of a licence holder, vary any period, event or condition of a licence specified under subsection (4) or (5).

Notice and  
appeals

**33.** (1) Where the CMDA proposes:

- (a) to withdraw or suspend or attach a condition to a licence under this Act;
- (b) to refuse an application under sections 7 or 11; or
- (c) to make a direction under section 34 or 41,

it shall give the applicant, the CIS licensed person or the person in respect of whom it proposes to make a direction written notice of its intention to do so, stating the reasons for which it proposes to act.

(2) In the case of a proposed withdrawal or suspension, or proposal to attach a condition or to make a direction, the notice shall state the date on which it is proposed that the withdrawal, suspension, condition or direction should take effect and, where relevant, its proposed duration.

(3) Where the reasons stated in a notice under this section relate specifically to matters which:

- (a) refer to a person identified in the notice other than the applicant or the holder of the licence; and
- (b) are, in the opinion of the CMDA, prejudicial to that person in any office or employment,

the CMDA shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(4) A notice under this section shall give particulars of the right conferred by subsection (5).

(5) A person on whom a notice is served under subsection (1) may, within 21 days after the service, make written representations to the CMDA and, if desired, oral representations to a person appointed by the CMDA for that purpose.

(6) The CMDA shall have regard to any representations made in accordance with subsection (5) in determining whether to withdraw, suspend or attach conditions to the licence or to refuse the application or make a direction and shall give written notice of its determination to all persons notified by it under subsection (1) or (3).

(7) The CMDA may give public notice of any decision notified by it under subsection (6) and the reasons for the decision; except that it shall not do so in

the case of a decision to grant the application or, as the case may be, not to withdraw or suspend the licence, unless the person concerned consents to it doing so.

(8) A person upon whom notice is served under subsection (6) who is aggrieved by the decision of the CMDA may appeal to the [Minister/Court<sup>9</sup>], whose decision shall be final.

Employment of  
prohibited  
persons

**34.** (1) Where it appears to the CMDA that an individual is not a fit and proper person to be employed in connection with a licensed scheme it may direct that that person shall not, without the written consent of the CMDA, be employed in connection with a licensed scheme:

- (a) by CIS licensed persons; or
- (b) by any specified person or persons.

(2) A direction under subsection (1), in this section referred to as a "disqualification direction", shall specify the date on which it is to take effect and a copy of it shall be served on the person to whom it relates.

(3) Any consent by the CMDA to the employment of a person who is the subject of a disqualification direction may:

- (a) relate to employment generally or to employment of a particular kind;
- (b) be given subject to conditions and restrictions; and
- (c) be varied by the CMDA from time to time.

(4) Where the CMDA proposes to give a disqualification direction in respect of any person, it shall give that person or the applicant written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the right conferred by subsection (5), and the provisions of section 33 shall apply.

(5) No person shall accept or continue in any employment in contravention of a disqualification direction.

(6) It is the duty of a licensed person to take reasonable care not to employ or continue to employ a person in contravention of a disqualification direction.

(7) The CMDA may revoke a disqualification direction.

(8) In this section, references to employment include references to

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<sup>9</sup> To be advised.

employment otherwise than under a contract of service.

Public statement **35.** If the CMDA considers that a CIS licensed person has contravened a prohibition or requirement imposed by this Act or by the CMDA acting in accordance with its powers under this Act or any CIS regulations, the CMDA may publish a statement to that effect.

Injunctions **36.** (1) Where, on the application of the CMDA, the Court is satisfied:

- (a) that there is a reasonable likelihood that any person will contravene a provision of this Act or any CIS regulations;
- (b) that any person has contravened a provision referred to in paragraph (a), and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that any person has contravened a provision referred to in paragraph (a), and that there are steps that could be taken for remedying the contravention,

the Court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the Court to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(2) Nothing in this section affects the right of any person, other than the CMDA, to bring proceedings in respect of the matters to which this section applies.

Restrictions on business **37.** (1) The CMDA may prohibit a CIS licensed person from:

- (a) entering into transactions of any specified kind, or entering into those transactions except in specified circumstances or to a specified extent;
- (b) soliciting business from persons of a specified kind or otherwise than from such persons or in a specified country or territory outside the Maldives; or
- (c) carrying on business in a specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to transactions entered into in connection with, or for the purposes of a licensed scheme, or to other business carried on in connection with or for the purposes of such a scheme.

Restrictions on dealing with assets **38.** (1) The CMDA may prohibit a CIS licensed person from disposing of or otherwise dealing with any assets, or any specified assets of that licensed person or any licensed scheme in any specified manner or otherwise than in a specified manner.

(2) A prohibition under this section may relate to assets outside the Maldives.

Vesting of assets  
in appointed  
person

**39.** (1) The CMDA may impose a requirement that all assets, or all assets of any specified class or description, which at any time while the requirement is in force belong to a CIS licensed person or licensed scheme shall be transferred to and held for such persons by an entity approved for these purposes by the CMDA (the "appointed person").

(2) Where a requirement is imposed under this section, it shall be the duty of the depositary to transfer the assets to the appointed person and to give the appointed person all other assistance as may be required to enable the appointed person to discharge his functions in accordance with the requirement.

(3) Assets held by an appointed person in accordance with a requirement under this section shall not be released or dealt with except in accordance with directions given by the CMDA or in such circumstances as may be specified by the CMDA.

(4) A requirement under this section may relate to assets outside the Maldives.

Rescission and  
variation

**40.** The CMDA may, either of its own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Part, rescind or vary the prohibition or requirement if it appears to the CMDA that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Directions

**41.** (1) The CMDA may give a direction under subsection (2) if it appears to it:

- (a) that any of the requirements for the granting of a licence are no longer satisfied;
- (b) that the exercise of the power conferred by this subsection is desirable in the interests of unitholders or potential unitholders in the scheme; or
- (c) without prejudice to paragraph (b):
  - (i) that the manager or depositary of such a scheme has contravened any provision of this Act or any CIS regulations or,
  - (ii) in purported compliance with any such provision, has furnished the CMDA with false, inaccurate or misleading information or,

(iii) has contravened any prohibition or requirement imposed under this Act.

(2) A direction under this subsection may:

- (a) require that the scheme cease the issue and/or redemption of units on a date specified in the direction until such further date as is specified in that or another direction;
- (b) require that transfers of units cease on a date specified in the direction until such further date as is specified in that or another direction;
- (c) if it is an umbrella scheme, require that investments made in respect of one or more parts of the scheme property which are pooled separately, be realised and, following the discharge of such liabilities of the scheme as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to participants in accordance with the provisions of the formation documents of the scheme and the CIS regulations; or
- (d) require, by such date as is specified in the direction or if no date is specified, as soon as is practicable, the scheme is wound up.

(3) Subject to subsection (4), the withdrawal or suspension of a licence under section 32 shall not affect the operation of any direction under subsection (2) which is then in force; and a direction may be given under subsection (2) in relation to a scheme in the case of which the licence has been revoked if a direction under that subsection was already in force at the time of revocation.

(4) Where a winding up order has been made by the Court, no direction under this section shall have effect in relation to the scheme concerned.

(5) The CMDA may, either of its own motion or on the application of the depositary or manager of the scheme concerned, withdraw or vary a direction given under this section if it appears to the CMDA that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Notice of directions

**42.** (1) The power to give a direction under section 41 in relation to a scheme shall be exercised by written notice served by the CMDA on the manager and depositary and the notice shall take effect on a date to be specified in it.

(2) If the CMDA refuses to withdraw or vary a direction on the application of the manager or depositary of the scheme concerned, it shall serve that person with a written notice of refusal.

(3) A notice giving a direction, or varying it otherwise than on the application of the manager or depositary concerned, or refusing to withdraw or vary a direction on the application of such a person, shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.

(4) The CMDA may give public notice of a direction given by it under section 41, and of any withdrawal or variation of that direction; and any such notice may, if the CMDA thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

Actions for damages

**43.** Without prejudice to section 60, a contravention of this Act or any CIS regulations in respect of a collective investment scheme shall be actionable at the suit of a person who suffers loss as a result of the contravention.

Duty to assist foreign regulators

**44.** The CMDA shall have a duty to assist any foreign regulatory authority in the proper and reasonable performance of its duties and the CMDA shall be entitled to exercise any of its powers under this Act for such purpose.

#### PART X - WINDING UP

Winding up orders

**45.** (1) The CMDA, the depositary or manager of a scheme, or a creditor of a licensed scheme may present a petition to the Court to wind up that scheme.

(2) The Court may, on receipt of a petition under subsection (1), wind up a licensed scheme if:

- (a) the scheme is unable to pay its debts; or
- (b) the Court is of the opinion that it is just and equitable that it should be wound up.

(3) For the purposes of subsection (2)(a), a scheme is deemed to be unable to pay its debts:

- (a) if a creditor to whom the scheme is indebted in a sum exceeding [ . . . ]<sup>10</sup> then due, has served on the scheme a demand requiring the scheme to pay the sum due and the scheme has for 7 days thereafter failed to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if any order of any court requiring the scheme to make payment to a creditor has not been satisfied in whole or in part and there is no action taken by the scheme in Court to indicate

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<sup>10</sup> To be advised.

any reason for the non-payment other than disability;

- (c) if, taking into account the contingent and prospective liabilities of the scheme, the Court is satisfied that the scheme is unable to pay its debts; or
- (d) if a scheme defaults in an obligation to pay any sum due and payable under any investment agreement and a demand requiring the scheme to pay the sum due has been served on the scheme and the scheme has for seven days thereafter failed to pay the sum or secure or compound for it to the reasonable satisfaction of the creditor.

(4) Where a petition for the winding up of a licensed scheme is presented by a person other than the CMDA:

- (a) that person shall serve a copy of the petition on the CMDA; and
- (b) the CMDA is entitled to be heard on the petition.

Dissolution in other circumstances

**46.** (1) Where the affairs of a licensed scheme are proposed to be wound up otherwise than by the Court, the manager of the licensed scheme shall give notice to the CMDA in accordance with section 16.

(2) The Court may, on the application of the CMDA or the manager of the relevant scheme, make an order deferring the date at which the winding up of the scheme is to commence for such period as the Court thinks fit.

(3) Within 21 days of receiving such notice under subsection (1), the CMDA may petition the Court to wind up the scheme.

#### PART XI - INVESTIGATIONS

Investigations

**47.** (1) The CMDA may, if it appears to it that it is in the interests of the unitholders to do so, or that the matter is of public concern, or if requested by any foreign regulatory authority, appoint one or more competent inspectors to investigate and report on:

- (a) the affairs of the manager or depositary of any licensed scheme; or
- (b) the affairs of the operator, manager or depositary of any recognised scheme in relation to activities carried on in the Maldives.

Investigations disclosure

**48.** (1) If the person (“A”) appointed to conduct an investigation under this Act considers that a person (“B”) is or may be able to give information which is relevant to the investigation, A may require B:

- (a) to produce to A any documents in B's possession or under his control which appear to A to be relevant to that investigation;
- (b) to attend before A; and
- (c) otherwise to give A all such assistance in connection with the investigation which B is reasonably able to give,

and it is B's duty to comply with that requirement.

(2) A person shall not, under subsection (1), be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in court, except that a lawyer may be required to furnish the name and address of his client.

(3) Nothing in subsection (1) requires a person, except as mentioned in subsection (4), to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless:

- (a) the person to whom the obligation of confidence is owed is the manager or depositary of the scheme under investigation or any person whose affairs are under investigation; or
- (b) the making of the requirement was authorised by the CMDA.

(4) Subsection (3) does not apply where the person owing the obligation of confidence, or to whom it is owed, is a manager or, depositary under investigation by virtue of that section.

Investigations  
supplementary

**49.** (1) Where a person claims a lien on a document, its production under section 54 shall be without prejudice to the lien.

(2) An inspector appointed under section 48 may, and if directed by the CMDA shall, make interim reports to the CMDA and on the conclusion of his investigation, shall make a final report to the CMDA.

(3) Where it appears to the CMDA that matters have been revealed in the course of an inspector's investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, the CMDA may direct the inspector to take no further steps in the investigation, or to take only such steps as are specified in the direction.

(4) Where an investigation is the subject of a direction under subsection (3), the inspector shall make a final report to the CMDA only where the CMDA directs him to do so.

(5) The final report shall be written or printed as the CMDA may direct

and the CMDA may, if it thinks fit, cause the report to be published and give a copy, on request and on payment of the prescribed fee to any unitholder, manager or depositary of a scheme under investigation under section 48 or to any other person whose conduct is referred to in the report.

(6) A person who is convicted on a prosecution instituted as a result of an investigation under section 48 may, in the same proceedings, be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

(7) For the purposes of subsection (6), there shall be treated as expenses of the investigation, in particular, such reasonable sums as the CMDA may determine in respect of general staff costs and overheads.

#### PART XII - INFORMATION

CIS register

**50.** (1) The CMDA shall keep a register containing an entry in respect of:

- (a) each CIS licensed person;
- (b) each licensed scheme;
- (c) each recognised scheme; and
- (d) each person in respect of whom a direction under section 42 is in force.

(2) The entry in respect of each CIS licensed person shall consist of:

- (a) the name and address of that person;
- (b) the activities covered by the licence; and
- (c) such other information as the CMDA may determine.

(3) The entry in respect of each such scheme shall consist of:

- (a) its name;
- (b) the name and address of the manager and depositary;
- (c) in the case of a recognised scheme, the name and address of the operator and of any representative of the operator in the Maldives; and
- (d) in either case, such other information as the CMDA may determine.

(4) Where a CIS licensed person or licensed scheme or recognised scheme in respect of which there is an entry in the register has ceased to be

licensed or recognised, the CMDA shall make a note to that effect in the register.

(5) An entry in respect of which a note is made under subsection (5) may be removed from the register at the end of such period as the CMDA thinks appropriate.

Inspection of register

**51.** (1) The information contained in the entries included in the register shall be open to inspection; and the CMDA may publish the information contained in those entries in any form it thinks appropriate and may offer copies of any such information for sale.

(2) Information which by virtue of this section is open to inspection shall be open to inspection free of charge but only at such times and places as the CMDA may appoint and a person entitled to inspect any information may obtain a certified copy of it from the CMDA on payment of a prescribed fee.

(3) The CMDA shall keep a register in such form as it thinks appropriate with a view to facilitating inspection of the information which it contains.

Records to be kept

**52.** (1) Every CIS licensed person shall keep, in the Maldives, adequate and orderly records of their business affairs, their financial position, their internal organisation, their compliance with statutory and regulatory requirements and of their risk management systems, and orderly records of the business transactions undertaken with or on behalf of any licensed scheme or any other person, and the business affairs of such other persons (where relevant to the business undertaken by the CIS licensed person) and their relationship with such other persons.

(2) The records should be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

(3) Unless otherwise prescribed by statute, records shall be kept for a period of at least five years. In the case of records relating to another person, the records shall be kept for a period of five years from the time when the business relationship with that person ceased.

(4) The nature of the records to be kept may be prescribed by the CMDA in CIS regulations.

Power to call for information

**53.** (1) The CMDA may, by notice in writing, require a manager or depositary of a licensed scheme or recognised scheme to furnish it with such information as it may reasonably require for the exercise of its functions under this Act.

(2) The CMDA may require any information which it requires under this section to be furnished within such reasonable time and verified in such manner as it may specify.

(3) Sections [ ] have effect in relation to a contravention of a requirement

imposed under subsection (1) as they have effect in relation to a contravention of the provisions to which those sections apply.

#### PART XIII – RESTRICTIONS ON DISCLOSURE

Restrictions on disclosure of information

**54.** (1) Subject to section 655, restricted information which relates to the business or other affairs of any person shall not be disclosed by:

- (a) a person mentioned in subsection (3) (“the primary recipient”); or
- (b) any person obtaining the information directly or indirectly from him,

without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(2) Subject to subsection (4), restricted information for the purposes of this section is information obtained by the primary recipient for the purposes of, or in the discharge of his functions under this Act or under any CIS regulations, whether or not by virtue of any requirement to supply it made under those provisions.

(3) The persons mentioned in subsection (1) are:

- (a) the CMDA;
- (b) a person appointed or authorised to exercise powers under section 47;
- (c) an officer or servant of a person mentioned in paragraphs (a) or (b).

(4) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this section.

Exemptions from restriction on disclosure

**55.** (1) Section 54 shall not preclude the disclosure of information:

- (a) with a view to the institution of, or otherwise, for the purposes of criminal proceedings;
- (b) with a view to the institution of, or otherwise, for the purposes of any civil proceedings arising under or by virtue of this Act; or
- (c) to the CMDA if the disclosure is made in the interests of investors or in the public interest.

(2) Section 54 shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this subsection by the Minister by statutory instrument, to discharge any functions specified in that order.

(3) Section 54 shall not preclude the disclosure of information for the purpose of enabling or assisting any foreign regulatory authority to perform its duties.

(4) An order under subsection (2) designating an authority for the purposes of that subsection may:

- (a) impose conditions subject to which the disclosure of information is permitted; and
- (b) otherwise restrict the circumstances in which that disclosure is permitted.

(5) Section 54 shall not preclude the disclosure of any information contained in any notice or copy of a notice served under this Act, the contents of which have not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from him.

#### PART XIV - MISCELLANEOUS AND SUPPLEMENTARY

Jurisdiction of court

**56.** Proceedings arising out of any act or omission, or proposed act or omission of the CMDA in the discharge or purported discharge of any of its functions under this Act may be brought in Court.

False or misleading statements

**57.** (1) A person commits an offence if:

- (a) for the purposes of or in connection with any application under this Act; or
- (b) in purported compliance with any requirement imposed on him by or under this Act or any CIS regulation,

he furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular.

Service of notices

**58.** (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act and any CIS regulation to be given to, or served on, any person other than the CMDA.

(2) A document referred to in subsection (1) may be given to or served on the person in question:

- (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by registered post to him at that address.
- (3) A document referred to in subsection (1) may:
- (a) in the case of a company, be given to or served on the secretary or clerk of that body;
  - (b) in the case of a partnership, be given to or served on any partner;
  - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association; or
  - (d) in the case of an appointed representative, be given to or served on his principal.
- (4) For the purposes of this section, the proper address of any person is his last known address, whether of his residence or of a place where he carries on business or is employed, and also any address applicable in his case under the following provisions:
- (a) in the case of a company, its secretary or its clerk, the address of its registered or principal office in the Maldives; and
  - (b) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the Maldives.
- (5) Where a person has notified the CMDA of an address or a new address at which documents may be given to or served on him under this Act, that address shall also be his proper address for the purposes mentioned in subsection (4) or, as the case may be, his proper address for those purposes in substitution for that previously notified.

Immunity of  
CMDA and its  
employees

**59.** No action or other legal proceedings shall lie against the CMDA or an officer or employee of the CMDA or a person, including a stock exchange, acting under the direction of the CMDA for any act done in good faith in the performance or intended performance of any duty, or in the exercise of any power under this Act or the CIS regulations, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Offences committed  
under this Act

**60.** (1) Any person who contravenes any of sections 4, 34(5), 55 or 58 of this Act commits an offence and is liable on conviction to punishment under subsection (8).

(2) Where a company is guilty of an offence under this Act, any director, executive officer, secretary or employee of the company who was in any way, by act or omission, directly or indirectly knowingly concerned in or a party to the commission of the offence shall also be guilty of that offence.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of the association, and not in that of any of its members, and for the purposes of the proceedings, any rules of court relating to the service of documents shall have effect as if the association were a corporation.

(4) A fine imposed on an unincorporated association on its conviction for an offence under this Act shall be paid out of the funds of the association.

(5) In proceedings brought against any person for an offence under section 4(1)(a), it shall be a defence for that person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) In proceedings brought against any person for an offence under section 4(1)(b), it shall be a defence for that person to prove that he acted on the order of another person and that he believed, on reasonable grounds, that:

- (a) the person to whose order the advertisement was issued was a CIS licensed person;
- (b) the contents of the advertisement were approved by a CIS licensed person; or
- (c) the advertisement was permitted by virtue of CIS Regulations published under section 4(2).

(5) In proceedings brought against any person for an offence under section 4(1)(c), it shall be a defence for that person to prove that he acted on the order of another person, and that he believed, on reasonable grounds, that the scheme was a licensed scheme or recognised scheme.

(6) A person who is guilty of an offence under this Act shall be liable on conviction to a fine not less than [25,000]<sup>11</sup> Rufiyaa and not exceeding [100,000] Rufiyaa or imprisonment for a term not less than [3 months] and not longer than [one year] or to both.

(7) A person who fails to comply with any CIS Regulations shall commit an offence punishable on conviction by a fine not exceeding [15,000] Rufiyaa.

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<sup>11</sup> To be advised.

(8) Prosecution for an offence against any provision of this Act may be taken by the CMDA.

(9) The CMDA may, without instituting proceedings against any person for an offence punishable by a fine under this Act or the CIS regulations, demand the amount of the fine or such reduced amount as it thinks fit from the person liable and—

- (a) where the person pays the amount to the CMDA within 14 days of the demand, no proceedings shall be taken against him in relation to the offence;
- (b) where the person does not pay the amount the CMDA may commence proceedings in relation to the offence.

(10) The powers conferred on the CMDA under subsection (2) shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under that subsection.

Power of Minister  
to give directions  
to CMDA

**61.** The Minister may give to the CMDA directions of a general or specific character as to the exercise of the CMDA's functions and/or pass CIS regulations governing the operation of the CMDA in respect of its powers under this Act, and it shall be the duty of the CMDA to give effect to any such direction or CIS regulation.

Citation

**62.** This Act may be cited as the CIS Act.