

**THE COLLECTIVE INVESTMENT
SCHEMES REGULATIONS 2008**

- A Draft (for the Maldives) -

THE COLLECTIVE INVESTMENT SCHEMES REGULATIONS 2008

ARRANGEMENT OF SECTIONS

1. Authority
2. Commencement
3. Citation
4. Application
5. Disapplication in respect of certain schemes
6. Interpretation

Schedule 1: Constitutive Document

Schedule 2: Fit and Proper Persons

Schedule 3: Prospectus Requirements and Other Promotional Documents

Schedule 4: Units

Schedule 5: Meetings

Schedule 6: Reports and Accounts

Schedule 7: Investment and Borrowing Powers

Schedule 8: Operating Duties and Responsibilities

Part I: Dealing

Part II: Valuation and Pricing

Part III: Title and Registers

Part IV: Appointment and Replacement of Manager and Depositary

Part V: Powers and Duties of the Scheme, the Manager and the Depositary

Part VI: Payments

Part VII: Income: Allocation and Distribution

Schedule 9: Suspension of Dealings and Winding Up of a Solvent Scheme

1. **Authority**

These Regulations are made by the Capital Market Development Authority under the powers conferred on it by Part VIII of the Collective Investment Schemes Act [No.: []] (the "Act").

2. **Commencement**

These Regulations come into force on []. [The Schedules to these Regulations shall come into force on a date to be specified by the CMDA.]

3. **Citation**

These Regulations shall be cited as the CIS Regulations.

4. **Application**

Subject to section 5, the Schedules to these Regulations will apply to all licensed schemes and all references to a "scheme" shall be to a licensed scheme.

5. **Dis-application in respect of certain schemes**

The CMDA may determine, in respect of any particular scheme or category of scheme, by reference to the number of potential investors or the nature of those investors, that any of the provisions in these Regulations do not apply to that scheme or category of scheme.

6. **Interpretation**

6.1 Words and expressions defined in the Act have, unless the contrary intention appears, the meanings which they bear in the Act.

6.2 In these Regulations, unless the context otherwise requires:

"affected person" means the scheme, its manager, its depositary, any investment adviser, any associate of any such person, or the auditor of the scheme;

"appropriate valuer" means a person who:

- (a) has knowledge of and experience in the valuation of properties of the relevant kind in the relevant area;
- (b) is independent of the scheme, the depositary and the manager; and
- (c) has not engaged himself or any of his associates in relation to the finding of the property for the scheme or the finding of the scheme for the property;

"approved bank" means [any bank that:

- (a) is subject to regulation by a national banking regulator;

- (b) is required to provide audited accounts;
- (c) has minimum net assets of [£5] million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and
- (d) has an annual audit report which is not materially qualified]¹;

"business day" means any day on which [banks] in the Maldives are generally open for business²;

"capital property" means the scheme property, other than income property and any amount for the time being standing to the credit of the distribution account;

"class" means a particular class of units of a scheme (or of a particular sub-fund of an umbrella scheme);

"class meeting" means a separate meeting of holders of a class of units;

"contract for differences" means rights under a contract for differences or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in:

- (a) the value or price of property of any description; or
- (b) an index or other factor designated for that purpose in the contract;

"currency class unit" means a unit denominated in a currency which is not the base currency of the scheme concerned;

"custodian" means as an approved bank³;

"dealing day" means the period in a business day (in accordance with provisions of the prospectus) during which the scheme is open for business;

"derivative" means an option, future or contract for differences;

"dilution" means the amount of dealing costs incurred, or expected to be incurred, by or for the account of a scheme to the extent that these costs may reasonably be expected to result, or have resulted, from the acquisition or disposal of investments by the scheme as a consequence of the increase or decrease in the cash resources of the scheme resulting from the issue or cancellation of units over a period for the purposes of this definition, dealing costs include both the costs of dealing in an investment, professional fees incurred, or expected to be incurred, in relation to the acquisition or disposal of property and, where there is a spread between the buying and selling prices of the investment, the indirect cost resulting from the differences between those prices;

¹ Is this a suitable definition? Currently relevant to Schedule 7, paragraph 5.2 and definition of "custodian"

² TBD: is this a suitable definition?

³ TBD. cf definition in FSA glossary?

"dilution adjustment" means an adjustment to the price of a unit determined by the manager of a scheme, under Schedule 8, Part II, paragraph 4 (dilution) for the purpose of reducing dilution;

"dilution levy" means a charge of such amount or at such rate as is determined by the manager of a scheme to be made for the purpose of reducing the effect of dilution;

"distribution account" means the account to which the income property of a scheme must be transferred as at the end of each annual accounting period under Schedule 8, Part VII, paragraph 2 (income allocation and distribution);

"forward price" means a price calculated by reference to the valuation point next following the manager's agreement to sell or, as the case may be, to redeem the units in question;

"future" means rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made;

"income equalisation" means a capital sum which, in accordance with a power contained in the scheme's constitutive document, is included in an allocation of income for a unit issued or sold during the accounting period in respect of which that income allocation is made;

"income property" means all sums considered by a manager, after consultation with the auditor, to be in the nature of income received or receivable for the account of a scheme;

"initial offer" means an offer for sale of units in a scheme or sub-fund where all or part of the consideration paid for the units is to be used to acquire the initial scheme property of the scheme or that particular sub-fund;

"initial price" means the price to be paid for units in a scheme during the initial offer period;

"intermediate holding vehicle" means a company, trust or partnership (but not a collective investment scheme), whose purpose is to enable the holding of real property on behalf of a scheme;

"limited redemption arrangements" means the arrangements operated by a scheme for the redemption of units where the scheme holds itself out to redeem units less frequently than twice in a calendar month in accordance with Schedule 8, Part I, paragraph 6.7 (limited redemption);

"option" means an option to acquire or dispose of an investment;

"redemption" means the purchase of units in a scheme from their holder by the scheme (or, in the case of a unit trust, by the trustee in respect of the scheme);

"scheme property" means the property subject to the scheme constituted by it;

"share" means a share or stock in the share capital of any body corporate (wherever incorporated);

"sub-fund" means a separate part of the scheme property of a scheme that is pooled separately;

"valuation point" means a valuation point fixed by the manager for the purpose of Schedule 8, Part II, paragraph 2 (valuation points).

Schedule 1

Constitutive Document

1. Relationship between the constitutive document, the Act and these Regulations

The constitutive document of a scheme must not contain any provision that:

- (a) conflicts with any rule in the Act, these Regulations or any other CIS regulation; or
- (b) is unfairly prejudicial to the interests of unitholders generally, or to the unitholders of any class of units.

2. Nature of constitutive document

A scheme must be constituted by:

- (a) in the case of a unit trust, a trust deed made between the manager and the trustee; and
- (b) in the case of an investment company, an instrument of incorporation,

in each case complying with the requirements in this Schedule.

3. Amendments to the constitutive document

A scheme may amend any provision which is contained in its constitutive document by following the procedure set out in the Act.

4. Binding effect

4.1 The provisions of a scheme's constitutive document are binding on the manager and depositary of the scheme and on each of its unitholders; and all such persons (but no others) are to be taken to have notice of the provisions of the constitutive document.

4.2 Any power conferred by the Act or these Regulations is subject to any restriction in a scheme's constitute document.

5. Required contents

The statements and provisions required by the following table must be included in the constitutive document of a scheme.

5.1 Name of the scheme

A statement of the name of the scheme.

5.2 Nature of the scheme

A statement as to whether the scheme is a unit trust, an open-ended investment company or a close-ended investment company.

5.3 Unitholder's liability to pay

A statement that a unitholder is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units which he holds.

5.4 Depositary

A statement that the scheme property is entrusted to a depositary for safekeeping and, in the case of a unit trust, that the scheme is held by the trustee on trust for the unitholders according to the number of units held by each unitholder.

5.5 Base currency

A statement of the base currency of the scheme.

5.6 Valuation and pricing

A statement setting out the basis for the valuation and pricing of the scheme.

5.7 Duration of the scheme

If the scheme is to be wound up after a particular period expires, a statement to that effect.

5.8 Object of the scheme

A statement:

- (a) as to the object of the scheme, in particular the types of investments and assets in which it may invest; and
- (b) that the object of the scheme is to invest in assets of that kind with the aim of spreading investment risk and giving unitholders the benefits of the results of the management of those assets.

In relation to an umbrella scheme, the statement should include the investment objectives applicable to each part of the scheme property that is pooled separately.

5.9 Classes of unit

A statement:

- (a) specifying the classes of unit that may be issued, and for umbrella scheme, the classes that may be issued in respect of each sub-fund; and
- (b) if the rights of any class of unit differ, a statement describing those differences in relation to the differing classes; and
- (c) if any class of units in a scheme has different rights from another class of units in that scheme, how the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class must be calculated.

5.10 Restrictions on sale and redemption

Where relevant, the restrictions which will apply in relation to the sale and redemption of units.

5.11 Meetings

Details of the procedures for the convening of meetings and the manner in which votes may be given at a meeting of unitholders.

5.12 Certificates

That the scheme will issue certificates evidencing the ownership of units, or, if the scheme is to dispense with the requirement to issue certificates, the details of any substituted procedures for evidencing title to the scheme's units.

5.13 Income

A statement setting out the basis for the distribution or re-investment of income. Where relevant, a provision for income equalisation.

5.14 Redemption or cancellation of units on breach of law or rules

A statement that where any holding of units by a unitholder is (or is reasonably considered by the manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.

5.15 Charges and expenses

A statement of the charges and expenses of the scheme that may be taken out of the scheme property.

5.16 Governing law: head office

A statement, in the case of a unit trust, that the trust, deed is made under and governed by the law of the Maldives and, in the case of an investment company, that its head office is in the Maldives.

5.17 Additional provision for unit trusts

A declaration that, subject to the provisions of the trust deed and these Regulations the scheme property is held by the trustee on trust for the unitholders according to the number of units held by them.

Schedule 2

Fit and Proper Persons

1. **General qualities**

In order to determine, for the purposes of the Act, whether an applicant to become a CIS person and each of its directors, controllers or other principals is a fit and proper person to carry on the proposed activities (the "relevant persons"), the CMDA shall have regard to the financial and other resources of the applicant, and the experience and expertise of the applicant and the relevant persons, and the following qualities, in so far as they are reasonably determinable, of each of the relevant persons:

- (a) his general probity;
- (b) his competence and soundness of judgment for the fulfilment of the responsibilities of the office in question; and
- (c) the diligence with which he is likely to fulfil those responsibilities.

2. **Previous conduct**

For the purposes of, and without prejudice to the generality of paragraph 1, the CMDA may have regard to the previous conduct and activities of the relevant persons in business or financial matters, and in particular to any evidence that any relevant persons:

- (a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
- (b) has contravened the provisions of any legislation designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services; or
- (c) has wilfully defaulted on a loan of an institution of which he is a director.

3. **Evidence**

The CMDA may request a relevant person to furnish evidence of any professional qualifications that such person may hold, any approvals from foreign regulatory authorities and such other evidence, references and additional information as the CMDA may deem necessary for determining the professional suitability of a relevant person.

4. **Associated Persons**

The CMDA may take into account any matter relating to any person who is or will be employed by or associated with the relevant person, for the purposes of the proposed activities.

Schedule 3

Prospectus Requirements and other Promotional Documents

1. Requirement for prospectus

- 1.1 Each scheme must publish a document containing information about the scheme and complying with the requirements set out in this Schedule.
- 1.2 The prospectus must be drawn up in English and Dhivehi.
- 1.3 The manager must ensure that the prospectus:
 - (a) contains the information required by paragraph 3 (required contents);
 - (b) does not contain any provision which is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units;
 - (c) does not contain any provision that conflicts with any rule in the Act or any regulation made thereunder;
 - (d) is fair, clear and not misleading; and
 - (e) is kept up-to-date and that revisions are made to it, whenever appropriate.
- 1.4 The manager must file a copy of the scheme's original prospectus, together with all revisions thereto, with the CMDA. The manager must supply a copy of the scheme's most recent prospectus free of charge to any person on request.

2. False or misleading prospectus

- 2.1 The manager:
 - (a) must ensure that the prospectus of the scheme is clear, fair and not misleading, and does not omit any matter required by this Schedule to be included in it; and
 - (b) is liable to pay compensation to any person who has acquired any units in the scheme and suffered loss in respect of them as a result of any statement which is not clear or fair, or is misleading, or any omission; this is in addition to any liability incurred apart from under this paragraph.
- 2.2 The manager is not in breach of paragraph 2.1(a) and is not liable to pay compensation under paragraph 2.1(b) if, at the time when the prospectus was published, it had taken reasonable care to determine that it was clear, fair and not misleading, or that the omission was appropriate, and that:
 - (a) it continued to take such reasonable care until the time of the relevant acquisition of units in the scheme; or
 - (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or

- (c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
 - (d) the person who acquired the units was not materially influenced or affected by that statement or omission in making the decision to invest.
- 2.3 The manager is not liable to pay compensation under paragraph 2.1(b) if the person who acquired the units knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.

3. **Required contents**

The statements and provisions required by the following table must be included in the prospectus of a scheme.

3.1 Document status

A statement that the document is the prospectus of the scheme valid as at a particular date.

3.2 Scheme

A description of the scheme including:

- (a) its name;
- (b) whether it is a close-ended investment company, an open-ended investment company or a unit trust and that the unitholders are not liable for the debts of the scheme;
- (c) or an umbrella scheme, a statement that the sub-funds are not ring-fenced and in the event of the umbrella scheme being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, that the remaining liabilities may have to be met out of the assets attributed to other sub-funds;
- (d) for an investment company, the address of its head office and the address of the place in the Maldives for service on the investment company of notices or other documents required or authorised to be served on it, and for a unit trust, the equivalent for the trustee of the unit trust;
- (e) the effective date of the authorisation order made by the CMDA and relevant details of termination, if the duration of the scheme is limited;
- (f) its base currency;
- (g) the circumstances in which it may be wound up and a summary of the procedure for, and the rights of unitholders under, such a winding up; and
- (h) in respect of a close-ended investment company, the fact that an application has been made to admit its shares to trading on a recognised stock exchange, or the date on which it is to terminate (by reference to section 14(1)(f) of the Act).

3.3 Investment objectives and policy

The following particulars of the investment objectives and policy of the scheme:

- (a) its investment objectives;
- (b) its investment policy for achieving those investment objectives;
- (c) an indication of any limitations on that investment policy;
- (d) the proportion of the scheme which may consist of an asset of any description;
- (e) the policy in relation to the exercise of borrowing powers by the scheme;
- (f) for a scheme which may invest in other schemes, the extent to which the scheme property may be invested in the units of schemes which are managed by the manager or by its associate;
- (g) information concerning the profile of the typical investor for whom the scheme is designed;
- (h) information concerning the historical performance of the scheme (if any), presented in accordance with paragraph 4 (past performance).

3.4 Reporting, distributions and accounting dates

Relevant details of the reporting, accounting and distribution information which includes:

- (a) the accounting and distribution dates of the scheme and when reports will be sent to unitholders;
- (b) procedures for:
 - (i) determining and applying income (including how any distributable income is paid);
 - (ii) unclaimed distributions; and
 - (iii) if relevant, calculating, paying and accounting for income equalisation.

3.5 Characteristics of the units

Information as to:

- (a) where there is more than one class of unit in issue or available for issue, the name of each class and the rights attached to each class in so far as they vary from the rights attached to other classes;
- (b) how unitholders may exercise their voting rights and what these amount to;

- (c) where a mandatory redemption, cancellation or conversion of units from one class to another may be required, in what circumstances it may be required; and
- (d) for a unit trust, the fact that the nature of the right represented by units is that of a beneficial interest under a trust.

3.6 Manager and Depositary

The following particulars of the manager and depositary:

- (a) its name;
- (b) the nature of its corporate form;
- (c) the date of its incorporation;
- (d) the address of its registered office;
- (e) the address of its head office, if that is different from the address of its registered office (provided that its head office and registered office must be in the Maldives);
- (f) if the duration of its corporate status is limited, when that status will or may cease; and
- (g) the amount of its issued share capital and how much of it is paid up.

3.7 Investment adviser

If an investment adviser is retained in connection with the business of a scheme in accordance with Schedule 8, Part V, paragraph 9:

- (a) its name; and
- (b) where it carries on a significant activity other than providing services to the scheme as an investment adviser, what that significant activity is.

3.8 Auditor

The name of the auditor of the scheme.

3.9 Contracts and other relationships with parties

The following particulars:

- (a) a summary of the material provisions of the contract between the investment company and the ACD or, in relation to a unit trust, the material provisions of the trust deed relating to the appointment of the manager, which may be relevant to unitholders including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity; and, in respect of an investment company a statement that copies of this contract will be provided to

a unitholder on request or available at the investment company's annual general meeting;

- (b) the names of the directors of the manager and the main business activities of each of the directors (other than those connected with the business of the scheme) where these are of significance to the scheme's business;
- (c) a summary of the material provisions of the contract between the investment company or the manager of the unit trust and the depositary which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;
- (d) if an investment adviser retained in connection with the business of the scheme is a company in a group of which the manager is a member, that fact;
- (e) a summary of the material provisions of any contract between the manager or the investment company and any investment adviser which may be relevant to unitholders;
- (f) if an investment adviser retained in connection with the business of the scheme has the authority of the manager or the investment company to make decisions on behalf of the manager or the investment company, that fact and a description of the matters in relation to which it has that authority;
- (g) what functions (if any) the manager has delegated and to whom; and
- (h) in what capacity (if any), the manager acts in relation to any other schemes and the name of such schemes.

3.10 Register of unitholders

Details of the address in the Maldives where the register of unitholders is kept and can be inspected by unitholders, and the registrar's name and address.

3.11 Payments out of scheme property

In relation to each type of payment from the scheme property, details of:

- (a) who the payment is made to;
- (b) what the payment is for;
- (c) the rate or amount where available;
- (d) how it will be calculated and accrued;
- (e) when it will be paid; and
- (f) where a performance fee is taken, examples of its operation in plain language and the maximum it can amount to.

3.12 Allocation of payments

If, in accordance with these Regulations, the manager and the depositary have agreed that all or part of any income expense payments may be treated as a capital expense, that fact, the policy for allocation of such payments and a statement that this policy may result in capital erosion or constrain capital growth.

3.13 Valuation and pricing of scheme property

- (a) In relation to the valuation of scheme property and pricing of units for open-ended investment companies and unit trusts:
 - (i) a provision that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point;
 - (ii) details regarding how the value of the scheme property is to be determined;
 - (iii) details regarding how frequently and at what time or times of the day the scheme property will be regularly valued for dealing purposes and a description of any circumstance in which the scheme property may be specially valued;
 - (iv) where relevant, details regarding how the price of units of each class will be determined for dealing purposes; and
 - (v) details regarding where and at what frequency the most recent prices will be published;
- (b) In relation to a close-ended investment company, details regarding:
 - (i) how the value of the scheme property is to be determined and how frequently the scheme property will be valued; and
 - (ii) how the price at which any unitholders admitted after the initial offer period are admitted will be determined.

3.14 Dealing

- (a) The following particulars in relation to any open-ended investment company or unit trust:
 - (i) the procedures, the dealing periods and the circumstances in which the manager will effect the sale and redemption of units and the settlement of transactions (including the minimum number or value of units which one person may hold or which may be subject to any transaction) for each class of unit in the scheme;
 - (ii) the circumstances in which the redemption of units may be suspended; and

- (iii) the circumstances and procedures for the limitation or deferral of redemptions in accordance with Schedule 8, Part I, paragraph 6.7 (limited redemption) or 6.8 (deferred redemption).
- (b) In relation to any close-ended investment company the procedure for dealing in the investment company's shares on the recognised stock exchange on which they are listed (if any).
- (c) The following particulars in relation to all schemes:
 - (i) whether certificates will be issued in respect of units;
 - (ii) in a prospectus available during the period of any initial offer:
 - (A) the length of the initial offer period;
 - (B) the initial price of a unit, which must be in the base currency;
 - (C) the arrangements for issuing units during the initial offer period, including the manager's intentions on investing the subscriptions received during the initial offer;
 - (D) the circumstances when the initial offer will end;
 - (E) whether units will be sold or issued in any other currency; and
 - (F) any other relevant details of the initial offer.

3.15 Dilution

In respect of an open-ended investment company or a unit trust, details of what is meant by dilution including:

- (a) a statement explaining:
 - (i) that it is not possible to predict accurately whether dilution is likely to occur; and
 - (ii) which of the policies the manager is adopting under Schedule 8, Part II, paragraph 4 (dilution) together with an explanation of how this policy may affect the future growth of the scheme; and
- (b) if the manager may require a dilution levy or make a dilution adjustment, a statement of:
 - (i) the manager's policy in deciding when to require a dilution levy, including the manager's policy on large deals, or when to make a dilution adjustment;
 - (ii) the estimated rate or amount of any dilution levy or dilution adjustment based either on historical data or future projections; and

- (iii) the likelihood that the manager may require a dilution levy or make a dilution adjustment and the basis (historical or projected) on which the statement is made.

3.16 Preliminary charge

Where relevant, a statement authorising the manager to make, upon a sale of units, a charge and specifying the basis for and current amount or rate of that charge.

3.17 Redemption charge

In respect of an open-ended investment company or a unit trust, where relevant, a statement authorising the manager to deduct a redemption charge out of the proceeds of redemption; and if the manager makes a redemption charge:

- (a) the current amount of that charge or, if it is variable, the rate or method of calculating it;
- (b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the manager on request; and
- (c) how the order in which units acquired at different times by a unitholder is to be determined so far as necessary for the purposes of the imposition of the redemption charge.

3.18 General information

Details of:

- (a) the address at which copies of the constitutive document, any amending instrument and the most recent reports may be inspected and from which copies may be obtained;
- (b) the manner in which any notice or document will be served on unitholders;
- (c) the extent to which and the circumstances in which:
 - (i) the scheme is liable to pay or suffer tax on any appreciation in the value of the scheme property or on the income derived from the scheme property; and
 - (ii) deductions by way of withholding tax may be made from distributions of income to unitholders and payments made to unitholders on the redemption of units.

3.19 Umbrella schemes

In the case of an umbrella scheme, the following information:

- (a) that a unitholder is entitled to exchange units in one sub-fund for units in any other sub-fund (other than a sub-fund which has limited the issue of units);

- (b) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;
- (c) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund; and
- (d) for each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the scheme.

3.20 Application of the prospectus contents to an umbrella scheme

For an umbrella scheme, information required must be stated:

- (a) in relation to each sub-fund where the information for any sub-fund differs from that for any other; and
- (b) for the umbrella scheme as a whole, but only where the information is relevant to the umbrella scheme as a whole.

3.21 Investment in real property through an intermediate holding vehicle

If investment in real property is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement disclosing the existence of those intermediate holding vehicles and confirming that the purpose of those intermediate holding vehicles is to enable the holding of real property by the scheme.

3.22 Additional information

Any other material information which is within the knowledge of the manager, or which the manager would have obtained by making reasonable enquiries, including but not confined to, the following matters:

- (a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the scheme and the extent and characteristics of the risks accepted by so investing;
- (b) a clear and easily understandable explanation of any risks which investment in the scheme may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
- (c) if there is any arrangement intended to result in a particular capital or income return from a holding of units in the scheme or any investment objective of giving protection to the capital value of, or income return from, such a holding:
 - (i) details of that arrangement or protection;
 - (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;

- (iii) a description of the risks that could affect achievement of that return or protection; and
 - (iv) details of the arrangements by which the manager will notify unitholders of any action required by the unitholders to obtain the benefit of the guarantee; and
- (d) whether any notice has been given to unitholders of the manager's intention to propose a change to the scheme and if so, its particulars.

4. **Past Performance**

The manager must ensure that any information in the prospectus or any other document provided to unitholders or potential unitholders which contains an indication of past performance satisfies the following conditions:

- (a) the indication is not the most prominent feature of the prospectus;
- (b) the information includes appropriate performance information which covers at least the immediately preceding five years, or the whole period for which the investment has been offered/service provided, if shorter;
- (c) the reference point and the source of information are clearly stated;
- (d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (e) if the indication relies on figures denominated in a currency other than the Maldives Rufiyaa, the currency is clearly stated and it includes a warning that the return may increase or decrease as a result of currency fluctuations; and
- (f) if the indication is based on gross performance, the effect of fees, commissions or other charges is disclosed.

5. **Guarantees and capital protection**

If there is any arrangement intended to result in a particular capital or income return from a holding of units in a scheme, or any investment objective of giving protection to the capital value of, or income return from, such a holding:

- (a) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:
 - (i) unitholders and the manager or depositary; or
 - (ii) unitholders intended and not intended to benefit from the arrangement; and
- (b) where action is required by the unitholders to obtain the benefit of any guarantee, the manager must provide reasonable notice in writing to unitholders before such action is required.

6. **Other communications**

- 6.1 The manager of a scheme must ensure that any communication made by it to unitholders or potential unitholders of the scheme is fair, clear and not misleading.
- 6.2 The depositary of a scheme must ensure that any communication made by it to unitholders or potential unitholders of the scheme is fair, clear and not misleading.

Schedule 4

Units

1. **Classes of unit**

A scheme's constitutive document may provide for different classes of unit to be issued by the scheme and, for an umbrella scheme, provide that classes of units may be issued for each sub-fund.

2. **Currency class units**

For a currency class unit:

- (a) The price must be expressed in the currency of the class concerned;
- (b) any distribution must be paid in the currency of the class concerned; and
- (c) statements of amounts of money or values included in statements and in tax certificates must be given in the currency of the class concerned (whether or not also given in the base currency).

3. **Rights of unit classes**

3.1 The rights which attach to a unit of any class are:

- (a) the right, in accordance with the constitutive document, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the scheme property,
- (b) the right, in accordance with the constitutive document, to vote at any general meeting of the scheme or at any relevant class meeting; and
- (c) such other rights as may be provided for, in relation to units of that class, in the constitutive document of the scheme.

3.2 In respect of any class of units, the rights which attach to each unit of that class are equal to the rights that attach to each other unit of that class.

3.3 For a scheme which is not an umbrella scheme, the constitutive document must not provide for any class of units in respect of which:

- (a) the extent of the rights to participate in the scheme property would be determined differently from the corresponding rights for any other class of units; or
- (b) payments or accumulation of income or capital would differ in source or form from those of any other class of units.

- 3.4 For an umbrella scheme, the provisions in paragraph 3.3(a) apply to classes of units in respect of each sub-fund as if each sub-fund were a separate scheme.
- 3.5 Paragraphs 3.2 and 3.3 do not prohibit a difference between the rights attached to one class of units and to another class of units that relates solely to:
- (a) the accumulation of income rather than distribution; or
 - (b) charges and expenses that may be taken out of the scheme property or payable by the unitholders; or
 - (c) the currency in which prices or values are expressed or payments made; or
 - (d) the use of derivatives entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a currency class unit and either the base currency of the scheme or any currency in which all or part of the scheme property is denominated or valued (in this section referred to as a "currency class hedging transaction").

4. **Certificates**

- 4.1 Unless a scheme's constitutive document states that certificates will not be issued and contains provision as to other procedures for evidencing a person's entitlement to units, each scheme must prepare documentary evidence of title to its units.
- 4.2 Each certificate must state the number of units the title to which is evidenced by the certificate; and, where the scheme has more than one class of units, the class of units title to which is evidenced by the certificate.

Schedule 5

Meetings

1. General meetings

1.1 An investment company, or the manager of a unit trust, must in each year hold a general meeting of the unitholders ("annual general meeting") and the manager or the depositary may convene any other general meeting of unitholders at any time.

1.2 The unitholders may request the convening of a general meeting by a requisition which must:

- (a) state the object of the meeting;
- (b) be dated;
- (c) be signed by unitholders who, at that date, are registered as unitholders of units representing not less than one-tenth in value (or such lower proportion stated in the constitutive document) of all of the units then in issue;
- (d) be deposited at the head office of the investment company or with the trustee.

1.3 The manager or the depositary of a scheme must on receipt of a requisition that complies with paragraph 1.2, immediately convene a general meeting of the scheme for a date no later than 8 weeks after the receipt of the requisition.

2. Class meetings

This Schedule applies, unless the context otherwise requires, to class meetings, by reference to the units of the class concerned and the unitholders and prices of such units.

3. Notice

In respect of the annual general meeting or where the manager or depositary decide to convene any other general meeting of unitholders:

- (a) each unitholder must be given at least 14 days written notice, inclusive of the date on which the notice is first served and the day of the meeting; and
- (b) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the depositary.

4. Quorum

The quorum required to conduct business at a meeting of unitholders is two unitholders, present in person or by proxy.

5. **Resolutions and voting**

- 5.1 On a show of hands every unitholder who is present in person has one vote.
- 5.2 On a poll, votes may be given either personally or by proxy or in another manner permitted by the constitutive document, and the voting rights for each unit must be the proportion of the voting rights attached to all of the units in issue that the price of the unit bears to the aggregate price of all the units in issue.
- 5.3 Except where another percentage is specifically required or permitted, any resolution of unitholders is passed by a simple majority of the votes validly cast at a general meeting of unitholders.
- 5.4 In the case of an equality, or an absence of, votes cast, the chairman is entitled to a casting vote.

6. **Proxies and polls**

- 6.1 A resolution put to the vote of a general meeting must be determined by a show of hands unless a poll is demanded by the chairman of the meeting, the depositary or two unitholders.
- 6.2 Every unitholder has a right to attend and vote at general meetings and may appoint another person to attend a general meeting and vote in his place.

7. **Chairman**

A meeting of unitholders must have a chairman, appointed by the depositary.

8. **Minutes**

The manager must ensure that minutes of all resolutions and proceedings at every meeting of the unitholders are kept and that any minute is signed by a person appointed as chairman of the meeting. Any such minute is conclusive evidence of the matters stated in it.

9. **Notice to unitholders**

Where any notice or document is required to be served upon a unitholder, it is duly served if sent by post or left at the unitholder's address appearing on the register. Any notice or document served by post is deemed to have been served on the second business day following the day on which it is posted. Any document left at a registered address is deemed to have been served on that day.

10. **Depositary**

- 10.1 The depositary is entitled to:
- (a) receive all notices of any general meeting of a scheme;
 - (b) attend any general meeting of a scheme;
 - (c) be heard at any general meeting of a scheme;

- (d) require from the manager such information and explanations as it thinks fit for the performance of its functions as depositary; and
- (e) have access to any reports, statements or papers to be considered at any directors' meeting, general meeting or class meeting.

Schedule 6

Reports and Accounts

1. Preparation of reports

The manager must, for each annual accounting period and each half-yearly accounting period, prepare a report for a scheme. Where the first annual accounting period for a scheme is less than 12 months, a half-yearly report need not be prepared. For an umbrella scheme, the manager must prepare a report for each sub-fund (and references in this Schedule should be read accordingly).

2. Content of reports

2.1 The annual report for a scheme must contain, for the relevant period:

- (a) the full accounts for the relevant accounting period which must be prepared in accordance with any requirements set down by the CMDA from time to time;
- (b) the report of the manager in accordance with paragraph 3;
- (c) the comparative information in accordance with paragraph 5;
- (d) the report of the depositary in accordance with paragraph 6;
- (e) the report of the auditor in accordance with paragraph 7.

2.2 The half-yearly report for a scheme must contain, for the relevant period:

- (a) the full accounts for the relevant half-yearly accounting period, which must be prepared in accordance with the requirements of 4; and
- (b) the report of the manager in accordance with paragraph 3.

2.3 The manager must take reasonable steps to ensure that the report is structured and written in such a way that it can be easily understood by the average investor.

3. Manager's report

3.1 The matters set out below must be included in the manager's report:

- (a) the names and addresses of the manager, the depositary, any investment adviser and the auditor;
- (b) a statement of the licensed status of the scheme;
- (c) a statement that the unitholders are not liable for the debts of the scheme;
- (d) the investment objectives of the scheme and the policy for achieving those objectives;
- (e) a review of the investment activities during the period to which the report relates;

- (f) particulars of any changes to the scheme made since the date of the last report;
- (g) any other information which would enable unitholders to make an informed judgement on the development of the activities of the scheme during the relevant period and the results of those activities as at the end of that period; and
- (h) for an umbrella scheme:
 - (i) a statement to the effect that, as a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the umbrella scheme; and
 - (ii) the information required in paragraphs (a) to (g) above for each sub-fund, if it would vary from that given in respect of the umbrella as a whole.

4. **Accounts**

The manager must ensure that the accounts referred to in paragraph 2.1(a) give a true and fair view of the net income and the net gains and losses on the scheme property of the scheme for the accounting period in question and the financial position of the scheme as at the end of that period.

5. **Comparative information**

The report must set out:

- (a) a performance record over the last five years (or if the scheme has not been in existence for that long, over the whole period in which it has been in existence) showing the highest and lowest price per unit of each class in issue during those years and the net income distributed or accumulated for a unit of each class in issue during those years.
- (b) as at the end of each of the last three annual accounting periods (or all of the scheme's annual accounting periods, if less than three), the total net asset value of the scheme property at the end of each of those years; the net asset value per unit of each class; and the numbers of units of each class in issue;
- (c) if, in the period covered, the scheme has been the subject of any event having a material effect on the size of the scheme (but excluding any issue or cancellation of units for cash), or there have been changes in the investment objectives of the scheme, an indication of the date of the event or change in the investment objectives and a brief description of its nature.

6. **Depository's report**

6.1 The depository must make an annual report to unitholders which must be included in the annual report.

6.2 The annual report must contain:

- (a) a description, which may be in summary form, of the duties of the depository under Schedule 8, Part V, paragraph 3 and in respect of the safekeeping of the scheme property; and
- (b) a statement whether, in any material respect, the issue, sale, redemption and cancellation, and calculation of the price of the units and the application of the scheme's income, have not been carried out in accordance with the rules in these Regulations and the Act; and the investment and borrowing powers and restrictions applicable to the scheme have been exceeded.

7. **Audit report**

The manager must ensure that the report of the scheme's auditor to the unitholders includes a statement whether, in the auditor's opinion, the accounts have been properly prepared in accordance with [standards], the Act, these Regulations and the scheme's constitutive documents; the accounts give a true and fair view of the scheme's net income and net gains and losses; and the auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purpose of his audit.

8. **Publication and availability**

8.1 The manager must, within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any unitholder.

8.2 The manager must provide free of charge on the request of any person eligible to invest in the scheme a copy of the latest annual or half-yearly report before the conclusion of any sale to such person.

8.3 A copy of the report and accounts must be provided to the CMDA.

Schedule 7

Investment and Borrowing Powers⁴

1. Prudent spread of risk

The manager must ensure that, taking account of the investment objectives and policy of the scheme as stated in its most recently published prospectus, the scheme property aims to provide a prudent spread of risk.

2. Investment powers : general

The scheme property may only be invested in:

- (a) shares which are listed on a recognised exchange, or such other shares as may be permitted by the CMDA;
- (b) instruments creating or acknowledging indebtedness, including debentures, loan stock and bonds;
- (c) units in collective investment schemes;
- (d) interests in real property;
- (e) [derivatives, subject to paragraph 9] and
- (f) any other type of investment permitted by the CMDA from time to time, either generally, or in relation to a particular scheme.

3. Investment in other collective investment schemes

3.1 A scheme may invest in units in another collective investment scheme (the "second scheme") only if the second scheme is:

- (a) a licensed scheme; or
- (b) a scheme which is not a licensed scheme where the manager has taken reasonable care to determine that:
 - (i) it is the subject of an independent annual audit conducted in accordance with international accounting standards;
 - (ii) it has its value verified by a person independent from its operator in relation to each day on which dealing in that scheme's units may take place;
 - (iii) there are mechanisms in place to enable unitholders to redeem their units within a reasonable time;

⁴ Subject to further discussion.

- (iv) it is prohibited from having more than 15% of its value in units of other collective investment schemes; and
- (v) it operates in accordance with the principle of risk spreading.

3.2 Where the second scheme is an umbrella scheme, the provisions apply to each sub-fund as if it were a separate scheme.

3.3 A scheme must not invest in units of a second scheme if the second scheme is managed or operated by the manager of the investing scheme or an associate of the manager unless:

- (a) the prospectus of the investing scheme clearly states that it may be invested in this way; and
- (b) the manager accounts to the investing scheme for any charge made for the account of the manager or operator of the second scheme or any associate of it in respect of the investing scheme's acquisition or disposal of units in the second scheme.

4. **Stock lending**

A scheme may not enter into any stock lending arrangements.

5. **Borrowing**

5.1 A scheme (or the trustee, in the case of a unit trust) may borrow money for the use of the scheme on terms that the borrowing is to be repayable out of the scheme property, provided that the manager must ensure that the scheme's borrowing does not contravene any restriction in the scheme's constitutive documents and does not, on any day, exceed:

- (a) in the case of a scheme invested solely in real property, 100% of the net value of the scheme property;
- (b) in the case of a scheme not investing in real property, 10% of the net value of the scheme property; and
- (c) in the case of a scheme investing in both real property and other assets, 100% of the net value of that portion of the scheme invested in real property and 10% of the net value of that portion of the scheme invested in other assets,

and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance. For these purposes borrowing includes any arrangement designed to achieve a temporary injection of money into the scheme in the expectation that the sum will be repaid.

5.2 A scheme (or the trustee, in the case of a unit trust) may borrow under paragraph 5.1 only from an approved bank.

5.3 [Other than in respect of a scheme's investment in real property,] the manager must ensure that any borrowing is on a temporary basis and that borrowings are not

persistent, and for this purpose the manager must have regard in particular to the duration of any period of borrowing and the number of occasions on which resort is had to borrowing in any period.

- 5.4 In addition to complying with paragraph 5.3, [other than in respect of a scheme's investment in real property], the manager must ensure that no period of borrowing exceeds three months, whether in respect of any specific sum or at all, without the prior consent of the depositary.
- 5.5 The depositary may only give its consent as required under paragraph 5.4 on such conditions as appear to it appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

6. **Lending**

- 6.1 None of the money in a scheme may be lent, and for the purposes of this prohibition money is lent by a scheme if it is paid to a person (the "payee") on the basis that it should be repaid, whether or not by the payee.
- 6.2 Acquiring a debenture is not lending for the purposes of paragraph 6.1, nor is the placing of money on deposit or in a current account.
- 6.3 This does not prevent a scheme from providing an officer of it with funds to meet expenditure to be incurred by him for the purposes of the scheme.

7. **Investment in real property**

- 7.1 In respect of any real property held by a scheme:
- (a) it must be situated in a country or territory identified in the prospectus;
 - (b) the manager must have taken reasonable care to determine that the title to the interest in the property is a good marketable title; and
 - (c) the manager or the scheme must have received a report that:
 - (i) contains a valuation of the property; and
 - (ii) states that in an appropriate valuer's opinion the interest in the property would, if acquired by the scheme, be capable of being disposed of reasonably expeditiously at that valuation; and
 - (d) it must be brought within six months of the receipt of the valuer's report and must not be bought at a price more than 105% of the valuation received.
- 7.2 Real property may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of property by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding a real property shall be treated for the purposes of this section as if it were a direct investment in that property. An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate

holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation requires a proportion of local ownership.

7.3 The amount secured by mortgages over any real property must not exceed 100% of the latest valuation by an appropriate valuer.

7.4 No option may be granted to a person to buy or obtain an interest in any real property comprised in the scheme property if this might unduly prejudice the ability of a scheme which is an open-ended investment company or a unit trust to provide redemptions.

7.5 The total of all premiums paid for options to purchase real property must not exceed 10% of the scheme value in any 12 month period, calculated at the date of granting the option.

8. **Spread: general⁵**

(a) Not more than [20%] in value of the scheme property is to consist of deposits with a single body.

(b) Not more than [5%] in value of the scheme property is to consist of securities issued by a single body, and not more than [20%] in value of the scheme property is to consist of securities issued by the same group.

(c) Not more than [20%] in value of the scheme is to consist of units in any one collective investment scheme.

(d) [No more than [10%] in value of the scheme property of a scheme may consist of securities which are not admitted to or dealt in a recognised stock exchange.]

8.2 The rules in this Schedule relating to spread of investments do not apply until the expiry of a period of six months after the date on which a scheme's licence takes effect or on which the initial offer commenced, if later, provided that paragraph 1 is complied with.

8.3 The constitutive document of a scheme may further restrict the kind of assets in which the scheme may invest; the proportion of the scheme invested in assets of any description and the borrowing powers of the scheme.

8.4 In this Schedule, the value of the property of a scheme means the net value determined in accordance with Schedule 8, Part II (valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.

9. **Derivatives**

9.1 A scheme may not invest in derivatives [except for the purpose of efficient portfolio management⁶].

⁵ Percentages to be discussed.

⁶ Use of derivatives for efficient portfolio management to be discussed.

- 9.2 If using derivatives for the purpose of efficient portfolio management:
- (a) the transactions must be economically appropriate;
 - (b) the exposure must be fully covered by cash or scheme property sufficient to meet any obligation to pay or deliver that could arise; and
 - (c) the transactions must be entered into with the aim of:
 - (i) the reduction of risk;
 - (ii) the reduction of cost; and
 - (iii) the generation of additional or income with an acceptably low level of risk.]

10. **Requirement to cover sales**

No agreement by or on behalf of a scheme to dispose of property or rights may be made unless:

- (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the scheme by delivery of property or the assignment of rights; and
- (b) the property and rights mentioned in paragraph (a) are owned by the scheme at the time of the agreement.

Schedule 8

Operating Duties and Responsibilities

Part I: Dealing

1. Initial offers

- 1.1 During the initial offer period, units may only be issued at the initial price.
- 1.2 The length of any initial offer should not be unreasonable when considered alongside the characteristics of the scheme.
- 1.3 The manager must, as soon as practicable after receiving the initial price from the purchaser and no later than the fourth business day following the end of the initial offer, pay the depositary the initial price in respect of any unit it has agreed to sell during the period of the initial offer.
- 1.4 The period of the initial offer comes to an end if the manager reasonably believes the price that would reflect the current value of the scheme property would vary by more than 2% from the initial price.

2. Issue and cancellation of units

- 2.1 Units in an investment company are issued or cancelled by the ACD making a record of the issue or cancellation and of the number of the units of each class concerned, and cannot be issued or cancelled in any other manner. The time of the issue or cancellation is the time when the record is made.
- 2.2 Units in a unit trust must be issued or cancelled by the trustee when instructed by the manager.

3. Controls over the issue and cancellation of units

- 3.1 The manager must ensure at each valuation point that there are at least as many units in issue of any class as there are units registered to unitholders for that class, and if it fails to comply with this obligation, it must correct the error as soon as possible and must reimburse the scheme for any costs it may have incurred in correcting the position.
- 3.2 The manager must not, when giving instructions to the trustee for, or arranging with an investment company for, the issue or cancellation of units do, or omit to do, anything which would, or might, confer on itself or an associate a benefit or advantage at the expense of a unitholder or potential unitholder.

4. Payment for units issued

The manager must, by the close of business on the fourth business day following the issue of any units, arrange for payment to the scheme (or the trustee, in the case of a unit trust) of the issue price of the units and any payments required under Schedule 8, Part II, paragraph 4 (dilution).

5. **Payment for cancelled units**

On cancelling units, the manager must, before the expiry of the fourth business day following the cancellation of units or, if later, as soon as practicable after delivery to the scheme or the trustee of such evidence of title to the units as it may reasonably require, require the depositary to pay the price of the units less any deduction required under Schedule 8, Part II, paragraph 4(dilution).

6. **Sale and redemption**

The following provisions apply to unit trusts and open-ended investment companies:

- 6.1 The manager must, at all times during the dealing day, be willing to effect the sale of units in the scheme, in accordance with the conditions in the formation documents, unless it has reasonable grounds to refuse such sale or the issue of units is limited in the scheme's formation documents.
- 6.2 Subject to paragraphs 6.7 (limited redemption) and 6.8 (deferred redemption), the manager must, at all times during the dealing day, on request of any qualifying unitholder, effect the redemption of units in accordance with the conditions in the formation documents, unless it has reasonable grounds to refuse such redemption.
- 6.3 On agreeing a redemption of units, the manager must pay the unitholder the appropriate proceeds of redemption within the period specified in paragraph 6.4, unless the manager has reasonable grounds for withholding all or any part of the proceeds.
- 6.4 The period referred to in paragraph 6.3 expires at the close of business on the fourth business day following the later of:
 - (a) the valuation point at which the price for the redemption was determined; or
 - (b) the time when the manager has all the duly executed instruments and authorisations to effect the transfer of title to the units.
- 6.5 Except where paragraph 6.7 (limited redemption) applies, and subject to paragraph 6.8 (deferred redemption), the manager must sell or redeem units at a price determined no later than the end of the business day immediately following the receipt and acceptance of an instruction to do so, or at the next valuation point for the purposes of dealing in units if later.
- 6.6 Where the scheme operates limited redemption arrangements, the manager must sell or redeem units at a price determined no later than the expiry of a period of 185 days from the date of the receipt and acceptance of the instruction to sell or redeem.
- 6.7 **Limited redemption**
 - (a) A scheme which invests substantially in real property or whose investment objective is to provide a specified level of return may provide for limited redemption arrangements appropriate to its aims and objectives. Such a scheme must provide for redemptions at least once in every six months.

- (b) Within a scheme, unit classes may operate different arrangements for redemption of units provided there is no prejudice to the interests of any unitholder.

6.8 Deferred redemption

- (a) A scheme [which has at least one valuation point on each business day]⁷ may permit deferral of redemptions at a valuation point to the next valuation point where the requested redemptions exceed 10%, or some other reasonable proportion disclosed in the prospectus, of the scheme's value.
- (b) Any such deferral of redemptions must be undertaken in accordance with procedures explained in the prospectus which must ensure:
 - (i) the consistent treatment of all unitholders who have sought to redeem units at any valuation point at which redemptions are deferred; and
 - (ii) that all deals relating to an earlier valuation point are completed before those relating to a later valuation point are considered.

7. **Limited issue**

- 7.1 If a scheme limits the issue of any class of units, the prospectus of the scheme must provide for the circumstances and conditions when units will be issued.
- 7.2 Where paragraph 6.1 applies, the manager may not provide for the further issue of units unless, at the time of the issue, it is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the scheme's investment objective or materially prejudicing existing unitholders.
- 7.3 Within a scheme, unit classes may operate different arrangements for the issue of units provided there is no prejudice to the interests of any unitholder.

⁷ TBD

Part II: Valuation and pricing

1. Valuation

To determine the price of units, the manager must carry out a fair and accurate valuation of all the scheme property in accordance with the formation documents.

2. Valuation points

2.1 An open-ended investment company or a unit trust must not have fewer than two regular valuation points in any month and if there are only two valuation points in any month, they must be at least two weeks apart.

2.2 Where a scheme operates limited redemption arrangements, paragraph 2.1 does not apply and the valuation points must not be set more than six months apart.

2.3 No valuation points are required during the period of any initial offer.

3. Price of a unit

3.1 The manager of an open-ended investment company or a unit trust must ensure that the price of a unit of any class at which it is issued and cancelled is calculated by reference to the net asset value of the scheme property and in accordance with the provisions of the formation documents.

3.2 The manager of a unit trust or open-ended investment company must not:

(a) sell a unit for more than the price of a unit of the relevant class at the relevant valuation point, to which may be added any preliminary charge permitted and any payments required under paragraph 4 (dilution); or

(b) redeem a unit for less than the price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted and any deductions under paragraph 4 (dilution).

4. Dilution

The following provisions apply to an open-ended investment company or a unit trust.

4.1 When arranging to sell, redeem, issue or cancel units, a manager is permitted to:

(a) require the payment of a dilution levy;

(b) make a dilution adjustment; or

(c) neither require a dilution levy nor make a dilution adjustment,

in accordance with its statements in the prospectus.

- 4.2 A manager operating either a dilution levy or a dilution adjustment must operate that measure in a fair manner to reduce dilution and solely for that purpose.
- 4.3 A dilution levy becomes due at the same time as payment becomes due for the issue, sale, redemption or cancellation of units and any such payment in respect of a dilution levy must be paid to the depositary to become part of the scheme property as soon as possible after receipt.
- 4.4 A dilution adjustment may be made as part of the calculation of the unit price for the purpose of reducing dilution in the scheme or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the issue or cancellation of units.
- 4.5 Where the manager decides to make or not to make a dilution adjustment, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an affected person.
- 4.6 As soon as practicable after a valuation point, the manager must provide the depositary with the amount or rate of any dilution adjustment made to the price or any dilution levy applied.

5. **Forward pricing**

For the sale and redemption of units in an open-ended investment company or a unit trust, the manager must operate on the basis of forward price only.

6. **Publication of prices**

Where the manager is prepared to deal in units, it must make the dealing prices public in an appropriate manner.

7. **Valuation and pricing guidance**

7.1 The valuation of scheme property

- (a) Where possible, investments should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.
- (b) For some or all of the investments comprising the scheme property, different prices may be quoted according to whether they are being bought (offer prices) or sold (bid prices). The valuation of a scheme should reflect the mid-market value of such investments. The prospectus should explain how investments will be valued for which a single price is quoted for both buying and selling.
- (c) For the purposes of (b), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the investment or other part of the scheme property should be excluded from the value of an investment or other part of the scheme property.
- (d) Where the manager has reasonable grounds to believe that:
- (i) no reliable price exists for a security at a valuation point; or

- (ii) the most recent price available does not reflect the manager's best estimate of the value of a security at the valuation point,

it should value an investment at a price which, in its opinion, reflects a fair and reasonable price for that investment (the "fair value price").

- (e) The circumstances which may give rise to a fair value price being used include:
 - (i) no recent trade in the security concerned; or
 - (ii) the occurrence of a significant event since the most recent closure of the market where the price of the security is taken.

In (ii), a significant event is one that means the most recent price of a security or a basket of securities is materially different to the price that it is reasonably believed would exist at the valuation point had the relevant market been open.

- (f) In determining whether to use such a fair value price, the manager should include in his consideration:
 - (i) the securities involved;
 - (ii) the basis and reliability of the alternative price used; and
 - (iii) the manager's policy on the valuation of scheme property as disclosed in the prospectus.
- (g) The manager should document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.
- (h) Where a unit price is determined using properly applied fair value prices in accordance with policies in (d), subsequent information that indicates the price should have been different from that calculated will not normally give rise to an instance of incorrect pricing.

7.2 The pricing controls of the manager

- (a) A manager needs to be able to demonstrate that it has effective controls over its calculations of unit prices.
- (b) The controls referred to in (a) should ensure that:
 - (i) asset prices are accurate and up to date;
 - (ii) investment transactions are accurately and promptly reflected in valuations;
 - (iii) the components of the valuation (including stock, cash, and units in issue), are regularly reconciled to their source or prime records and any

reconciling items resolved promptly and debtors reviewed for recoverability;

- (iv) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;
 - (v) compliance with the investment and borrowing powers is regularly reviewed;
 - (vi) dividends are accounted for as soon as securities are quoted ex-dividend (unless it is prudent to account for them on receipt):
 - (vii) fixed interest dividends, interest and expenses are accrued at each valuation point;
 - (viii) tax positions are regularly reviewed and adjusted, if necessary;
 - (ix) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated; and
 - (x) the manager regularly reviews the portfolio valuation for accuracy.
- (c) In exercising its pricing controls, the manager may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the scheme or the materiality of any effect on the price.
- (d) Evidence of the exercise of the pricing controls should be retained.
- (e) Evidence of persistent or repetitive errors in relation to these matters, and in particular any evidence of a pattern of errors working in a manager's favour, will make demonstrating effective controls more difficult.
- (f) Where the pricing function is delegated to a third party, Schedule 8, Part V, paragraph 10 (committees and delegation) will apply.

7.3 The depositary's review of the manager's systems and controls

- (a) This section provides details of the types of checks a depositary should carry out to be satisfied that the manager adopts systems and controls which are appropriate to ensure that prices of units are calculated in accordance with this section and to ensure that the likelihood of incorrect prices will be minimised. These checks also apply where a manager has delegated all or some of its pricing functions to a third party.
- (b) A depositary should thoroughly review a manager's systems and controls to confirm that they are satisfactory. The depositary's review should include an analysis of the controls in place to determine the extent to which reliance can be placed on them.

- (c) A review should be performed when the depositary is appointed and thereafter as it feels appropriate given its knowledge of the robustness and the stability of the systems and controls and their operation.
- (d) A review should be carried out more frequently where a depositary knows or suspects that a manager's systems and controls are weak or are otherwise unsatisfactory.
- (e) Additionally, a depositary should from time to time review other aspects of the valuation of the scheme property of each scheme for which it is responsible, verifying, on a sample basis, if necessary, the assets, liabilities, accruals, units in issue, securities prices (and in particular the basis for the valuation of unquoted securities) and any other relevant matters, for example an accumulation factor or a currency conversion factor.
- (f) A depositary should ensure that any issues which are identified in any such review are properly followed up and resolved.

7.4 The recording and reporting of instances of incorrect pricing

- (a) A manager should record each instance where the price of a unit is incorrect as soon as the error is discovered, and report the fact to the depositary together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.
- (b) The depositary should report any material breach of the rules in this Schedule 8, Part II immediately to the CMDA.
- (c) A depositary should also report to the CMDA immediately any instance of incorrect pricing where the error is 0.5% or more of the price of a unit, where a depositary believes that reimbursement or payment is inappropriate and should not be paid by a manager.
- (d) A depositary should also make a return to the CMDA on a quarterly basis which summarises the number of instances of incorrect pricing during a particular period.

7.5 The rectification of pricing breaches

- (a) The manager must take action to reimburse affected unitholders, former unitholders, and the scheme itself, for instances of incorrect pricing, except if it appears to the depositary that the breach is of minimal significance.
- (b) A depositary may consider that the instance of incorrect pricing is of minimal significance if:
 - (i) the manager and depositary meet the standards of control set out in paragraphs 7.2 and 7.3; and
 - (ii) the error in pricing of a unit is less than 0.5% of the correct price.

- (c) In determining (b), if the instance of incorrect pricing is due to one or more factors or exists over a period of time, each price should be considered separately.
- (d) If a depositary deems it appropriate, it may, in spite of the circumstances outlined in (b), require a payment from the manager or from the scheme to the unitholders, former unitholders, the scheme or the manager (where appropriate).
- (e) The depositary should satisfy itself that any payments required following an instance of incorrect pricing are accurately and promptly calculated and paid.
- (f) If a depositary considers that reimbursement or payment is inappropriate, it should report the matter to the CMDA, together with its recommendation and justification. The depositary should take into account the need to avoid prejudice to the rights of unitholders, or the rights of unitholders in a class of units.
- (g) It may not be practicable, or in some cases legally permissible, for the manager to obtain reimbursement from unitholders, where the unitholders have benefited from the incorrect price.
- (h) In all cases where reimbursement or payment is required, amounts due to be reimbursed to unitholders for individual sums which are reasonably considered by the manager and depositary to be immaterial, need not normally be paid.

Part III: Title and Registers

1. Register

- 1.1 Either the manager or the depositary must maintain a register of unitholders in accordance with this paragraph 1.
- 1.2 The manager or depositary must exercise all due diligence and take all reasonable steps to ensure the information contained on the register is at all times complete and up to date.
- 1.3 The register must contain:
 - (a) the name and address of each unitholder;
 - (b) the number of units of each class held by each unitholder;
 - (c) the date on which the unitholder was registered for units; and
 - (d) the number of units of each class currently in issue.
- 1.4 The person responsible for the register in paragraph 1.1 must:
 - (a) take reasonable steps to alter the register on receiving written notice of a change of name or address of any unitholder;
 - (b) in relation to a change of name where a certificate has been issued, either endorse the existing certificate or issue a new one;
 - (c) make the register available for inspection free of charge in the Maldives by or on behalf of any unitholder (or the manager), during office hours (provided that it may be closed for periods not exceeding 30 business days in any one year);
 - (d) supply free of charge to any unitholder a copy of the entries on the register relating to that unitholder on request.

1.5 The register must be kept at the head office of the investment company (or trustee, in the case of a unit trust) or, if the manager or depositary arranges for some other person to make up the registration on its behalf, it may be kept at the office of that other person.

2. **Transfer of units**

2.1 Every unitholder is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless it is permitted by the formation documents.

2.2 Every instrument of transfer of units must be signed by, or on behalf of, the unitholder transferring the units and the transferor must be treated as the unitholder until the name of the transferee has been entered in the register.

2.3 The details of instruments of transfer must be kept for a period of six years from the date of registration.

2.4 On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the register.

3. **Certificates**

Following the sale or transfer of units, a document recording title to those units may be issued in such a form as the formation documents permit.

4. **Conversion of units**

Where there is more than one class of units offered for issue or sale, the unitholder has a right to convert from one to the other, provided that doing so would not contravene any provision in the formation documents.

Part IV

Appointment and replacement of manager and depositary

1. Appointment of a manager

- 1.1 The depositary must take all practicable steps to ensure that a scheme has at all times as its manager a CIS licensed person whose licence permits it to act as a manager.
- 1.2 The appointment of a manager (other than the first manager) under paragraph 1.1 must terminate at the close of the next annual general meeting following the date of the appointment or (if later) upon the expiration of 12 months from the date the appointment takes effect, unless the appointment has been approved by a resolution of the unitholders before the close of that annual general meeting or expiration of that 12 month period.

2. Termination of appointment of manager

- 2.1 The appointment of the manager terminates if a notice of termination of that appointment is given, in the case of an investment company, by that company to the manager and, in the case of a unit trust, by the trustee to the manager, following any of the following events:
 - (a) an application being made to dissolve the manager or to strike it off the Register of Companies;
 - (b) the presentation of a petition for the winding up of the manager;
 - (c) the depositary forming the reasonable opinion, and stating in writing, that a change of manager is desirable in the interest of unitholders;
 - (d) a resolution of unitholders being passed to remove the manager; or
 - (e) the unitholders of three quarters in value of all of the units then in issue making a request in writing to the depositary that the manager should be removed⁸.
- 2.2 The depositary must ensure that the unitholders are informed of the termination of appointment of a manager.
- 2.3 On receipt of a notice by the investment company or trustee under 2.1, the manager ceases to be the manager, and the investment company or trustee must appoint another CIS licensed person to be the manager, upon and subject to that other person entering into such documents as the investment company or trustee may require or manage the scheme property itself on behalf of the scheme until a manager is appointed or the winding up of the scheme is commenced, provided it is not prohibited from doing so by any law or rule.

⁸ TBD

3. **Retirement of a manager**

3.1 The manager of a unit trust has the right to retire in favour of another CIS licensed person approved in writing by the trustee upon:

- (a) the retiring manager appointing that person as manager in its place and assigning to that person all its rights and duties as such a manager; and
- (b) the new manager entering into such documents as the trustee reasonably considers necessary or desirable to be entered into by that person in order to secure the due performance of its duties as the manager of the unit trust.

3.2 Upon retirement, the retiring manager of a unit trust is released from all further obligations under the rules in the Act and this Regulation and under the trust deed; and may retain any consideration paid to it in connection with the change without having to account for it to any unitholder. This does not affect the rights of the trustee or any other person in respect of any act or omission on the part of the retiring manager before his retirement.

3.3 An ACD must not voluntarily terminate its appointment as ACD unless the termination is effective at the same time as the commencement of the appointment of a successor ACD under paragraph 1.

4. **Retirement of depositary**

4.1 The depositary of a licensed scheme may not retire voluntarily except upon the appointment of a new depositary.

4.2 When the depositary wishes to retire or ceases to be a CIS licensed person, subject to the CMDA approval the manager may appoint another person eligible to be the depositary in its place.

5. **Notification requirements**

5.1 In the event of:

- (a) the appointment of a manager being terminated;
- (b) a new manager being appointed; or
- (c) the manager becoming aware of any change of its controller,

the CMDA must be notified immediately.

Part V

Powers and Duties of the Scheme, the Manager and the Depositary

1. General

- 1.1 The duties and powers of the manager and the depositary under the rules in these Regulations and under the instrument constituting the scheme are in addition to the powers and duties under the general law.
- 1.2 Paragraph 1.1 applies only in so far as the relevant general law is not qualified by the rules in the Act, these Regulations or the instrument constituting the scheme.

2. Functions of manager

- 2.1 The manager must manage the scheme in accordance with the scheme's formation documents, the Act and these Regulations.
- 2.2 The manager must:
 - (a) make decisions as to the constituents of the scheme property in accordance with the investment objectives and the policy of the scheme; and
 - (b) instruct the depositary in writing how rights attaching to the ownership of the scheme property are to be exercised.

3. Functions of depositary

- 3.1 The depositary must take reasonable care to ensure that the scheme is managed by the manager in accordance with the provisions of Schedule 7 and Schedule 8 Parts I, II and VII of these Regulations and any provisions in the formation documents relating thereto.
- 3.2 The depositary, when acting in its capacity as such, must act solely in the interests of the unitholders.

4. Maintenance of records

- 4.1 The manager must make and retain for six years such records as enable:
 - (a) the scheme and the manager to comply with the Act and these Regulations; and
 - (b) it to demonstrate at any time that such compliance has been achieved.

- 4.2 The manager must make and retain for six years a daily record of the units in the scheme held, acquired or disposed of by the manager, including the classes of such units and of the balance of any acquisitions and disposals.
- 4.3 Where relevant, the manager must make and retain for a period of six years a daily record of:
- (a) how it calculates and estimates dilution; and
 - (b) its policy and method for determining the amount of any dilution levy or dilution adjustment.
- 4.4 The manager must on the request of the depositary immediately supply it with such information concerning the management and administration of the scheme as the depositary may reasonably require.

5. **Auditor**

- 5.1 Every scheme must appoint an auditor.
- 5.2 An investment company or the manager of a unit trust must, upon any vacancy for the position of auditor, with the approval of the depositary, appoint as auditor for the scheme a person qualified for appointment as auditor.
- 5.3 An investment company or the manager of a unit trust may at any time remove the auditor.
- 5.4 A person is not eligible for appointment as auditor of a scheme if he is an officer or employee of the scheme, the manager or the depositary or a partner or employee of such a person.

6. **Dealings in scheme property**

- 6.1 The manager may give instructions to deal in the assets of the scheme.
- 6.2 Where the depositary is of the opinion that a deal is not within the rules in these Regulations and the foundation documents, the depositary may require the manager to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.

7. **Control over scheme property**

- 7.1 The depositary is responsible for the safekeeping of all of the scheme property entrusted to it and must:
- (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the scheme;
 - (b) ensure that the scheme property in registered form is, as soon as practicable, registered in the name of the depositary, its nominee or a person retained by it;
 - (c) take into its custody or under its control documents of title to the scheme

property other than for transactions in derivatives; and

- (d) ensure that any transaction in derivatives is entered into so as to ensure that any resulting benefit is received by the depositary.

7.2 The depositary is responsible for the collection of income due to be paid for the account of the scheme.

7.3 The depositary must keep for six years such records as are necessary to enable it to comply with the rules in these Regulations and to demonstrate that it has achieved such compliance.

8. **Exercise of rights in respect of scheme property**

8.1 The depositary must take all necessary steps to ensure that instructions given to it by the manager for the exercise of rights attaching to the ownership of scheme property are carried out.

8.2 Where the scheme property contains units in any other scheme managed or otherwise operated by the manager or any associate, the depositary must exercise any voting rights associated with those units in accordance with what it reasonably believes to be the interests of the unitholders in the scheme.

9. **Duties of the depositary and the manager: investment and borrowing powers**

9.1 The manager must avoid the scheme property being used or invested contrary to Schedule 7 (investment and borrowing powers), or any provision in the formation documents.

9.2 The manager must, immediately upon becoming aware of any breach of a provision listed in paragraph 9.1, take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within paragraph 9.3.

9.3 The manager must restore compliance with Schedule 7 as soon as reasonably practicable having regard to the interests of the unitholders and, in any event, within the period specified in paragraph 9.5 where the scheme property is:

- (a) used or invested contrary to Schedule 7 (other than a provision excusing a failure to comply on a temporary basis); and
- (b) the contravention is beyond the control of both the manager and the depositary.

9.4 Immediately upon the depositary becoming aware of any breach of any provision listed in paragraph 9.1, it must ensure that the manager complies with paragraph 9.2.

9.5 The maximum period for restoration of compliance under paragraph 9.3 starts at the date of discovery of the relevant circumstance and lasts:

- (a) for six months; or
- (b) where the transaction relates to real property, for two years.

10. Committees and delegation

10.1 The manager of a scheme has the power to retain the services of anyone to assist in the performance of its functions, provided that:

- (a) a mandate in relation to managing investments of the scheme property is not given to:
 - (i) the depositary; or
 - (ii) any other person whose interests may conflict with those of the manager or the unitholders; or
 - (iii) any person who is not:
 - (A) a CIS licensed person or a licensed investment adviser under the Securities Act; or
 - (B) [subject to at least equivalent supervision in any jurisdiction outside the Maldives].⁹
- (b) the manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;
- (c) the mandate permits the manager to:
 - (i) give further relevant instructions to the person so retained; and
 - (ii) withdraw the mandate with immediate effect when this is in the interests of the unitholders; and
- (d) the mandate does not prevent effective supervision of the manager and does not prevent the manager from acting, or the scheme from being managed, in the best interests of the unitholders.

10.2 Where services are retained under paragraph 10.1, the responsibility which the manager had in respect of such services prior to that retention of services will remain unaffected.

10.3 The depositary of a scheme may delegate any function to any person save:

- (a) the investment company or the manager of a scheme, to assist the depositary to perform:
 - (i) any function of oversight in respect of the scheme or the manager as the case may be; or
 - (ii) any function of custody or control of the scheme property;
- (b) an associate of the investment company or of the manager of the scheme (as the case may be) to assist the depositary to perform any function in paragraph

⁹ TBD.

10.3(a)(i); or

- (c) a nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property of the scheme unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depositary.

10.4 Where a depositary retains services under paragraph 10.3:

- (a) if it retains the services of an associate of the manager or its own associate, then its liability for those services shall remain unaffected; and
- (b) in any other case, it will not be held responsible by virtue of the rules in these Regulations for any act or omission of the person so retained if it can show that:
 - (i) it was reasonable for it to obtain assistance to perform the function in question;
 - (ii) the person retained was and remained competent to provide assistance in the performance of the function in question; and
 - (iii) it had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.

11. Conflicts of interest

11.1 The manager and the depositary must take reasonable care to ensure that a transaction within paragraphs 11.1(a) to (e) is not carried out on behalf of the scheme:

- (a) putting cash on deposit with an affected person unless that person is an [eligible institution or an approved bank]¹⁰ and the requirement in paragraph 11.2 is satisfied;
- (b) lending money by an affected person to, or for the account of, the scheme, unless the affected person is an [eligible institution or an approved bank], and the requirement in paragraph 11.2 is satisfied;
- (c) the dealing in property by an affected person, to, or with, the scheme (or the depositary for the account of the scheme), unless paragraph 11.3 applies;
- (d) the vesting of property (other than cash) by an affected person in the scheme or the depositary for the account of the scheme against the issue of units in the scheme, unless:
 - (i) paragraph 11.3 applies; or
 - (ii) the purpose of the vesting is that the whole or part of the property of a body corporate or a collective investment scheme becomes the first

¹⁰ TBD.

property of the scheme and the unitholders of shares or units in the body corporate or collective investment scheme become the first unitholders in the scheme; and

- (e) the acquisition of scheme property by an affected person from the scheme (or the depositary acting for the account of the scheme) unless paragraph 11.3 applies.
- 11.2 Any transaction in paragraphs 11.1(a) or (b) must be at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm's length between the affected person and an independent party.
- 11.3 There is no breach of paragraph 11.1(c), (d) or (e) if the transaction meets the requirements of paragraphs 11.4 (best execution on-exchange), 11.5 (independent valuation) or 11.6 (arm's length transaction).
- 11.4 There is best execution on-exchange for the purposes of paragraph 11.3 if:
- (a) the property is a security admitted to listing on a recognised stock exchange;
 - (b) the transaction is effected under the rules of the relevant exchange with or through a person who is bound by those rules;
 - (c) there is evidence in writing of the effecting of the transaction and of its terms; and
 - (d) the manager has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the scheme.
- 11.5 There is independent valuation for the purposes of paragraph 11.3 if:
- (a) the value of the property is certified in writing for the purpose of the transaction by a person approved by the depositary as:
 - (i) independent of any affected person; and
 - (ii) qualified to value property of the relevant kind; and
 - (b) the depositary is of the opinion that the terms of the transaction are not likely to result in any material prejudice to unitholders.
- 11.6 There is an arm's length transaction for the purposes of paragraph 11.3 if:
- (a) paragraph 11.4(a) is not satisfied;
 - (b) it is not reasonably practicable to obtain an independent valuation under paragraph 11.5; and
 - (c) the depositary has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in paragraph 11.2.
12. **Duties of depositary in relation to the holding of the scheme's assets**

- 12.1 The depositary must segregate the scheme property from its own investments except to the extent required by law or permitted by this paragraph 12.
- 12.2 The depositary must ensure that if any scheme property is recorded in an account with itself, the title of that account makes it clear that the scheme property belongs to the scheme, and is segregated from the depositary's own property.
- 12.3 If the depositary appoints a custodian to hold any of the scheme property, the depositary must require the custodian to make it clear in the title of the account that the scheme property belongs to one or more schemes of which the depositary is the depositary.
- 12.4 To the extent practicable, the depositary must effect appropriate registration or recording of legal title to all scheme property in the name of:
- (a) the scheme (or, in respect of a unit trust, the trustee itself);
 - (b) a nominee company which is controlled by:
 - (i) the depositary;
 - (ii) an affiliated company; or
 - (iii) a custodian;
 - (c) a custodian if the scheme property is subject to the law or market practice of a jurisdiction outside the Maldives and the depositary has taken reasonable steps to determine that it is in the scheme's best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
 - (d) the depositary if the scheme property is subject to the law or market practice of a jurisdiction outside the Maldives and the depositary has taken reasonable steps to determine that it is in the scheme's best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice.
- 12.5 The depositary must hold any document of title to any scheme property either in its physical possession or with a custodian in an account designated for the scheme.
- 12.6 [The depositary must, as often as is necessary, but no less than every [25] business days, perform a reconciliation of its record of safe custody investments for which it is accountable but which it does not physically hold, with statements obtained from custodians.]¹¹
- 12.7 The depositary must, as often as is necessary, but no less than every 6 months, carry out a count of all scheme property it physically holds on behalf of the scheme and reconcile the result of that count with its record of scheme property that it physically holds on behalf of the scheme.

¹¹ John to consider reconciliation requirements.

- 12.8 The reconciliation referred to in paragraphs 12.6 and 12.7 must cover all scheme property recorded in the depositary's books and records [and must be performed by the 'total count method', which requires that all safe custody investments be counted and reconciled as at the
- 12.9 A firm must promptly correct any discrepancies which are revealed, and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the firm is responsible.
- 12.10 A depositary must ensure that proper records of the scheme property which it holds, or arranges for another to hold, are made and retained for a period of 3 years after they are made.

Part VI
Payments

1. Payments out of scheme property

- 1.1 The only payments which may be recovered from the scheme property are those in respect of:
- (a) remunerating the parties operating the scheme;
 - (b) the administration of the scheme; or
 - (c) the investment or safekeeping of the scheme property.
- 1.2 No payment under this rule can be made from scheme property if it is unfair to (or materially prejudices the interests of) any class of unitholders or potential unitholders.
- 1.3 Paragraphs 1.1 and 1.2 do not apply to any payments in relation to any taxation payable by the scheme.
- 1.4 Paragraphs 1.1 and 1.2 do not permit payments to third parties for the safekeeping or administration of units on behalf of unitholders rather than on behalf of the scheme.

2. Charges on buying and selling units

- 2.1 No person other than the manager may impose charges on unitholders or potential unitholders when they buy or sell units.
- 2.2 A manager must not make any charge or levy in connection with:
- (a) the issue or sale of units except where a preliminary charge is made in accordance with the prospectus of the scheme which must be either a fixed amount or calculated as a percentage of the price of a unit; or
 - (b) the redemption or cancellation of units, except a redemption charge made in accordance with the prospectus current at the time the relevant units were purchased by the unitholder.
- 2.3 This rule is subject to Schedule 8, Part II, paragraph 4 (dilution).

3. Allocation of payments to income or capital

- 3.1 The manager must determine whether a payment is to be made from the income property or capital property of a scheme, and in doing so the manager must:
- (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the scheme; and
 - (b) agree the treatment of any payment with the depositary.

3.2 Where, for any annual accounting period, the amount of the income property is less than the income distributed, the shortfall must, as from the end of that period, be charged to the capital account and must not subsequently be transferred to the income account.

4. Prohibition on promotional payments

4.1 No payment may be made from scheme property to any person, other than a payment to the manager permitted by the rules in these Regulations, for the acquisition or promotion of the sale of units in a scheme.

4.2 Paragraph 4.1 does not apply to the costs a scheme incurs preparing and printing the prospectus provided the prospectus states that these costs are properly payable to the manager from scheme property.

5. Allocation of scheme property

5.1 For an umbrella scheme, any assets to be received into, or any payments out of, the scheme property which are not attributable to one sub-fund only, must be allocated by the manager between the sub-funds in a manner which is fair to the unitholders of the umbrella scheme generally.

Part VII

Income: accounting, allocation and distribution

1. Accounting periods

1.1 A scheme must have:

- (a) an annual accounting period;
- (b) a half-yearly accounting period; and
- (c) an accounting reference date.

1.2 A half-yearly accounting period begins with the first day of an annual accounting period and ends on:

- (a) the day which is six months before the last day of that annual accounting period; or
- (b) some other reasonable date as set out in the prospectus of the scheme.

1.3 The first annual accounting period of a scheme must begin on the first day of any period of initial offer and must end on the next accounting reference date, except where paragraph 1.4 applies.

1.4 When the accounting reference date of a scheme falls less than six months after the beginning of the first annual accounting period, that period may be extended until the subsequent accounting reference date.

1.5 Each annual accounting period of a scheme subsequent to the first period is to run for a period of 12 months.

2. Income allocation and distribution

2.1 A scheme must have an annual income allocation date, [which must be within four months of the accounting reference date].

2.2 A scheme may have interim income allocation dates and one or more interim accounting periods for each of those dates and, if it does, the interim income allocation date must be within four months of the end of the relevant interim accounting period(s).

2.3 A scheme must have a distribution account to which the income property is transferred at the end of the relevant accounting period.

2.4 If income is allocated and distributed during an accounting period:

- (a) with effect from the end of the relevant accounting period, the amount of income allocated to unit classes that accumulate income becomes part of the capital property and requires an adjustment to the proportion of the value of the

scheme property to which they relate if other classes of units are in issue during the period;

- (b) the adjustment in (a) must ensure the price of units remains unchanged despite the transfer of income; and
- (c) the amount of any interim distribution may not be more than the amount which, in the opinion of the manager, would be available for allocation if the interim accounting period and all previous interim accounting periods in the same annual accounting period, taken together, were an annual accounting period.

3. **Unclaimed, de minimis and joint unitholder distributions**

- 3.1 Any distribution remaining unclaimed after a period of six years, or such longer time specified by the prospectus, must become part of the capital property.
- 3.2 The manager and the depositary may agree a de minimis amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.
- 3.3 Distributions made to the first named joint unitholder on the register will be as effective a discharge to the trustee and manager, as if the first named joint unitholder had been a sole unitholder.

Schedule 9

Suspension of dealings and winding up of a solvent scheme

1. Requirement

- 1.1 The manager may, with the prior agreement of the depositary, and must without delay if the depositary so requires, suspend the issue, cancellation, sale and redemption of units in a scheme (referred to in this Schedule as "dealings in units"), where due to exceptional circumstances it is in the interest of all the unitholders in the scheme.
- 1.2 On suspension, the manager, or the depositary if it has required the manager to suspend dealings in units, must:
 - (a) immediately inform the CMDA, stating the reason for its action; and
 - (b) as soon as practicable give written confirmation of the suspension and the reasons for it to the CMDA.
- 1.3 During a suspension, none of the obligations in Schedule 8, Part I (dealing) or Part II (valuation and pricing) apply.
- 1.4 The suspension of dealings in units must cease as soon as practicable after the exceptional circumstances referred to in paragraph 1.1 have ceased and, in any event, within 28 days of the commencement of the suspension.
- 1.5 The manager must inform the CMDA of the proposed restart of dealings in units and immediately after the restart must confirm this by giving notice to the CMDA.
- 1.6 If a scheme operates limited redemption arrangements, and the event in paragraph 1.1 has affected a valuation point, the manager must declare an additional valuation point as soon as possible after the restart of dealings in units.

2. When an a scheme is to be wound up or a sub-fund terminated

- 2.1 In this Schedule, where a sub-fund of an umbrella scheme is being terminated, references to:
 - (a) units, are references to units of the class or classes related to the sub-fund being terminated;
 - (b) a resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (a);
 - (c) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
 - (d) liabilities, are references to liabilities of the scheme allocated or attributable to the sub-fund to be terminated.

- 2.2 A scheme must not be wound up except under this Schedule or Part X of the Act.
- 2.3 A scheme must not be wound up under this Schedule if there is a vacancy in the position of manager.
- 2.4 A scheme must not be wound up or a sub-fund terminated under this Schedule unless:
- (a) section 16 of the Act has been complied with; and
 - (b) a statement has been prepared and sent or delivered to the CMDA under paragraph 3 (solvency statement) and received by the CMDA prior to satisfaction of the condition in (a).
- 2.5 Subject to paragraph 2.3 and the subsequent provisions of this Schedule, the appropriate steps to wind up a scheme or terminate a sub-fund under this section must be taken:
- (a) if a resolution of the unitholders to that effect is passed by a majority of not less than three-quarters of the votes validly cast; or
 - (b) when the period (if any) fixed for the duration of the investment company or the sub-fund by the formation document expires or any event occurs, for which the formation document provides that the investment company or the sub-fund is to be wound up; or
 - (c) on the date stated in any agreement by the CMDA in response to a request from the manager for the winding up of the scheme or a request for the termination of the sub-fund.

3. **Solvency statement**

- 3.1 Before notice is given to the CMDA under section 16 of the Act of the proposals referred to in paragraph 2.3, the manager must make a full enquiry into the scheme affairs to determine whether the scheme will be able to meet all its liabilities.
- 3.2 The manager must then, based on the results of this enquiry, prepare a statement either:
- (a) confirming that the scheme will be able to meet all its liabilities within 12 months of the date of the statement; or
 - (b) stating that such confirmation cannot be given.
- 3.3 This solvency statement must:
- (a) relate to the scheme's affairs at a date no more than 28 days before the date on which notice is given to the CMDA; and
 - (b) if it contains the confirmation under paragraph 3.2(a), be signed by at least two directors of the manager.
- 3.4 A statement which contains the confirmation under paragraph 3.1 must annex a

statement signed by the scheme's auditor to the effect that, in his opinion, the enquiry required by paragraph 3.1 has been properly made and is fairly reflected by the confirmation.

- 3.5 The solvency statement must be sent or delivered to the CMDA and the depositary no later than 21 days after notice is given to the CMDA in accordance with section 16 of the Act.

4. **Consequences of commencement of winding up or termination**

- 4.1 Winding up or termination must commence once the conditions referred to in paragraph 2.3 are both satisfied or, if later, once the events in paragraph 2.4 have occurred.

- 4.2 Once winding up or termination has commenced:

- (a) Schedule 8, Part 1 (dealing) and Part II (valuation and pricing) and Schedule 7 (investment and borrowing powers) cease to apply to the scheme or to the units and scheme property in the case of a sub-fund;
- (b) the scheme must cease to issue and cancel units;
- (c) the manager must cease to sell or redeem units or to arrange for the issue or cancellation of units;
- (d) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the sanction of the managers;
- (e) where winding up an investment company, the investment company must cease to carry on its business, except for its beneficial winding up; and
- (f) where winding up an investment company, the corporate status and corporate powers of the investment company and (subject to the preceding provisions of this rule) the powers of the directors continue until the investment company is dissolved.

- 4.3 The manager must as soon as practicable after winding up or termination has commenced if the manager has not previously notified unitholders of the proposal to wind up the investment company or terminate the sub-fund, give written notice of the commencement of the winding up or termination to the unitholders.

5. **Manner of winding up or termination**

- 5.1 The manager must, as soon as practicable after winding up or termination has commenced, cause the scheme property to be realised and the liabilities of the scheme or the sub-fund to be met out of the proceeds.

- 5.2 The manager must instruct the depositary how such proceeds (until utilised to meet liabilities or make distributions to unitholders) must be held and those instructions must be prepared with a view to the prudent protection of creditors and unitholders against loss.

- 5.3 Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the scheme's or the sub-fund's remaining liabilities, the manager may arrange for the depositary to make one or more interim distributions to the unitholders proportionately to the right of their respective units to participate in scheme property at the commencement of the winding up or termination.
- 5.4 On or before the date on which the final account is sent to unitholders in accordance with paragraph 6 (final account and termination account), the manager must arrange for the depositary to make a final distribution to the unitholders, in the same proportions as provided by paragraph 5.3, of the balance remaining (net of a provision for any further expenses of the scheme or sub-fund).
- 5.5 Where the scheme and one or more unitholders (other than the manager) agree, the requirement in paragraph 5.2 to realise the scheme property does not apply to that part of the scheme property which is proportionate to the right to participate in scheme property of that or those unitholders
- 5.6 In the case of paragraph 5.5, the manager must cause the scheme to distribute that part of the scheme property in specie to that or those unitholders in proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the manager appropriate to ensure that those unitholders bear the proportion of the liabilities and the expenses of the distribution attributable to their units.
- 5.7 The depositary must notify the CMDA once the winding up of the scheme or the termination of a sub-fund is complete and at the same time the manager or the depositary must request the CMDA to revoke the manager.

- 5.8 Where any sum of money stands to the account of a scheme at the date of its dissolution, the manager must arrange for the depositary to pay or lodge that sum within one month after that date into the Court.
- 5.9 Where any sums (including unclaimed distributions) remain standing to the account of the scheme following tender of payment (whether to a creditor or a unitholder), the manager must instruct the depositary to retain the sums ("tendered sums") in an account ("unclaimed payments account") separate from any other part of the scheme property.
- 5.10 The depositary must, if instructed by the manager, make a payment out of the unclaimed payments account for the purpose of settling a claim for a tendered sum.
- 5.11 Any costs and reasonable expenses of the manager for investigating a claim and any costs and expenses incurred by the depositary in making a payment out of the unclaimed payments account may be reimbursed from the payment.
- 5.12 The person entitled to any tendered sum is not entitled to any interest in respect of the unclaimed payments account and any interest arising in respect of the unclaimed payments account must be allocated between the continuing sub-funds of the scheme in a manner which is fair to the unitholders of the scheme generally.
- 5.13 Amounts standing to the credit of an unclaimed payments account must be excluded from the value of the scheme property and must not be subject to any distribution under this rule, but upon a dissolution of the scheme the depositary must cease to hold those amounts as part of that account and they will become subject to the provisions of paragraph 5.8.

6. **Final account and termination account**

- 6.1 Once the scheme's affairs are fully wound up or termination of the sub-fund has been completed, the manager must prepare an account of the winding up or termination showing:
- (a) how it has been conducted; and
 - (b) how the scheme property has been disposed of.
- 6.2 The account in paragraph 6.1 must be approved by the board of directors of the manager and be signed on their behalf by at least two directors.
- 6.3 Once signed, this account is the "final account" for the purposes of the winding up of a scheme and the "termination account" for the purposes of the termination of a sub-fund.
- 6.4 The final account must state the date on which the scheme's affairs were fully wound up and the date stated must be regarded as the final day of the accounting period of the scheme then running ("final accounting period").
- 6.5 The manager must ensure that the scheme's auditor makes a report in respect of the final account or termination account, which states the auditor's opinion whether the final account or termination account has been properly prepared for the purpose of

paragraph 6.1.

- 6.6 Within two months of the date of the completion of the winding up of the scheme or termination of the sub-fund, the manager must send a copy of the final account or termination account and the auditor's report on it to the CMDA and to each person who was a unitholder immediately before its end.

7. **Duty to ascertain liabilities**

- 7.1 The manager must use all reasonable endeavours to ensure that all the liabilities of the scheme are discharged before the completion of the winding up or termination.

- 7.2 The duty in paragraph 7.1 relates to all liabilities of which the manager:

- (a) is, or becomes, aware before the completion of the winding up or termination;
or
- (b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

- 7.3 If the manager rejects any claim against the scheme in whole or part or against the scheme in respect of a liability in whole or part, the manager must immediately send to the claimant written notice of its reasons for doing so.

8. **Reports and accounts**

- 8.1 The manager need not send to each unitholder a copy of any report relating to an annual accounting period or half-yearly accounting period which began after commencement of winding up or termination, if the manager, after consulting the CMDA, have reasonably determined that this is not required in the interest of unitholders.

- 8.2 Where paragraph 8.1 applies, a copy of the report must be supplied free of charge to any unitholder upon request.

9. **Liabilities of the manager**

- 9.1 Except to the extent that the manager can show that it has complied with paragraph 7 (duty to ascertain liabilities), the manager:

- (a) is personally liable to meet any liability of an scheme, of which it is the manager, wound up under this section (whether or not the scheme has been dissolved); and
- (b) must keep the scheme indemnified against any liability allocated or attributable to a sub-fund that has been terminated under these rules

that was not discharged before the completion of the winding up or termination.

- 9.2 Where winding up an scheme, if the proceeds of the realisation of the assets attributable, or allocated to a particular sub-fund of an umbrella scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the manager must pay to the scheme, for the account of that sub-fund the amount of the

deficit, unless and to the extent that the manager can show that the deficit did not arise as a result of any failure by the manager to comply with the rules in these Regulations.

- 9.3 The liabilities of the manager under this rule create a debt accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question.
- 9.4 The obligations of the manager under this rule do not affect any other obligation of the manager under these rules or the general law.

10. **Additional provisions applicable to umbrella schemes**

- 10.1 Liabilities of an umbrella scheme which is an umbrella attributable, or allocated, to a particular sub-fund must be met first out of the scheme property attributable or allocated to such sub-fund.
- 10.2 If the liabilities to be met out of a particular sub-fund of an umbrella scheme are greater than the proceeds of the realisation of the scheme property attributable or allocated to that sub-fund, the deficit must be met out of the scheme property attributable or allocated to the solvent sub-funds of that umbrella scheme in which the proceeds of realisation exceed liabilities and divided between those sub-funds in a manner that is fair to the unitholders in those solvent sub-funds.

11. **Miscellaneous**

- 11.1 If:
- (a) during the course, or as a result, of the enquiry referred to in paragraph 3.1, the manager become of the opinion that it will not be possible to provide the confirmation referred to in paragraph 3.2(a) that rule; or
 - (b) after winding up or termination has commenced, the manager becomes of the opinion that the scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under paragraph 3.2(a);

the manager must immediately present a petition or cause the scheme to present a petition for the winding up of the investment company as an unregistered scheme under []¹².

¹² General insolvency law to be referenced.