

Business Trusts (Amendment) Bill

Bill No. 22/2022.

Read the first time on 12 September 2022.

A BILL

intituled

An Act to amend the Business Trusts Act 2004.

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

Short title and commencement

1. This Act is the Business Trusts (Amendment) Act 2022 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2 of the Business Trusts Act 2004 (called in this Act the principal Act) is amended —

(a) by inserting, immediately before the definition of “accounting records”, the following definitions:

10 ““accounting corporation” —

(a) has the meaning given by section 2(1) of the Accountants Act 2004; and

(b) includes a company deemed to be an accounting corporation under that Act;

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“accounting entity” means a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership;

“accounting firm” —

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(a) has the meaning given by section 2(1) of the Accountants Act 2004; and

(b) includes a firm deemed to be an accounting firm under that Act;

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“accounting limited liability partnership” has the meaning given by section 2(1) of the Accountants Act 2004;”;

(b) by inserting, immediately after the definition of “accounting records”, the following definition:

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““Accounting Standards”, in relation to business trusts, means the accounting standards made or formulated by the Accounting Standards Council under Part 3 of the Accounting

Standards Act 2007 as prescribed in regulations, with such modifications as may be prescribed in those regulations;”;

(c) by deleting the word “Schedule” in the definition of “business trust” and substituting the words “First Schedule”;

(d) by inserting, immediately after the definition of “business trust”, the following definition:

““chief executive officer”, in relation to the trustee-manager of a registered business trust, means any one or more persons, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the trustee-manager of the registered business trust; and

(b) is principally responsible for the management and conduct of the business of the trustee-manager of the registered business trust, or part of the business of the trustee-manager, as the case may be;”;

(e) by deleting the definition of “financial year” and substituting the following definitions:

““financial statements”, in relation to a registered business trust, means the financial statements of the registered business trust required to be prepared in accordance with the Accounting Standards;

“financial year”, in relation to a registered business trust, means the period —

(a) in respect of which the financial statements of the registered business

trust is made up, whether that period is a year or not; and

(b) which is to be determined in accordance with section 74A;

5 “foreign company” has the meaning given by section 4(1) of the Companies Act 1967;”;

(f) by inserting, immediately after the definition of “licensed insolvency practitioner”, the following definition:

10 ““limited liability partnership” has the meaning given by section 4(1) of the Limited Liability Partnerships Act 2005;”;

(g) by inserting, immediately after the definition of “liquidator”, the following definition:

15 ““listed”, in relation to a registered business trust, means a registered business trust that has been admitted to the official list of an approved exchange in Singapore and has not been removed from that official list;”;

20 (h) by inserting, immediately after the definition of “substantial shareholder”, the following definition:

““summary financial statement” means a summary financial statement mentioned in section 79;”;

25 (i) by deleting the words “referred to” in paragraph (f) of the definition of “trust property” and substituting the word “mentioned”; and

(j) by deleting the full-stop at the end of the definition of “unitholder” and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

30 ““unlisted registered business trust”, for the purposes of sections 63A to 63G, means a registered business trust the units of which are not listed for quotation or quoted on an approved exchange in Singapore or any securities exchange outside Singapore;

“VCC” or variable capital company has the meaning given by section 2(1) of the Variable Capital Companies Act 2018.”.

Amendment of section 7

3. Section 7 of the principal Act is amended —

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(a) by deleting subsection (1) and substituting the following subsection:

“(1) The trustee-manager of a registered business trust must take all reasonable steps to secure that each secretary of the trustee-manager is a person who satisfies the requirements in section 171(1AA) of the Companies Act 1967.”; and

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(b) by inserting, immediately after the words “an offence” in subsection (2), the words “and shall be liable on conviction to a fine not exceeding \$50,000”.

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Amendment of section 10

4. Section 10(3) of the principal Act is amended by inserting, immediately after the words “improper use of”, the words “its position as the trustee-manager or”.

Amendment of section 11

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5. Section 11(2) of the principal Act is amended by inserting, immediately after the words “improper use of”, the words “his, her or its position as an officer or agent of the trustee-manager or”.

Repeal and re-enactment of section 12

6. Section 12 of the principal Act is repealed and the following section substituted therefor:

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“Disclosure of interests in transactions, property, offices, etc.

12.—(1) Subject to this section, every director or chief executive officer of the trustee-manager of a registered business trust (called in this section the director or chief

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executive officer) who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction entered or to be entered into by the trustee-manager for or on behalf of the registered business trust (called in this section the transaction or proposed transaction) must, as soon as practicable after the relevant facts have come to his or her knowledge —

(a) declare the nature of his or her interest at a meeting of the directors of the trustee-manager; or

(b) send a written notice to the trustee-manager containing details on the nature, character and extent of his or her interest in the transaction or proposed transaction.

(2) A written notice under subsection (1)(b) must be given as soon as practicable after —

(a) the date on which the director or chief executive officer became a director or chief executive officer, as the case may be; or

(b) if already a director or chief executive officer (as the case may be), the date on which the director or chief executive officer became, directly or indirectly, interested in the transaction or proposed transaction.

(3) Despite subsections (1) and (2), where —

(a) before the appointed day, a chief executive officer had become, directly or indirectly, interested in a transaction or proposed transaction; and

(b) on the appointed day, the transaction or proposed transaction has not been fully carried out,

the chief executive officer must —

(c) make the declaration under subsection (1)(a) as soon as practicable on or after the appointed day unless the declaration has been made before that day; or

(d) give the written notice under subsection (1)(b) as soon as practicable on or after the appointed day unless the written notice has been given before that day.

(4) Where a chief executive officer makes any declaration in accordance with subsection (3)(c), the chief executive officer is deemed to have made a declaration under subsection (1)(a) in accordance with subsection (1), and any declaration made under subsection (3)(c) is to be treated as a declaration given under subsection (1)(a). 5

(5) Where a chief executive officer gives any written notice in accordance with subsection (3)(d), the chief executive officer is deemed to have given a written notice under subsection (1)(b) in accordance with subsection (2), and any written notice given under subsection (3)(d) is to be treated as a written notice given under subsection (1)(b). 10

(6) The requirements of subsection (1) do not apply in any case where the interest of the director or chief executive officer consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction mentioned in that subsection if the interest of the director or chief executive officer (as the case may be) may properly be regarded as not being a material interest. 15

(7) A director or chief executive officer is not deemed to be interested or to have been at any time interested in the transaction or proposed transaction mentioned in subsection (1) by reason only — 20

(a) in the case where the transaction or proposed transaction relates to any loan to the trustee-manager of the registered business trust — that he or she has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or 25

(b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a related corporation of the trustee-manager of the registered business trust — that he or she is a director or chief executive officer (as the case may be) of the related corporation, 30

and this subsection has effect not only for the purposes of this Act but also for the purposes of any other law, but does not affect 35

the operation of any provision in the trust deed of the registered business trust.

5 (8) A declaration given by a director or chief executive officer under subsection (1)(a), or a written notice given by a director or chief executive officer under subsection (1)(b), is to be treated as a sufficient declaration or written notice under those provisions in relation to a transaction or proposed transaction if —

10 (a) in the case of a declaration, the declaration is given at a meeting of the directors of the trustee-manager or the director or chief executive officer (as the case may be) takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors of the trustee-manager after it is given;

(b) the declaration or written notice is to the effect that —

15 (i) he or she is an officer or a member of a specified corporation, a member of a specified firm, or a partner or an officer of a specified limited liability partnership; and

20 (ii) he or she is to be regarded as interested in any transaction which may, after the date of the declaration or written notice, be made with the specified corporation, firm or limited liability partnership;

25 (c) the declaration or written notice specifies the nature and extent of his or her interest in the specified corporation, firm or limited liability partnership; and

30 (d) at the time the transaction is made, or the proposed transaction is proposed, his or her interest is not different in nature or greater in extent than the nature and extent of the interest specified in the declaration or written notice under paragraph (c).

(9) Every director and chief executive officer who holds any office or possesses any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with

the duties or interests of the trustee-manager in relation to the registered business trust, must —

- (a) declare the fact and the nature, character and extent of the conflict at a meeting of the directors of the trustee-manager; or 5
- (b) send a written notice to the trustee-manager setting out the fact and the nature, character and extent of the conflict.

(10) A declaration under subsection (9)(a) must be made at the first meeting of the directors of the trustee-manager of a registered business trust held — 10

- (a) after he or she becomes a director or chief executive officer, as the case may be; or
- (b) if already a director or chief executive officer (as the case may be), after he or she commenced to hold the office or to possess the property. 15

(11) A written notice under subsection (9)(b) must be given as soon as practicable after —

- (a) the date on which the director or chief executive officer became a director or chief executive officer, as the case may be; or 20
- (b) if already a director or chief executive officer (as the case may be), after he or she commenced to hold the office or to possess the property.

(12) Despite subsections (9), (10) and (11), where — 25

- (a) before the appointed day, a chief executive officer held any office or possessed any property mentioned in subsection (9); and

(b) on the appointed day, the chief executive officer continues to hold such office or to possess such property,

the chief executive officer must —

5 (c) make the declaration under subsection (9)(a) at the first meeting of the directors of the trustee-manager held on or after the appointed day unless the declaration has been made before that day; or

10 (d) give the written notice under subsection (9)(b) as soon as practicable on or after the appointed day unless the written notice has been given before that day.

15 (13) Where a chief executive officer makes any declaration in accordance with subsection (12)(c), the chief executive officer is deemed to have made a declaration under subsection (9)(a) in accordance with subsection (10), and any declaration made under subsection (12)(c) is to be treated as a declaration given under subsection (9)(a).

20 (14) Where a chief executive officer gives any written notice in accordance with subsection (12)(d), the chief executive officer is deemed to have given a written notice under subsection (9)(b) in accordance with subsection (11), and any written notice given under subsection (12)(d) is to be treated as a written notice given under subsection (9)(b).

25 (15) The trustee-manager of a registered business trust must, as soon as practicable after the receipt of the written notice mentioned in subsection (1)(b) or (9)(b), send a copy of the written notice to —

30 (a) in the case where the written notice is given by a chief executive officer — all the directors of the trustee-manager; or

(b) in the case where the written notice is given by a director — all the other directors of the trustee-manager.

(16) Where a director or chief executive officer declares an interest or a conflict by a written notice mentioned in subsection (1)(b) or (9)(b) (respectively) in accordance with this section —

- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors of the trustee-manager of the registered business trust after the written notice is given; and 5
- (b) the provisions of section 188 (minutes of proceedings) of the Companies Act 1967 apply as if the declaration had been made at that meeting. 10

(17) The secretary of the trustee-manager of a registered business trust must —

- (a) record every declaration under this section in the minutes of the meeting at which it was made; and 15
- (b) keep records of every written resolution duly signed and returned to the trustee-manager under this section.

(18) The directors of the trustee-manager of a registered business trust must permit a chief executive officer who is not a director to attend a meeting of the board of directors of the trustee-manager where such attendance is necessary for the chief executive officer to make a declaration for the purpose of complying with this section. 20

(19) For the purposes of this section — 25

- (a) an interest of a member of a director's family is treated as an interest of the director and the words "member of a director's family" include the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter; and 30
- (b) an interest of a member of a chief executive officer's family is treated as an interest of the chief executive officer and the words "member of the chief executive officer's family" include the chief executive officer's

spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

5 (20) Subject to subsection (7), this section is in addition to and not in derogation of the operation of any rule of law or any provision in the trust deed restricting a director or chief executive officer of the trustee-manager of a registered business trust from having any interest in transactions with the trustee-manager in its capacity as the trustee-manager of the registered business trust or from holding offices or possessing properties involving duties or interests in conflict with the duties or interests of the trustee-manager in relation to the registered business trust.

15 (21) Any director or chief executive officer who contravenes subsection (1), (2), (3), (9), (10), (11), (12) or (18) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

20 (22) In this section, “appointed day” means the date of commencement of section 6 of the Business Trusts (Amendment) Act 2022.”.

Amendment of section 13

7. Section 13 of the principal Act is amended —

25 (a) by inserting, immediately after subsection (1), the following subsection:

30 “(1A) The trustee-manager of a registered business trust must keep a register showing with respect to each chief executive officer of the trustee-manager particulars of —

(a) units or derivatives of units in the registered business trust, being units or derivatives in which the chief executive

officer has an interest and the nature and extent of that interest; and

- (b) debentures of the registered business trust in which the chief executive officer has an interest and the nature and extent of that interest.”; 5
- (b) by deleting the words “its director” in subsection (2) and substituting the words “a director or chief executive officer”;
- (c) by deleting the words “the particulars in subsection (1)” in subsection (2) and substituting the words “or chief executive officer (as the case may be) the particulars in subsection (1) or (1A) (as the case may be)”;
- (d) by inserting, immediately after the word “director” in subsection (2)(a) and (b), the words “or chief executive officer (as the case may be)”;
- (e) by deleting the words “referred to” in subsection (2)(c) and substituting the word “mentioned”;
- (f) by inserting, immediately after subsection (2), the following subsections: 20
- “(2A) Subsection (2) does not apply to a trustee-manager of a registered business trust in relation to any notice received by the trustee-manager before the appointed day, from a person in the person’s capacity as a chief executive officer, under section 137N(1) of the Securities and Futures Act 2001. 25
- (2B) Where —
- (a) before the appointed day, the trustee-manager of a registered business trust had received any notice under section 137N(1) of the Securities and Futures Act 2001 from a person in the 30

person's capacity as a chief executive officer; and

(b) on the appointed day, the person is a chief executive officer of the trustee-manager,

5 the trustee-manager must enter in its register in relation to the chief executive officer, within 14 days after the appointed day —

10 (c) the particulars of units or derivatives of units in the registered business trust and debentures of the registered business trust, in which the chief executive officer has an interest immediately prior to the appointed day; and

15 (d) the nature and extent of that interest, including the number and description of the units or derivatives of units in the registered business trust and debentures of the registered business trust.”;

20 (g) by deleting the words “subsection (1) or (2)” in subsection (7) and substituting the words “subsection (1), (1A), (2) or (2B)”;

(h) by inserting, immediately after the word “director” wherever it appears in subsection (7), the words “or chief executive officer”;

25 (i) by deleting the words “subsection (9), a director” in subsection (8) and substituting the words “subsections (9), (9A) and (9B), every director and chief executive officer”;

30 (j) by deleting the words “subsections (1) and (2)” in subsection (8) and substituting the words “subsections (1), (1A) and (2)”;

(k) by deleting paragraph (a) of subsection (9) and substituting the following paragraph:

“(a) in the case of a notice under paragraph (a) of that subsection, within 2 business days after the later of the following dates:

- (i) the date on which the director became a director of the trustee-manager of a registered business trust or the chief executive officer became a chief executive officer of the trustee-manager, as the case may be; 5
- (ii) the date on which the director or chief executive officer (as the case may be) became a unitholder of the registered business trust or acquired an interest in the units or derivatives of units in the registered business trust or debentures of the registered business trust; and”; 10

(l) by inserting, immediately after subsection (9), the following subsections: 20

“(9A) Subsection (9) does not apply to a chief executive officer of the trustee-manager of a registered business trust in respect of —

- (a) any acquisition of a unit in the registered business trust, or an interest in a unit or derivative of a unit in the registered business trust or a debenture of the registered business trust, that takes place before the appointed day; and 25
- (b) any change in respect of the particulars mentioned in subsection (8)(a), where the event giving rise to the change takes place before the appointed day. 30

(9B) Where —

(a) before the appointed day, a chief executive officer of the trustee-manager of a registered business trust had become a unitholder of the registered business trust or acquired an interest in the units or derivatives of units in the registered business trust or debentures of the registered business trust; and

(b) on the appointed day, the chief executive officer continues to hold such units or interests,

a notice under subsection (8)(a) must be given within 14 days after the appointed day, unless such notice had been given before that day.”;

(m) by inserting, immediately after the words “other directors” in subsection (10), the words “and chief executive officers”;

(n) by deleting the words “or with subsection (9)” in subsection (11) and substituting the words “, (9) or (9B)”;

(o) by deleting subsection (13);

(p) by inserting, immediately after the words “a director” in subsection (14), the words “or chief executive officer”;

(q) by inserting, immediately after the words “that director” in subsection (14), the words “or chief executive officer (as the case may be)”;

(r) by deleting subsection (15) and substituting the following subsection:

“(15) For the purposes of this section —

(a) an interest of a member of a director’s family is treated as an interest of the director and the words “member of a director’s family” include the director’s spouse, son, adopted son, stepson,

daughter, adopted daughter and stepdaughter; and

(b) an interest of a member of a chief executive officer’s family is treated as an interest of the chief executive officer and the words “member of the chief executive officer’s family” include the chief executive officer’s spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.”;

(s) by inserting, immediately after the words “Any director” in subsection (16), the words “or chief executive officer”;

(t) by deleting the words “or (13)” in subsection (16);

(u) by deleting the words “subsection (1), (2), (3), (4), (5), (6) or (10)” in subsection (17) and substituting the words “subsection (1), (1A), (2), (2B), (3), (4), (5), (6) or (10)”;

(v) by inserting, immediately after subsection (18), the following subsection:

“(19) In this section, “appointed day” means the date of commencement of section 7 of the Business Trusts (Amendment) Act 2022.”; and

(w) by deleting the section heading and substituting the following section heading:

“Disclosure and register of directors’ and chief executive officer’s interests”.

Repeal and re-enactment of section 20

8. Section 20 of the principal Act is repealed and the following section substituted therefor:

“Removal of trustee-manager by unitholders

20.—(1) Despite any provision in the trust deed of a registered business trust, the trustee-manager of a registered business trust may be removed as the trustee-manager by the unitholders of the

registered business trust only if both of the following conditions are satisfied:

- 5 (a) a resolution to remove the trustee-manager is approved by the unitholders holding in the aggregate a majority of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or where proxies are allowed, by proxy present at a meeting of the unitholders of the registered business trust;
- 10 (b) the removal is in accordance with such procedures as the Authority may prescribe.

(2) Any provision in the trust deed of a registered business trust is void insofar as it would have the effect —

- 15 (a) of allowing the removal of a trustee-manager of a registered business trust as the trustee-manager by the unitholders of the registered business trust if a resolution to remove the trustee-manager is approved by the unitholders holding in the aggregate less than a majority of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or where proxies are allowed, by proxy present at a meeting of the unitholders of the registered business trust;
- 20 (b) of not allowing the removal of a trustee-manager of a registered business trust as the trustee-manager by the unitholders of the registered business trust even if a resolution to remove the trustee-manager is approved by the unitholders holding in the aggregate a majority of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or where proxies are allowed, by proxy present at a meeting of the unitholders of the registered business trust; or
- 25 (c) of allowing the removal of a trustee-manager of a registered business trust as the trustee-manager by the unitholders of the registered business trust in
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accordance with any procedure other than as prescribed by the Authority for the purposes of subsection (1)(b).”.

Repeal and re-enactment of section 27 and new sections 27A, 27B and 27C

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9. Section 27 of the principal Act is repealed and the following sections substituted therefor:

“Provisions protecting officers of trustee-manager from liability

27.—(1) Any provision (whether in the trust deed of a registered business trust, in any contract entered into by the trustee-manager of a registered business trust or its officer or whenever and however arising) that purports to exempt an officer of the trustee-manager (to any extent) from any liability that would otherwise attach to the officer in connection with any negligence, default, breach of duty or breach of trust in relation to the registered business trust is void.

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(2) Any provision (whether in the trust deed of a registered business trust, in any contract entered into by the trustee-manager of a registered business trust or its officer or whenever and however arising) by which the trustee-manager directly or indirectly provides an indemnity (to any extent) for an officer of the trustee-manager against any liability attaching to him or her in connection with any negligence, default, breach of duty or breach of trust in relation to the registered business trust is void, except as permitted by subsection (3) or section 27A.

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(3) Subsection (2) does not prevent the trustee-manager of a registered business trust from purchasing and maintaining for an officer of the trustee-manager insurance against any liability mentioned in that subsection.

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Third party indemnity

5 **27A.**—(1) Section 27(2) does not apply where the provision for indemnity is against liability incurred by the officer to a person other than the trustee-manager in its capacity as trustee-manager of the registered business trust, except when the indemnity is against —

(a) any liability of the officer to pay —

(i) a fine in criminal proceedings; or

10 (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

(b) any liability incurred by the officer —

15 (i) in defending criminal proceedings in which he or she is convicted;

(ii) in defending civil proceedings brought by the trustee-manager of the registered business trust or a related corporation of the trustee-manager in which judgment is given against him or her; or

20 (iii) in connection with an application for relief under section 105 in which the court refuses to grant him or her relief.

25 (2) The references in subsection (1)(b) to a conviction, judgment or refusal of relief are references to the final decision in the proceedings.

(3) For the purposes of subsection (2) —

(a) a conviction, judgment or refusal of relief becomes final —

30 (i) if it is not appealed against — at the end of the period for bringing an appeal; or

- (ii) if it is appealed against — at the time when the appeal (or any further appeal) is disposed of; and
- (b) an appeal (or further appeal) is disposed of —
 - (i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or
 - (ii) if it is abandoned or otherwise ceases to have effect.

Exception for expenditure on defending proceedings, etc.

27B.—(1) Despite sections 162 and 163 of the Companies Act 1967, and if it is done on the terms provided in subsection (2), a trustee-manager of a registered business trust may —

- (a) provide a director of the trustee-manager with funds by way of any loan to meet expenditure incurred or to be incurred by the director —
 - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him or her in relation to the registered business trust; or
 - (ii) in connection with an application for relief under section 105; or
 - (b) enable any such director to avoid incurring such expenditure.
- (2) The terms mentioned in subsection (1) are —
- (a) that the loan is to be repaid, or (as the case may be) any liability of the registered business trust incurred under any transaction connected with the thing done is to be discharged, in the event of —
 - (i) the director being convicted in the proceedings;

- (ii) judgment being given against him or her in the proceedings; or
 - (iii) the court refusing to grant him or her relief on the application; and
- 5 (b) that the loan is to be repaid or discharged not later than 14 days after —
 - (i) the date when the conviction becomes final;
 - (ii) the date when the judgment becomes final; or
 - 10 (iii) the date when the refusal of relief becomes final.
- (3) For the purposes of this section —
 - (a) a conviction, judgment or refusal of relief becomes final —
 - 15 (i) if it is not appealed against — at the end of the period for bringing an appeal; or
 - (ii) if it is appealed against — when the appeal (or any further appeal) is disposed of;
 - (b) an appeal or further appeal is disposed of —
 - 20 (i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or
 - (ii) if it is abandoned or otherwise ceases to have effect; and
 - 25 (c) a reference to the repayment of a loan includes the payment of any interest which is chargeable under the terms on which the loan was given.

Exception for expenditure in connection with regulatory action or investigation

- 30 **27C.** Section 27 of this Act and sections 162, 163 and 172 of the Companies Act 1967 do not apply to anything done by a trustee-manager of a registered business trust —

(a) to provide a director of the trustee-manager of a registered business trust with funds by way of any loan to meet expenditure incurred or to be incurred by the director in defending himself or herself —

(i) in an investigation by a regulatory authority; or 5

(ii) against any action proposed to be taken by a regulatory authority,

in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the registered business trust; or 10

(b) to enable any such director to avoid incurring such expenditure.”.

Amendment of section 31

10. Section 31(6) of the principal Act is amended by deleting the words “referred to” and substituting the word “mentioned”. 15

Amendment of section 33

11. Section 33(2) of the principal Act is amended —

(a) by deleting paragraph (b); and

(b) by deleting the full-stop at the end of paragraph (c) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph: 20

“(d) comply with any requirement relating to the publication or dissemination of the declaration as the Authority may prescribe.”. 25

Amendment of section 40A

12. Section 40A of the principal Act is amended —

(a) by inserting, immediately after the words “or all of the units in any particular class, in a” in subsection (1), the word “registered”; 30

(b) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

“(b) any other person.”;

5 (c) by inserting, immediately after subsection (2), the following subsections:

“(2A) Where alternative terms were offered to the unitholders, a dissenting unitholder is entitled to elect which of those terms the dissenting unitholder prefers, on or before the later of the following dates:

10 (a) the last day of one month after the date on which the notice is given under subsection (1);

(b) the 14th day after a statement is supplied under subsection (3).

15 (2B) In offering alternative terms to the unitholders, the transferee must state which of those terms is to apply to the acquisition of the units of a dissenting unitholder where the dissenting unitholder fails to make the election within the time allowed under subsection (2A).

20 (2C) In determining whether the arrangement or contract has been approved by the holders of the requisite number of units, or units of any particular class, under subsection (1), the units that are issued after the date of the offer are to be disregarded.”;

25 (d) by deleting the words “transferee by a written demand served on the transferee” in subsection (3) and substituting the words “trustee-manager of the subject trust by a written demand served on the trustee-manager of the subject trust”;

30 (e) by deleting subsections (8) and (9) and substituting the following subsections:

“(8) Where any money or other consideration is held in trust by the trustee of the subject trust for any

person under this section, the trustee holding the money or other consideration may, after the expiry of 2 years and must, before the expiry of 10 years, after the date on which such money or other consideration was received by the trustee, transfer the money or other consideration to the Official Receiver.

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(9) The Official Receiver must —

(a) deal with any moneys received under subsection (8) as if the moneys were paid to the Official Receiver pursuant to section 49; and

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(b) sell or dispose of any other consideration so received under subsection (8) in any manner that he or she thinks fit and must deal with the proceeds of the sale or disposal as if it were moneys paid to him or her pursuant to section 49.”;

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(f) by deleting the full-stop at the end of the definition of “real estate investment trust” in subsection (14) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

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““register of unitholders” includes any records kept by the trustee-manager of the subject trust, or with respect to the subject trust, of the names and addresses of holders of derivatives of units in a registered business trust.”; and

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(g) by inserting, immediately after subsection (14), the following subsections:

“(15) In this section and sections 40B and 40C, “units”, in relation to a registered business trust, includes derivatives of units in a registered business trust.

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(16) In this section and section 40C, “unitholders” includes holders of derivatives of units in a registered business trust but does not include a person who holds

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derivatives of units in a business trust only beneficially.

(17) Nothing in the definition of “units” in subsection (15) is to be read as requiring any units to be treated —

(a) as units of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

(b) as units of the same class as other units by reason only that the units into which they are convertible or for which the holder is entitled to subscribe are of the same class.”.

New sections 40B and 40C

13. The principal Act is amended by inserting, immediately after section 40A, the following sections:

“Joint offers

40B.—(1) In the case of an arrangement involving an offer to acquire all of the units in a registered business trust, or all of the units in any particular class in a registered business trust, by 2 or more persons jointly (called in this section the joint transferees), section 40A is to be read subject to this section.

(2) The conditions for the exercise of the rights conferred by section 40A(1) and (2) are satisfied —

(a) in the case of acquisitions of units by virtue of acceptances of the offer — by the joint transferees acquiring or unconditionally contracting to acquire the necessary units jointly; or

(b) in other cases — by the joint transferees acquiring or unconditionally contracting to acquire the necessary units either jointly or separately.

(3) The conditions for the exercise of the rights conferred by section 40A(4) and (5) are satisfied —

(a) in the case of acquisitions of units by virtue of acceptances of the offer — by the joint transferees acquiring or unconditionally contracting to acquire the necessary units jointly; or

(b) in other cases — by the joint transferees acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary units either jointly or separately.

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(4) Subject to this section, the rights and obligations of the transferee under section 40A are respectively joint rights and joint and several obligations of the joint transferees.

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(5) Subject to subsection (6), any notice or other document given or sent by or to the joint transferees under section 40A is complied with if the notice or document is given or sent by or to any of them.

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(6) The notice required to be given by the joint transferees under section 40A(1) and (4) must be made by all of the joint transferees and —

(a) where one or more of them is a corporation, signed by a director or an equivalent person of that corporation; and

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(b) where one or more of them is a limited liability partnership or partnership, signed by any partner who has authority to bind the limited liability partnership or partnership, as the case may be.

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Effect of impossibility, etc., of communicating or accepting offer made under arrangement or contract

40C.—(1) Where there are unitholders of units in a registered business trust to whom an offer to acquire units in the registered business trust is not communicated, that does not prevent the offer from being an offer made under an arrangement or a contract for the purposes of section 40A if —

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(a) those unitholders have no address in Singapore registered with the trustee-manager of the registered business trust;

(b) the offer was not communicated to those unitholders —

(i) in order not to contravene the law of a country or jurisdiction outside Singapore; or

(ii) because communication to those unitholders would in the circumstances be unduly onerous; and

(c) either —

(i) the offer is published in the *Gazette*; or

(ii) the offer can be inspected, or a copy of it obtained, at a place in Singapore or on a website, and a notice is published in the *Gazette* specifying the address of that place or website.

(2) Where an offer is made to acquire units in a registered business trust and there are persons for whom, by reason of the law of a country or jurisdiction outside Singapore, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being made under an arrangement or a contract for the purposes of section 40A.

(3) It is not to be inferred —

(a) that an offer which is not communicated to every unitholder of the registered business trust cannot be an offer made under an arrangement or a contract for the purposes of section 40A unless the requirements of subsection (1)(a), (b) and (c) are met; or

(b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be an offer made under an arrangement or a contract for those purposes unless the reason for the impossibility or difficulty is the reason mentioned in subsection (2).”.

Amendment of section 42

14. Section 42 of the principal Act is amended —

- (a) by inserting, immediately after the word “action” wherever it appears in subsections (1), (2) and (4)(a) and (c), the words “or arbitration”; and
- (b) by inserting, immediately after the word “action” in subsection (4)(b), the words “or arbitration by the person so authorised”.

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Amendment of section 43

15. Section 43 of the principal Act is amended by deleting the word “shareholders” in the section heading and substituting the word “unitholders”.

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Amendment of section 46

16. Section 46 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection:

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“(2A) On an application for winding up on the ground specified in subsection (2)(a), instead of making an order for the winding up, the court may, if it is of the opinion that it is just and equitable to do so, make an order for the interests in units of one or more unitholders to be purchased by the trustee-manager of the registered business trust, or by one or more other unitholders of the registered business trust, on terms to the satisfaction of the court.”.

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Amendment of section 52

17. Section 52 of the principal Act is amended —

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- (a) by deleting the words “by post” in subsection (1) and substituting the words “, and its directors, secretaries and unitholders of the registered business trust,”;
- (b) by deleting the words “one month from” in subsections (1) and (2) and substituting in each case the words “30 days after”;

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(c) by inserting, immediately after subsection (1), the following subsection:

“(1A) Without limiting subsection (1), in determining whether there is reasonable ground to believe that the trustee-manager of a registered business trust is not managing or operating the business of the registered business trust, the Authority may have regard to any circumstances that may be prescribed.”;

(d) by deleting the words “3 months from” in subsection (2) and substituting the words “60 days after”;

(e) by inserting, immediately after the words “that notice, the Authority may” in subsection (2), the words “, unless cause is (in the form and manner specified in section 52B) shown,”; and

(f) by inserting, immediately after subsection (5), the following subsection:

“(6) The Authority must ensure that the substance of the notices mentioned in subsections (2) and (3) to be published in the *Gazette* is also published on the Authority’s website.”.

New sections 52A to 52E

18. The principal Act is amended by inserting, immediately after section 52 in Part 8, the following sections:

“Deregistration of wound up registered business trust

52A.—(1) Upon receiving notice of the completion of the winding up of a registered business trust (other than a registered business trust mentioned in section 52(3)) under section 47(3) or 48(5), the Authority —

(a) may deregister the registered business trust; and

(b) must publish a notice thereof in the *Gazette*.

(2) On the publication in the *Gazette* of the notice mentioned in subsection (1), the registered business trust is deregistered.

(3) To avoid doubt, the trustee-manager of a registered business trust mentioned in subsection (1) need not apply to the Authority for deregistration of the registered business trust under section 51.

(4) The Authority must ensure that the substance of the notice mentioned in subsection (1) to be published in the *Gazette* is also published on the Authority's website.

Objections to appointment of liquidator and deregistration of defunct business trust

52B.—(1) Where a notice is given or published by the Authority under section 52(2) of the Authority's intention to apply to the court to appoint a liquidator with respect to the registered business trust, any person may deliver, not later than the date specified in the notice, an objection to the appointment of a liquidator and deregistration of the registered business trust on the ground that there is reasonable cause why the registered business trust should not be deregistered, including that the business trust does not satisfy the grounds for deregistration referred to in section 52(1).

(2) An objection to the appointment of a liquidator and deregistration of the registered business trust mentioned in subsection (1) must be given to the Authority by notice in the prescribed form and manner.

(3) On receipt of a notice of objection, which is made in the prescribed form and manner, within the time mentioned in subsection (1), the Authority must, in deciding whether to allow the objection, take into account any considerations that may be prescribed.

Authority may reinstate registration of business trust deregistered by mistake

52C.—(1) The Authority may, on its own initiative, reinstate the registration of a business trust if the Authority is satisfied that the deregistration under section 51, 52 or 52A was the result of a mistake of the Authority.

(2) In subsection (1), a reference to a mistake of the Authority excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for deregistration of the registered business trust under section 51.

(3) The Authority may reinstate the registration of the business trust by publishing in the *Gazette* and on the Authority's website a notice declaring the reinstatement, and the reinstatement takes effect on the date of publication of the notice.

Effect of reinstatement of registration

52D.—(1) If the registration of the business trust is reinstated under section 52C, the business trust is to be regarded as having continued to be registered as if it had never been deregistered.

(2) The trustee-manager of the registered business trust and its directors are not liable to a penalty under section 76 or 80 for a financial year in relation to which the period for providing its financial statements ended —

(a) after the date of deregistration; and

(b) before the reinstatement of the registration of the business trust.

(3) On the application by any person, the court may give such directions and make such orders as it seems just for placing the trustee-manager and all other persons in the same position (as nearly as may be) as if the business trust had not been deregistered.

(4) An application to the court for such directions or orders may be made any time within 3 years after the date of reinstatement of the registration of the business trust.

Retention of books and papers upon deregistration

52E.—(1) Where a business trust is deregistered under section 51, 52 or 52A on or after the date of commencement of section 18 of the Business Trusts (Amendment) Act 2022, the following persons must ensure that all books and papers of the

business trust are retained for a period of at least 5 years after the date on which the business trust is deregistered:

- (a) in the case where no liquidator has been appointed under section 48(1), the trustee-manager of the registered business trust; 5
- (b) in the case where a liquidator has been appointed under section 48(1), the liquidator.

(2) Any trustee-manager or liquidator that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.”. 10

New Part 8A

19. The principal Act is amended by inserting, immediately before Part 9, the following Part:

“PART 8A

REGISTER OF CONTROLLERS OF REGISTERED BUSINESS TRUST 15

Application of this Part

52F.—(1) This Part applies to all registered business trusts except a registered business trust that is set out in the Second Schedule. 20

(2) The obligation to comply with this Part extends to —

- (a) all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not; and
- (b) all entities, whether formed, constituted or carrying on business in Singapore or not. 25

(3) This Part extends to acts done or omitted to be done outside Singapore.

Interpretation of this Part

52G. In this Part, unless the context otherwise requires —

“controller” means an individual controller or a corporate controller; 30

“corporate controller” —

5 (a) in relation to a registered business trust, means a legal entity which has a significant interest in, or significant control over, the registered business trust;

10 (b) in relation to a corporation (except a corporation which shares are listed for quotation on the official list of an approved exchange), means a legal entity which has a significant interest in, or significant control over, the corporation;

15 (c) in relation to a corporation which shares are listed for quotation on the official list of an approved exchange, means a substantial shareholder of that corporation within the meaning of section 2(6) of the Securities and Futures Act 2001; and

20 (d) in relation to a limited liability partnership, means a legal entity which has a significant interest in, or significant control over, the limited liability partnership;

“individual controller” —

25 (a) in relation to a registered business trust, means an individual who has a significant interest in, or significant control over, the registered business trust;

30 (b) in relation to a corporation (except a corporation which shares are listed for quotation on the official list of an approved exchange), means an individual who has a significant interest in, or significant control over, the corporation;

(c) in relation to a corporation which shares are listed for quotation on the official list of an approved exchange, means a substantial shareholder of that corporation within the

meaning of section 2(6) of the Securities and Futures Act 2001;

(d) in relation to a limited liability partnership, means an individual who has a significant interest in, or significant control over, the limited liability partnership; and 5

(e) in relation to a trustee of an express trust to which Part 7 of the Trustees Act 1967 applies, means an individual who has significant control over the trustee; 10

“legal entity” means any body corporate formed or incorporated or existing in Singapore or outside Singapore, and includes a foreign company;

“member of the public”, in relation to a registered business trust, includes any unitholder of the registered business trust acting in the unitholder’s capacity as such; 15

“register of controllers” or “register”, in relation to a registered business trust to which this Part applies, means the register that the trustee-manager of the registered business trust is required to keep of its registrable controllers under section 52J; 20

“significant control”, in relation to a registered business trust, corporation, limited liability partnership or trustee of an express trust, has the meaning given in the Third Schedule; 25

“significant interest”, in relation to a registered business trust, corporation or limited liability partnership, has the meaning given in the Third Schedule.

Meaning of “registrable”

52H. For the purposes of this Part, in relation to a registered business trust (*X*), a controller (*A*) is registrable unless — 30

(a) *A*’s significant interest in or significant control over *X* is only through one or more controllers (*B*) of *X*;

(b) *A* is a controller of *B* (or each *B*, if more than one); and

(c) *B* (or each *B*, if more than one) is —

(i) a company, or foreign company to which Part 11A of the Companies Act 1967 applies, that is required to keep a register of controllers under section 386AF of that Act;

(ii) a company that is set out in the Fourteenth Schedule to the Companies Act 1967;

(iii) a foreign company that is set out in the Fifteenth Schedule to the Companies Act 1967;

(iv) a corporation which shares are listed for quotation on the official list of an approved exchange;

(v) a limited liability partnership to which Part 6A of the Limited Liability Partnerships Act 2005 applies, that is required to keep a register of its controllers under that Act;

(vi) a limited liability partnership that is set out in the Sixth Schedule to the Limited Liability Partnerships Act 2005;

(vii) a trustee of an express trust to which Part 7 of the Trustees Act 1967 applies; or

(viii) a VCC.

Meaning of “legal privilege”

52I.—(1) For the purposes of this Part, information or a document is subject to legal privilege if —

(a) it is a communication made between a lawyer and a client, or a legal counsel acting as such and the legal counsel’s employer, in connection with the lawyer giving legal advice to the client or the legal counsel giving legal advice to the employer, as the case may be;

- (b) it is a communication made between 2 or more lawyers acting for a client, or 2 or more legal counsel acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of the legal counsel giving legal advice to the employer, as the case may be; 5
- (c) it is a communication made —
- (i) between a client, or an employer of a legal counsel, and another person;
 - (ii) between a lawyer acting for a client and either the client or another person; or 10
 - (iii) between a legal counsel acting as such for the legal counsel's employer and either the employer or another person,
- in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer (as the case may be) is or may be, or was or might have been, a party; 15
- (d) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (a) or (b) and that is made or prepared by any person in connection with a lawyer or legal counsel, or one or more of the lawyers or legal counsel, in either of those paragraphs giving legal advice to the client or the employer of the legal counsel, as the case may be; or 20 25

(e) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (c) and that is made or prepared by any person in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the legal counsel (as the case may be) is or may be, or was or might have been, a party,

but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose.

(2) In subsection (1) —

“client”, in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client;

“employer”, in relation to a legal counsel, includes —

(a) if the employer is one of a number of corporations that are related to each other under section 6 of the Companies Act 1967, every corporation so related as if the legal counsel were also employed by each of the related corporations;

(b) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act 1893 and the legal counsel is required as part of the legal counsel’s duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the legal counsel were also employed by the other public agency or each of the other public agencies; and

(c) an employee or officer of the employer;

“lawyer” means a solicitor or professional legal adviser, and includes an interpreter or other person who works under the supervision of a solicitor or professional legal adviser;

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“legal counsel” —

(a) means a legal counsel as defined in section 3(7) of the Evidence Act 1893; and

(b) includes an interpreter or other person who works under the supervision of a legal counsel.

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Register of controllers

52J.—(1) The trustee-manager of a registered business trust registered on or after the appointed day must keep a register of the registered business trust’s registrable controllers not later than 30 days after the date the registered business trust is registered by the Authority under section 4.

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(2) The trustee-manager of a registered business trust registered before the appointed day must keep a register of the registered business trust’s registrable controllers not later than 60 days after the appointed day.

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(3) If a registered business trust that is not a business trust to which this Part applies subsequently becomes a registered business trust to which this Part applies, the trustee-manager of the registered business trust must keep a register of the registered business trust’s registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the registered business trust.

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(4) The trustee-manager of a registered business trust must ensure that the register —

(a) contains such particulars of the registered business trust’s registrable individual controllers and registrable corporate controllers as may be prescribed;

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(b) is updated if any change to the prescribed particulars occurs; and

(c) is kept in such form and at such place as may be prescribed.

5 (5) The trustee-manager of a registered business trust must enter the particulars in its register and update the register within the prescribed time and in the prescribed manner.

(6) The trustee-manager of a registered business trust must —

10 (a) enter the particulars of any controller in its register, or update the particulars of that controller in the register, after the particulars of that controller are confirmed by the controller; or

15 (b) if the trustee-manager does not receive the controller's confirmation, enter or update the particulars with a note indicating that the particulars have not been confirmed by the controller.

(7) For the purposes of subsection (6)(a), the particulars of the controller to be entered, or updated, in a register must be confirmed by the controller in the prescribed manner.

20 (8) Subject to section 52Q, a trustee-manager of a registered business trust must not disclose, or make available for inspection, a register or any particulars contained in the register to any member of the public.

25 (9) Any trustee-manager of a registered business trust which contravenes —

(a) subsection (1), (2) or (3), whichever is applicable; or

(b) subsection (4), (5), (6) or (8),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

30 (10) In this section, “appointed day” means the date of commencement of section 19 of the Business Trusts (Amendment) Act 2022.

Duty of trustee-manager of registered business trust to investigate and obtain information

52K.—(1) A trustee-manager of a registered business trust must take reasonable steps to find out and identify the registrable controllers of the registered business trust. 5

(2) A trustee-manager (*A*) of a registered business trust —

(*a*) must give a notice to any person (*B*) whom *A* knows or has reasonable grounds to believe is a registrable controller in relation to the registered business trust, requiring *B* — 10

(i) to state whether *B* is or is not a registrable controller of the registered business trust;

(ii) to state whether *B* knows or has reasonable grounds to believe that any other person (*C*) is a registrable controller of the registered business trust or is likely to have that knowledge and to give the particulars of *C* that are within *B*'s knowledge; and 15

(iii) to provide any other information that may be prescribed; and 20

(*b*) must give a notice to any person (*D*) whom *A* knows, or has reasonable grounds to believe knows, the identity of a person who is a registrable controller of the registered business trust or is likely to have that knowledge, requiring *D* — 25

(i) to state whether *D* knows or has reasonable grounds to believe that any other person (*E*) is a registrable controller of the registered business trust or is likely to have that knowledge and to give the particulars of *E* that are within *D*'s knowledge; and 30

(ii) to provide any other information that may be prescribed.

(3) A trustee-manager of a registered business trust when giving a notice in subsection (2) to any person mentioned in that subsection —

5 (a) must state that the addressee must comply with the notice not later than the time prescribed for compliance;

(b) must be in such form, contain such particulars and be sent in such manner, as may be prescribed; and

10 (c) must be given within such period as may be prescribed after the trustee-manager first knows the existence of, or first has reasonable grounds to believe that there exists, a person to whom a notice must be given under that subsection.

15 (4) Subsection (2) does not require a trustee-manager of a registered business trust to give notice to any person in respect of any information that is required to be stated or provided pursuant to the notice if the information was previously provided by that person.

20 (5) Any trustee-manager of a registered business trust which contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

25 (6) An addressee of a notice under subsection (2) must comply with the notice within the time specified in the notice for compliance except that an addressee is not required to provide any information that is subject to legal privilege.

(7) An addressee of a notice under subsection (2) who contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

30 **Duty of trustee-manager of registered business trust to keep information up-to-date**

52L.—(1) If a trustee-manager of a registered business trust knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a registrable controller that are stated in the registered business trust's register of

controllers, the trustee-manager must give notice to the registrable controller —

(a) to confirm whether or not the change has occurred; and

(b) if the change has occurred —

(i) to state the date of the change; and

(ii) to provide the particulars of the change.

(2) A trustee-manager of a registered business trust must give the notice mentioned in subsection (1) within such period as may be prescribed after the trustee-manager first knows of the change or first has reasonable grounds to believe that the change has occurred.

(3) Section 52K(3)(a) and (b) applies to a notice under this section as it applies to a notice under section 52K.

(4) Subsection (1) does not require a trustee-manager of a registered business trust to give notice to any person in respect of any information that was previously provided by that person.

(5) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2), or section 52K(3)(a) and (b) as applied by subsection (3), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(7) For the purposes of this section, a relevant change occurs if —

(a) a person ceases to be a registrable controller in relation to the registered business trust; or

(b) any other change occurs as a result of which the particulars of the registrable controller in the registered business trust's register of controllers are incorrect or incomplete.

Duty of trustee-manager of registered business trust to correct information

5 **52M.**—(1) If a trustee-manager of a registered business trust knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the registered business trust's register is incorrect, the trustee-manager must give notice to the registrable controller to confirm whether the particulars are correct and, if not, to provide the correct particulars.

10 (2) A trustee-manager of a registered business trust must give the notice mentioned in subsection (1) within such period as may be prescribed after the trustee-manager first knows or first has reasonable grounds to believe that the information is incorrect.

15 (3) Section 52K(3)(a) and (b) applies to a notice under this section as it applies to a notice under section 52K.

(4) Subsection (1) does not require a trustee-manager of a registered business trust to give notice to any person in respect of any information that was previously provided by that person.

20 (5) Any trustee-manager of a registered business trust which contravenes subsection (1) or (2), or section 52K(3)(a) and (b) as applied by subsection (3), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

25 (6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Controller's duty to provide information

30 **52N.**—(1) A person who knows or ought reasonably to know that the person is a registrable controller in relation to a registered business trust must —

- (a) notify the trustee-manager of the registered business trust that the person is a registrable controller in relation to the registered business trust;

(b) state the date, to the best of the person's knowledge, on which the person became a registrable controller in relation to the registered business trust; and

(c) provide any other information that may be prescribed.

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known that that person was a registrable controller.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the trustee-manager of the registered business trust under section 52K(2) and has complied with the requirements of the notice within the time specified in the notice for compliance.

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

Controller's duty to provide change of information

52O.—(1) A person who is a registrable controller in relation to a registered business trust who knows, or ought reasonably to know that a relevant change has occurred in the prescribed particulars of the registrable controller must notify the trustee-manager of the registered business trust of the relevant change —

(a) stating the date that the change occurred; and

(b) providing the particulars of the change.

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known of the relevant change.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the trustee-manager of the registered business trust under

section 52L(1) and has complied with the requirements of the notice within the time specified in the notice for compliance.

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

(5) For the purposes of this section, a relevant change occurs if —

(a) a person ceases to be a registrable controller in relation to the registered business trust; or

(b) there is a change in the person's contact details or any other particulars that may be prescribed.

Power to enforce

52P.—(1) The Authority may —

(a) require a trustee-manager of a registered business trust to which this Part applies to produce the register of the registered business trust, and any other document relating to the register or the keeping of the register;

(b) inspect, examine and make copies of the registers and any document so produced; and

(c) make any inquiry that may be necessary to ascertain whether the provisions of this Part are complied with.

(2) Where any register or documents mentioned in subsection (1) are kept in electronic form —

(a) the power of the Authority in subsection (1)(a) to require the register or any documents to be produced includes the power to require a copy of the register or documents to be made available in legible form and subsection (1)(b) is to accordingly apply in relation to any copy so made available; and

(b) the power of the Authority under subsection (1)(b) to inspect the register or any documents includes the power to require any person on the premises in

question to give the Authority any assistance that the Authority may reasonably require to enable the Authority to inspect and make copies of the register or documents in legible form, and to make records of the information contained in the register or documents. 5

(3) The powers conferred on the Authority under subsections (1) and (2) may be exercised by a public agency to enable the public agency to administer or enforce any written law. 10

(4) Any person who fails to comply with any requirement imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(5) This section applies in addition to any right of inspection conferred by section 68. 15

(6) In this section, “public agency” means a public officer, an Organ of State or a ministry or department of the Government, or a public authority established by or under any public Act for a public purpose or a member, an officer or an employee, or any department, thereof. 20

Central register of controllers

52Q.—(1) The Authority may maintain a central register of controllers of registered business trusts.

(2) Where the Authority maintains a central register of controllers of registered business trusts under subsection (1) — 25

(a) the central register of controllers may consist of the particulars contained in the registers kept by trustee-managers of registered business trusts to which this Part applies; and

(b) the Authority may require any trustee-manager of a registered business trust to which this Part applies to lodge with the Authority — 30

(i) all particulars contained in the registered business trust's register maintained under section 52J; and

(ii) all updates to the registered business trust's register that occur after the lodgment of the particulars under sub-paragraph (i).

(3) Where the Authority requires a trustee-manager of a registered business trust to lodge with the Authority the particulars and updates mentioned in subsection (2)(b), the trustee-manager must lodge the particulars and updates in the prescribed form and manner and within the prescribed time.

(4) Any trustee-manager of a registered business trust which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(5) Except in such circumstances as may be prescribed, the Authority must not disclose, or make available for inspection, the central register of controllers of registered business trusts kept by the Authority under this section to any member of the public.”.

Amendment of section 53

20. Section 53 of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) The trustee-manager of a registered business trust must call a general meeting of the unitholders of the registered business trust known as the “annual general meeting” after the end of each financial year within —

(a) 4 months, in the case of a listed registered business trust; or

(b) 6 months, in the case of any other registered business trust.

(2) The Authority may extend the period mentioned in subsection (1)(a) or (b) —

- (a) on an application by the trustee-manager of a registered business trust, if the Authority thinks there are special reasons to do so; or
- (b) in respect of any prescribed class of registered business trusts.”; and

(b) by inserting, immediately after subsection (4), the following subsection:

“(5) The Authority may, by order in the *Gazette*, specify any other period in substitution of the period mentioned in subsection (1)(a) or (b), or both.”.

Amendment of section 56

21. Section 56 of the principal Act is amended —

- (a) by deleting “10%” in subsection (1)(b)(ii) and substituting “5%”;
- (b) by deleting the words “48 hours” in subsection (1)(c) and substituting the words “72 hours”; and
- (c) by inserting, immediately after subsection (1), the following subsection:

“(1A) Despite subsection (1)(b), where any provision in the trust deed of a registered business trust registered under this Act before the date of commencement of section 21 of the Business Trusts (Amendment) Act 2022 is void under subsection (1)(b)(ii), a demand for a poll on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting may be made by a unitholder or unitholders of the registered business trust representing at least 5% of the total voting rights of all the unitholders having the right to vote at the meeting.”.

Amendment of section 60

22. Section 60 of the principal Act is amended —

(a) by deleting the word “A” in subsections (1) and (2) and substituting in each case the words “Subject to this section, a”;

(b) by deleting the words “or persons” in subsection (1);

(c) by inserting, immediately after subsection (2), the following subsections:

“(2A) A unitholder of a registered business trust who is a relevant intermediary may appoint more than 2 proxies in relation to a meeting to exercise all or any of the unitholder’s rights to attend and to speak and vote at the meeting, but each proxy must be appointed to exercise the rights attached to a different unit or units held by the unitholder (which number and class of units must be specified).

(2B) A proxy appointed under subsection (2A) has at a meeting the right to vote on a show of hands.”;

(d) by inserting, immediately after the words “to appoint” in subsection (3), the words “a proxy or”; and

(e) by inserting, immediately after subsection (7), the following subsection:

“(8) In this section —

“banking corporation” means a bank or merchant bank licensed under the Banking Act 1970;

“relevant intermediary” means —

(a) a banking corporation or a wholly owned subsidiary of a banking corporation, whose business includes the provision of nominee services and who holds units in that capacity;

- (b) a person holding a capital markets services licence to provide custodial services under the Securities and Futures Act 2001 and who holds units in that capacity; or 5
- (c) the Central Provident Fund Board established by the Central Provident Fund Act 1953, in respect of units purchased under the subsidiary legislation made under that Act providing for the making of investments from the contributions and interest standing to the credit of members of the Central Provident Fund, if the Central Provident Fund Board holds those units in the capacity of an intermediary pursuant to or in accordance with that subsidiary legislation; 10
- “wholly owned subsidiary” has the meaning given by section 5B of the Companies Act 1967.”. 15 20

Amendment of section 62

23. Section 62 of the principal Act is amended —

- (a) by inserting, immediately after the words “at that meeting” in subsection (1)(a), the words “or (if the resolution is proposed to be passed by written means under section 63A) for which agreement is sought”; 25
- (b) by deleting the words “The trustee-manager of a registered business trust must give the notice of a resolution” in subsection (3) and substituting the words “Subject to subsection (3A), the trustee-manager of a registered business trust must give the notice of a resolution mentioned in subsection (1)(a)”; 30

- (c) by inserting, immediately after subsection (3), the following subsections:

5 “(3A) Where the resolution is proposed to be passed by written means under section 63A, the trustee-manager of a registered business trust must give and circulate the notice of the resolution mentioned in subsection (1)(a) and statement mentioned in subsection (1)(b) to the unitholders of the registered business trust entitled to have notice of the meeting sent to them by serving on each unitholder —

- 10 (a) a copy of the resolution and statement; and
 (b) a notification that formal agreement to the resolution is being sought under section 63A.

15 (3B) The trustee-manager of a registered business trust must give notice of the resolution to any other unitholder of the registered business trust by serving on the unitholder notice of the general effect of the resolution in any manner permitted for giving the unitholder notice of meetings of the unitholders of the registered business trust.”;

- 20 (d) by deleting the word “The” in subsection (4) and substituting the words “Except where the resolution is proposed to be passed by written means under section 63A, the”;
- 25 (e) by inserting, immediately after the words “subsection (3)” in subsection (4), the words “, or give notice of the general effect of the resolution mentioned in subsection (3B) (as the case may be)”;
- 30 (f) by deleting the word “The” in subsection (5) and substituting the words “Subject to subsection (6A), the”;
- (g) by inserting, immediately after subsection (6), the following subsections:

“(6A) A trustee-manager of a registered business trust is not bound under this section to give notice of any resolution which is proposed to be passed by written means under section 63A, or to circulate any statement relating thereto, unless —

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(a) the requisition setting out the text of the resolution and the statement is received by a director of the trustee-manager in legible form or a permitted alternative form; and

(b) the notice states that formal agreement to the resolution is sought under section 63A.

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(6B) Where the requisition under subsection (6A)(a) requests that the date of its receipt by the trustee-manager of a registered business trust be notified to a specified person, the directors of the trustee-manager must, without delay after it is first received by a director of the trustee-manager in legible form or a permitted alternative form, notify that person of the date when it was first so received.”; and

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(h) by deleting subsection (9) and substituting the following subsections:

“(9) Any trustee-manager of a registered business trust which contravenes subsection (1), (3), (3A), (3B) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

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(10) Every director of the trustee-manager of a registered business trust who contravenes subsection (6B) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

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(11) For the purposes of this section, something is “in legible form or a permitted alternative form” if, and only if, it is sent or otherwise supplied —

(a) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

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(b) in another form that —

(i) is currently agreed between the trustee-manager of the registered business trust and the person as a form in which the thing may be sent or otherwise supplied to the trustee-manager; and

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(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.”.

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New sections 63A to 63G

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24. The principal Act is amended by inserting, immediately after section 63, the following sections:

“Passing of resolutions by written means

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63A.—(1) Despite any other provision of this Act, the unitholders of an unlisted registered business trust may pass any resolution by written means in accordance with the provisions of this section and sections 63B to 63G.

(2) Subsection (1) does not apply to a resolution for which special notice is required.

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(3) A special resolution is passed by written means if the resolution indicates that it is a special resolution and if it has been formally agreed on any date by one or more unitholders of the unlisted registered business trust who on that date represent —

(a) at least 75%; or

- (b) if the trust deed of the unlisted registered business trust requires a greater majority for that resolution, that greater majority,

of the total voting rights of all unitholders who on that date would have the right to vote on that resolution at a general meeting of the unitholders of the unlisted registered business trust.

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(4) An ordinary resolution is passed by written means if the resolution does not indicate that it is a special resolution and if it has been formally agreed on any date by one or more unitholders of the unlisted registered business trust who on that date represent —

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- (a) a majority; or

- (b) if the trust deed of the unlisted registered business trust requires a greater majority for that resolution, that greater majority,

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of the total voting rights of all the unitholders who on that date would have the right to vote on that resolution at a general meeting of the unitholders of the unlisted registered business trust.

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(5) For the purposes of this section, a resolution of the unitholders of an unlisted registered business trust is formally agreed by a unitholder if —

- (a) the trustee-manager of the unlisted registered business trust receives from the unitholder (or the unitholder's proxy if this is allowed) a document that —

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- (i) is given to the trustee-manager in legible form or a permitted alternative form;

- (ii) indicates the unitholder's agreement (or agreement on the unitholder's behalf) to the resolution by way of the unitholder's signature (or the unitholder's proxy's signature if that is allowed), or any other method that the trust

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deed of the unlisted registered business trust may provide; and

(iii) includes the text of the resolution or otherwise makes clear that it is that resolution that is being agreed to; and

(b) the unitholder (or the unitholder's proxy) had a legible text of the resolution before giving that document.

(6) Nothing in subsection (3) or (4) is to be construed as requiring the requisite number of unitholders to formally agree to the resolution on a single day.

(7) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

(a) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

(b) in another form that —

(i) is currently agreed between the trustee-manager of the unlisted registered business trust and the person as a form in which the thing may be sent or otherwise supplied to the trustee-manager; and

(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

(8) Any reference in this Act or any other law to the passing or making of a resolution, or the passing or making of a resolution at a meeting of the unitholders of the unlisted registered business trust, includes a reference to the passing of the resolution by written means in accordance with this section.

(9) Any reference in this Act or any other law to the doing of anything at a general meeting of the unitholders of an unlisted registered business trust includes a reference to the passing of a resolution authorising the doing of that thing by written means in accordance with this section. 5

Requirements for passing of resolutions by written means

63B.—(1) A resolution of the unitholders of an unlisted registered business trust may only be passed by written means if —

(a) either — 10

(i) agreement to the resolution was first sought by the directors of the trustee-manager of the unlisted registered business trust in accordance with section 63C; or

(ii) a requisition for that resolution was first given to the trustee-manager of the unlisted registered business trust in accordance with section 62 and, by reason of that notice, the documents mentioned in section 62(3A) in respect of the resolution were served on the unitholders of the unlisted registered business trust in accordance with section 62(3A); 15 20

(b) the trust deed of the unlisted registered business trust does not prohibit the passing of resolutions (either generally or for the purpose in question) by written means; and 25

(c) all conditions in the trust deed of the unlisted registered business trust relating to the passing of the resolution by written means are met.

(2) Any resolution that is passed in contravention of subsection (1) is invalid. 30

Where directors seek agreement to resolution by written means

5 **63C.**—(1) The directors of the trustee-manager of an unlisted registered business trust who wish to seek agreement to a resolution of the unitholders of the unlisted registered business trust and for it to be passed by written means must send to each unitholder, having the right to vote on that resolution at a general meeting of the unitholders of the unlisted registered business trust, a copy of the text of the resolution.

10 (2) As far as practicable, the directors must comply with subsection (1) as respects every unitholder at the same time and without delay.

15 (3) Without limiting any other means of complying with subsections (1) and (2), the directors have complied with those subsections if they secure that the same paper document containing the text of the resolution is sent without delay to each unitholder in turn.

20 (4) Subject to section 63D, if the resolution is passed before the directors have complied with subsection (1) as respects every unitholder, that fact does not affect the validity of the resolution or any obligation already incurred by the directors under subsections (1) and (2).

Unitholders may require general meeting for resolution

25 **63D.**—(1) Any unitholder or unitholders of an unlisted registered business trust representing at least 5% of the total voting rights of all the unitholders having the right to vote on a resolution at a general meeting of the unitholders of the unlisted registered business trust may, within 7 days after —

30 (a) the text of the resolution has been sent to the unitholder or unitholders in accordance with section 63C; or

- (b) the documents mentioned in section 62(3A) in respect of the resolution have been served on the unitholder or unitholders,

(as the case may be) give notice to the trustee-manager of the unlisted registered business trust requiring that a general meeting of the unitholders of the unlisted registered business trust be convened for that resolution.

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(2) Where notice is given under subsection (1) —

- (a) the resolution is invalid even though it may have in the meantime been passed in accordance with section 63A; and

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- (b) the directors of the trustee-manager of the unlisted registered business trust must proceed to convene a general meeting of the unitholders of the unlisted registered business trust for the resolution.

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Period for agreeing to written resolution

63E.—(1) Unless the trust deed of an unlisted registered business trust otherwise provides, a resolution of the unitholders of the unlisted registered business trust proposed to be passed by written means lapses if it is not passed before the end of the period of 28 days starting on the date on which the written resolution is circulated to the unitholders of the unlisted registered business trust.

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(2) The agreement to a resolution is ineffective if indicated after the expiry of the period mentioned in subsection (1).

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Duty of trustee-manager of unlisted registered business trust to notify unitholders that resolution passed by written means

63F.—(1) Where a resolution of the unitholders of an unlisted registered business trust is passed by written means, the trustee-manager of the unlisted registered business trust must —

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- (a) notify every unitholder that it has been passed; and

(b) do so within 15 days after the earliest date on which a director or secretary of the trustee-manager is aware that it has been passed.

(2) Non-compliance with subsection (1) does not render the resolution invalid.

Recording of resolutions passed by written means

63G.—(1) Where a resolution of the unitholders of an unlisted registered business trust is passed by written means, the trustee-manager of the unlisted registered business trust must cause a record of the resolution, and the indication of each unitholder’s agreement (or agreement on the unitholder’s behalf) to it, to be entered in a book in the same way as minutes of proceedings of a general meeting of the unitholders of the unlisted registered business trust.

(2) Non-compliance with subsection (1) does not render the resolution invalid.

(3) Any such record, if purporting to be signed by a director or the secretary of the trustee-manager of the unlisted registered business trust, is evidence of the proceedings in passing the resolution.

(4) Where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings are deemed to have been complied with.

(5) Section 68 applies in relation to a record made in accordance with this section as it applies in relation to minutes of proceedings of a general meeting of the unitholders of a registered business trust.”.

Amendment of section 65

25. Section 65(1) of the principal Act is amended by deleting the words “one month” and substituting the words “14 days”.

Amendment of section 67

26. Section 67 of the principal Act is amended —

(a) by inserting, immediately after subsection (3), the following subsections:

“(3A) The trustee-manager of a registered business trust must keep minute books in which it must cause to be entered resolutions passed by written means under section 63A, within one month after the passing or making of each resolution.

(3B) The trustee-manager of a registered business trust must ensure that the minutes of the passing of a resolution mentioned in subsection (3A) are signed by a director of the trustee-manager within a reasonable time after the resolution is passed.

(3C) Minutes entered in accordance with subsection (3A) and purportedly signed in accordance with subsection (3B) are evidence of the resolution to which they relate, unless the contrary is proved.”; and

(b) by inserting, immediately after the words “subsection (1)” in subsection (4), the words “, (3A) or (3B)”.

Amendment of section 68

27. Section 68 of the principal Act is amended —

(a) by inserting, immediately after the words “section 67(1)” in subsection (1)(a), the words “and (3A)”;

(b) by inserting, immediately after the words “section 67(1)” in subsection (2), the words “or (3A)”.

Repeal and re-enactment of Division 3 of Part 9

28. Division 3 of Part 9 of the principal Act is repealed and the following Division substituted therefor:

“Division 3 — Annual return and financial year

Annual returns and information

5 **74.**—(1) The trustee-manager of a registered business trust must lodge with the Authority, a return in such form, containing such statements, information and particulars, and accompanied by such documents, as may be prescribed by the Authority after the annual general meeting of the unitholders of the registered business trust —

10 (a) in the case of a listed registered business trust, within 5 months after the end of the registered business trust’s financial year; and

 (b) in any other case, within 7 months after the end of the registered business trust’s financial year.

15 (2) The Authority may, if the Authority thinks there are special reasons to do so, extend any period within which a trustee-manager of a registered business trust must lodge a return under subsection (1) —

 (a) on an application by the trustee-manager; or

20 (b) in respect of any prescribed class of registered business trusts.

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

Financial year of registered business trust

30 **74A.**—(1) Where a registered business trust is registered on or after the appointed day —

 (a) the registered business trust’s first financial year starts on the date the registered business trust was constituted and, subject to subsection (5), ends on the last day of the registered business trust’s first

financial year as indicated in the application lodged with the Authority in accordance with section 3; and

- (b) each of the registered business trust's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or any other regular interval that the Authority may allow).

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(2) Subject to subsection (3), where a registered business trust is registered on or after the appointed day, its first financial year must not be longer than 18 months unless the Authority on the application of the trustee-manager of the registered business trust otherwise approves.

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(3) Subsection (2) does not apply to a registered business trust that is registered after the last day of the business trust's first financial year as indicated in the application lodged with the Authority in accordance with section 3.

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(4) Where a registered business trust was registered before the appointed day —

- (a) the last day of the financial year for the registered business trust's first financial year ending on or after the appointed day is —

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- (i) where the trustee-manager of the registered business trust had, before the appointed day, lodged an annual return, or lodged a notification with the Authority informing the Authority of the end of the registered business trust's financial year — the anniversary of the last day of the financial year as indicated in the last annual return or last such notification with the Authority; or

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- (ii) where the trustee-manager of the registered business trust had not, before the appointed day, lodged an annual return, or lodged a notification with the Authority informing the Authority of the end of the registered business trust's

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financial year — the anniversary of the last day of the first financial year as indicated in the registered business trust’s trust deed or, if the trust deed does not specify such date, the anniversary of the date on which the registered business trust was constituted; and

(b) each of the registered business trust’s subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or any other regular interval that the Authority may allow).

(5) Despite subsections (1) and (4), but subject to subsections (6) and (7), the trustee-manager of a registered business trust may by notice lodged with the Authority in the prescribed form specify a new date as the last day of the registered business trust’s financial year to apply to its previous or current financial year.

(6) The Authority’s approval must be obtained if the notice mentioned in subsection (5) —

(a) results in a financial year being longer than 18 months; or

(b) is lodged less than 5 years after the end of an earlier financial year that ended on a date on or after the appointed day, if the end of that earlier financial year was changed under this section.

(7) The notice under subsection (5) must not specify a new date as the last day of the registered business trust’s financial year —

(a) after the expiry of the period under section 53 within which an annual general meeting of the registered business trust must be held after that financial year;

(b) after the expiry of the period under section 74 within which an annual return of the registered business trust must be lodged with the Authority after that financial year; or

(c) after the expiry of the period under section 78 within which a copy of the financial statements, and documents mentioned in section 78(1) are required to be sent to all persons entitled to receive notice of general meetings of the unitholders of the registered business trust. 5

(8) For the purposes of —

(a) subsection (4)(a)(i), where the last day of the financial year of a registered business trust as indicated in the last annual return or in the last notification with the Authority informing the Authority of the last day of the registered business trust’s financial year falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February; and 10

(b) subsection (4)(a)(ii) — 15

(i) where the last day of the first financial year as indicated in the registered business trust’s trust deed falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February; and 20

(ii) where the date on which a registered business trust was constituted falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February.

(9) In this section, “appointed day” means the date of commencement of section 28 of the Business Trusts (Amendment) Act 2022.”. 25

Amendment of heading of Part 10

29. Part 10 of the principal Act is amended by deleting the word “ACCOUNTS” in the Part heading and substituting the words “FINANCIAL STATEMENTS”. 30

New Division 1 of Part 10

30. Part 10 of the principal Act is amended by inserting, immediately after the Part heading, the following Division:

“Division 1 — General provision

5 **Interpretation of this Part**

74B. In this Part, unless the context otherwise requires —

“balance sheet”, in relation to a parent business trust, means the balance sheet, by whatever name called, prepared in accordance with the Accounting Standards;

10 “consolidated financial statements” has the meaning given by the Accounting Standards;

“directors’ statement” means the statement of the directors mentioned in section 76(13);

15 “group” has the meaning given by the Accounting Standards;

“interested person” means —

(a) for the purposes of sections 82C, 82D and 82E —

20 (i) in the case of an auditor of a listed registered business trust — a unitholder of the listed registered business trust;

(ii) in the case of an auditor of a subsidiary company — a shareholder of the subsidiary company; and

25 (iii) in the case of an auditor of a subsidiary registered business trust — a unitholder of the subsidiary registered business trust; and

(b) for the purposes of section 82F —

30 (i) in the case of an auditor of a registered business trust that is not listed (other than

a subsidiary registered business trust) — a unitholder of the registered business trust;

(ii) in the case of an auditor of a listed registered business trust — a unitholder of the listed registered business trust; 5

(iii) in the case of an auditor of a subsidiary company — a shareholder of the subsidiary company; and

(iv) in the case of an auditor of a subsidiary registered business trust — a unitholder of the subsidiary registered business trust; 10

“parent” has the meaning given by the Accounting Standards;

“parent business trust” means a registered business trust that is required under the Accounting Standards to prepare financial statements in relation to a group; 15

“parent company” means a company that is required under the Accounting Standards to prepare financial statements in relation to a group;

“relevant auditor” means — 20

(a) an auditor of a listed registered business trust;

(b) an auditor of a subsidiary company; or

(c) an auditor of a subsidiary registered business trust;

“relevant person” means — 25

(a) for the purposes of sections 82B, 82C and 82D —

(i) in the case of an auditor of a listed registered business trust — the trustee-manager of the listed registered business trust; 30

- (ii) in the case of an auditor of a subsidiary company — the subsidiary company; and
- (iii) in the case of an auditor of a subsidiary registered business trust — the trustee-manager of the subsidiary registered business trust; and

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(b) for the purposes of section 82F —

- (i) in the case of an auditor of a registered business trust that is not listed (other than a subsidiary registered business trust) — the trustee-manager of the registered business trust;

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- (ii) in the case of an auditor of a listed registered business trust — the trustee-manager of the listed registered business trust;

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- (iii) in the case of an auditor of a subsidiary company — the directors of the subsidiary company; and

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- (iv) in the case of an auditor of a subsidiary registered business trust — the trustee-manager of the subsidiary registered business trust;

“subsidiary” has the meaning given by the Accounting Standards;

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“subsidiary company” means a company that is a subsidiary of a listed registered business trust;

“subsidiary registered business trust” means a registered business trust that is a subsidiary of a listed registered business trust;

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“ultimate parent business trust” means a business trust which is a parent but is not a subsidiary, within the meaning of the Accounting Standards;

“ultimate parent corporation” means a corporation which is a parent but is not a subsidiary, within the meaning of the Accounting Standards.”.

Deletion and substitution of Division heading of Part 10

31. Part 10 of the principal Act is amended by deleting the existing Division 1 heading and substituting the following Division heading:

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“Division 1A — Financial statements”.

Amendment of section 75

32. Section 75 of the principal Act is amended —

(a) by deleting the words “true and fair accounts” in subsections (1), (3)(b) and (5) and substituting in each case the words “true and fair financial statements”; and

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(b) by deleting the words “to the accounts” in subsections (1) and (5) and substituting in each case the words “to the financial statements”.

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Repeal and re-enactment of section 76 and new section 76A

33. Section 76 of the principal Act is repealed and the following sections substituted therefor:

“Financial statements and consolidated financial statements

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76.—(1) The trustee-manager of a registered business trust must lay before the unitholders of the registered business trust at their annual general meeting the financial statements of the registered business trust for the financial year in respect of which the annual general meeting is held.

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(2) Subject to subsections (9) to (12), the trustee-manager of a registered business trust must ensure that the financial statements mentioned in subsection (1) comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the registered business trust.

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(3) Subject to subsections (9) to (12), the trustee-manager of a registered business trust which is a parent business trust at the end of its financial year need not comply with subsection (1) but must cause to be made up and laid before the unitholders of the registered business trust at their annual general meeting —

(a) consolidated financial statements dealing with the financial position and performance of the group for the financial year in respect of which the annual general meeting is held; and

(b) a balance sheet dealing with the state of affairs of the parent business trust at the end of its financial year,

each of which complies with the requirements of the Accounting Standards and gives a true and fair view of the matters mentioned in paragraph (a) or (b) (as the case may be) so far as it concerns the unitholders of the registered business trust.

(4) The trustee-manager of a registered business trust must (before the financial statements mentioned in subsection (1) and the balance sheet mentioned in subsection (3)(b) are made up) take reasonable steps —

(a) to —

(i) ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts; and

(ii) cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the registered business trust and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

- (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
 - (c) to ascertain whether any non-current asset is shown in the books of the registered business trust at an amount which, having regard to its value to the registered business trust as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the financial statements any information and explanations that will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.
- (5) The trustee-manager of a registered business trust must cause —
- (a) the financial statements to be duly audited before they are laid before the unitholders of the registered business trust at their annual general meeting as required by this section; and
 - (b) the auditor’s report required by section 84 to be attached to or endorsed upon those financial statements.
- (6) The trustee-manager of a registered business trust must —
- (a) take reasonable steps to ensure that the financial statements are audited as required by this Part at least 14 days before the annual general meeting of the unitholders of the registered business trust, unless all the persons entitled to receive notice of general meetings of the unitholders of the registered business trust agree that the financial statements may be audited as required by this Part less than 14 days before the annual general meeting of the unitholders of the registered business trust; and

(b) cause to be attached to the financial statements the auditor's report that is provided to the trustee-manager under section 84(2).

5 (7) In subsections (5) and (6), "financial statements", in relation to a registered business trust, means —

10 (a) in the case where the registered business trust is not a parent business trust — the financial statements required to be laid before the unitholders of the registered business trust at their annual general meeting under subsection (1); or

15 (b) in the case where the registered business trust is a parent business trust — the consolidated financial statements of the group and the balance sheet of the parent business trust required to be laid before the unitholders of the registered business trust at their annual general meeting under subsection (3).

20 (8) Where at the end of a financial year a registered business trust is the subsidiary of a corporation or another registered business trust, the trustee-manager of the subsidiary must state in, or in a note as a statement annexed to, the financial statements laid before the unitholders of the subsidiary at their annual general meeting the name of the corporation or registered business trust which is its ultimate parent corporation or ultimate parent business trust.

25 (9) The financial statements or consolidated financial statements of a registered business trust need not comply with any requirement of the Accounting Standards for the purposes of subsection (1) or (3), if the trustee-manager of the registered business trust has obtained the approval of the Authority to such non-compliance.

30 (10) Where any financial statements or consolidated financial statements prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (1) or (3), would not give a true and fair view of any matter required by this section to be dealt with in the financial statements or consolidated financial statements, the financial statements or

consolidated financial statements need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.

(11) In the event of any non-compliance with a requirement of the Accounting Standards mentioned in subsection (10), the trustee-manager of a registered business trust must include in the financial statements or consolidated financial statements, as the case may be —

- (a) a statement by the auditor of the registered business trust that the auditor agrees that such non-compliance is necessary for the financial statements or consolidated financial statements (as the case may be) to give a true and fair view of the matter concerned;
- (b) particulars of the departure, the reason for it and its effect, if any; and
- (c) any further information and explanations that will give a true and fair view of that matter.

(12) The Authority may, by order in the *Gazette*, in respect of registered business trusts of a specified class or description, substitute other accounting standards for the Accounting Standards, and the provisions of this section and sections 74B and 84 are to apply accordingly in respect of such registered business trusts.

(13) The trustee-manager of a registered business trust must ensure that the financial statements laid before the unitholders of the registered business trust at the general meeting of the unitholders (including any consolidated financial statements annexed to the balance sheet of a parent business trust) are accompanied, before the auditor reports on the financial statements under this Part, by a statement signed on behalf of the directors by 2 directors of the trustee-manager containing the information set out in the Fourth Schedule.

(14) Any trustee-manager of a registered business trust which contravenes subsection (1), (2), (3), (4), (5), (6), (8), (11) or (13)

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

Retention of documents laid before unitholders at annual general meeting

76A.—(1) The trustee-manager of a registered business trust must cause to be kept at the registered office of the trustee-manager, or any other place that the trustee-manager thinks fit, a copy of each of the documents that were laid before the unitholders of the registered business trust at their annual general meeting under section 76 for a period of not less than 5 years after the date of the annual general meeting, being a date on or after the date of commencement of section 33 of the Business Trusts (Amendment) Act 2022.

(2) Any trustee-manager of a registered business trust which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(3) The Authority may at any time require the trustee-manager of the registered business trust to provide any document kept under subsection (1), and may, without fee or reward, inspect, make copies of or take extracts from the document.

(4) Any person who —

(a) without lawful excuse, refuses to produce any document required of the person by the Authority under subsection (3); or

(b) obstructs, hinders or delays the Authority in the course of inspecting, making copies of or taking extracts from the document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.”.

Amendment of section 77

34. Section 77 of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) The trustee-manager of a registered business trust may apply to the Authority in writing for an order relieving the trustee-manager from any requirement of this Act relating to — 5

(a) the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards); or 10

(b) the form and content of the directors’ statement required by section 76(13),

and the Authority may make such an order either unconditionally or on condition that the trustee-manager complies with any other requirements relating to the form and content of financial statements or consolidated financial statements or the directors’ statement that the Authority thinks fit to impose. 15 20

(2) The Authority may, where it considers it appropriate, make an order in respect of a specified class of registered business trusts relieving the trustee-manager of a registered business trust in that class from compliance with any specified requirements of this Act relating to — 25

(a) the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards); or 30

(b) the form and content of the directors' statement required by section 76(13),

and the order may be made either unconditionally or on condition that the trustee-manager complies with any other requirements relating to the form and content of financial statements or consolidated financial statements or the directors' statement that the Authority thinks fit to impose.”;

(b) by deleting the words “accounts or report” in subsection (3) and substituting the words “financial statements or consolidated financial statements or directors' statement”; and

(c) by deleting the words “accounts and reports” in the section heading and substituting the words “financial statements and directors' statement”.

New sections 77A and 77B

35. The principal Act is amended by inserting, immediately after section 77, the following sections:

“Voluntary revision of defective financial statements, or consolidated financial statements or balance sheet

77A.—(1) Subject to subsection (3), this section applies at any time, after the financial statements or, in the case of a parent business trust, consolidated financial statements and balance sheet are laid before the unitholders of the registered business trust at an annual general meeting of the unitholders.

(2) Where this section applies, if it appears to the trustee-manager of the registered business trust that the financial statements or, in the case of a parent business trust, consolidated financial statements or balance sheet do not comply with the requirements of this Act (including compliance with the Accounting Standards), the trustee-manager may cause the financial statements, or consolidated financial statements or balance sheet (as the case may be) to be revised and make necessary consequential

revisions to the summary financial statement or directors' statement.

(3) The revision of the financial statements, or consolidated financial statements or balance sheet (as the case may be) under subsection (2) must be confined to —

(a) those aspects in which the financial statements, consolidated financial statements or balance sheet (as the case may be) did not comply with this Act (including compliance with the Accounting Standards); and

(b) the making of any necessary consequential revisions.

(4) Where the Authority has given the trustee-manager of a registered business trust a notice under section 77B(1), the trustee-manager must not cause the financial statements, or consolidated financial statements or balance sheet (as the case may be) to be revised unless the Authority agrees with the trustee-manager on the proposals to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be) mentioned in section 77B(2)(b).

(5) The Authority may make regulations under section 114 in respect of the revision of financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement, including but not limited to the following:

(a) the manner of revision of financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement;

(b) the application of any provision of this Act to such financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement subject to such additions, exceptions and modifications as may be specified in the regulations;

(c) the taking of steps by the trustee-manager of a registered business trust to bring any revision of the

financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement;

- (d) the requirement to lodge the revised financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement with the Authority and the payment of any filing fee pursuant to the lodgment.

Authority's application to court in respect of defective financial statements, or consolidated financial statements and balance sheet

77B.—(1) If it appears to the Authority that there is, or may be, a question whether the financial statements or, in the case of a parent business trust, consolidated financial statements and balance sheet comply with the requirements of this Act (including compliance with the Accounting Standards), the Authority may give notice to the trustee-manager of the registered business trust indicating the respects in which it appears that such a question arises or may arise, and specify the period within which the trustee-manager must respond.

(2) The trustee-manager of the registered business trust to whom notice under subsection (1) is given must, at the end of the period mentioned in that subsection, or any longer period that the Authority may allow —

- (a) give the Authority an explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), if the trustee-manager does not propose to revise the financial statements, or consolidated financial statements or balance sheet, as the case may be; or

(b) inform the Authority how the trustee-manager proposes to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be) to address the questions in respect of which the Authority has given notice. 5

(3) If the Authority is satisfied with the explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), mentioned in subsection (2)(a), no further action need be taken by the trustee-manager of the registered business trust in respect of the notice under subsection (1). 10

(4) If the Authority agrees with the trustee-manager of the registered business trust on the proposals to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), mentioned in subsection (2)(b), the trustee-manager may cause the financial statements, or consolidated financial statements or balance sheet (as the case may be) to be revised in the manner provided in section 77A. 15

(5) The Authority may apply to court under subsection (6) if — 20

(a) the Authority does not receive a response from the trustee-manager of the registered business trust after giving the notice mentioned in subsection (1);

(b) the Authority is not satisfied with the explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), mentioned in subsection (2)(a); or 25

(c) the Authority does not agree with the trustee-manager of the registered business trust on the proposals to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), mentioned in subsection (2)(b). 30

(6) An application to court mentioned in subsection (5) may be for —

- 5
- (a) a declaration that the financial statements, or consolidated financial statements or balance sheet (as the case may be), do not comply with the requirements of this Act (including compliance with the Accounting Standards); and
 - (b) an order requiring the trustee-manager of the registered business trust to cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised.

10 (7) Where the court orders the preparation of revised financial statements, or consolidated financial statements or balance sheet, under subsection (6), the court may give directions as to —

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- (a) the auditing of the financial statements, or consolidated financial statements or balance sheet, as the case may be;
 - (b) the making of revisions to the financial statements, consolidated financial statements, balance sheet, directors' statement, or summary financial statement in such manner as the court considers necessary within a specified period;
 - (c) where the court has given directions under paragraph (b) to make revisions to the summary financial statement, the review by the auditors of the revised summary financial statement;
 - (d) the making of necessary consequential revisions to any other document;
 - (e) the taking of steps by the trustee-manager of a registered business trust to bring the making of the order to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance sheet, directors' statement, or summary financial statement; and
 - (f) any other matters that the court thinks fit.
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(8) If the court finds that the financial statements, or consolidated financial statements or balance sheet (as the case may be), did not comply with the requirements of this Act (including the Accounting Standards), the court may order that all or part of —

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(a) the costs of or incidental to the application; and

(b) any reasonable expenses incurred by the registered business trust in connection with or in consequence of the preparation of revised financial statements, or consolidated financial statements or balance sheet, as the case may be,

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must be borne by the trustee-manager of the registered business trust as at the date of the directors' statement which accompanied the defective financial statements, or consolidated financial statements and balance sheet, as the case may be.

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(9) The provisions of this section apply equally to revised financial statements, or consolidated financial statements or balance sheet (as the case may be), in which case they have effect as if the references to revised financial statements, or consolidated financial statements or balance sheet (as the case may be), were references to further revised financial statements, or consolidated financial statements or balance sheet, as the case may be.”.

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Repeal and re-enactment of section 78

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36. Section 78 of the principal Act is repealed and the following section substituted therefor:

“Unitholders of registered business trust entitled to financial statements, etc.

78.—(1) The trustee-manager of a registered business trust must send a copy of the financial statements or, in the case of a parent business trust, a copy of the consolidated financial statements and balance sheet (including every document required by law to be attached thereto), which is duly audited

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and which is to be laid before the unitholders of a registered business trust in their general meeting, accompanied by —

(a) a copy of the auditor's report thereon; and

5 (b) the financial statements of the trustee-manager prepared in accordance with section 201 of the Companies Act 1967,

to all persons entitled to receive notice of general meetings of the registered business trust, unless subsection (2) applies, not less than 14 days before the date of the meeting.

10 (2) The financial statements, or consolidated financial statements, balance sheet and documents mentioned in subsection (1) may be sent less than 14 days before the date of the general meeting as required under that subsection if all the persons entitled to receive notice of general meetings of the
15 unitholders of the registered business trust so agree.

(3) The trustee-manager of a registered business trust must provide without charge a copy of the last financial statements, or last consolidated financial statements and last balance sheet (including every document required by this Act to be attached
20 thereto) together with a copy of the auditor's report thereon, to —

(a) any unitholder of a registered business trust (whether
25 or not entitled to have sent to the unitholder copies of the financial statements, or consolidated financial statements and balance sheet) to whom copies have not been sent; and

(b) any holder of a debenture,

on a request being made by the unitholder or debenture holder to the trustee-manager.

30 (4) Any trustee-manager of a registered business trust which contravenes subsection (1) or (3) shall, unless it is proved that the unitholder or holder of a debenture in question has already made a request for and been provided with a copy of the financial statements, or consolidated financial statements and

balance sheet, and all documents mentioned in subsection (1) or (3), be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.”.

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Amendment of section 79

37. Section 79 of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

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“(1) Despite section 78 and anything in the trust deed of a registered business trust, the trustee-manager of the registered business trust may, in such cases as may be prescribed by the Authority and provided all the conditions imposed thereunder by the Authority are complied with, send a summary financial statement of the registered business trust instead of copies of the documents mentioned in section 78(1) to the unitholders of the registered business trust.

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(2) Where the trustee-manager of a registered business trust sends to the unitholders of the registered business trust a summary financial statement under subsection (1), any of the unitholders, and any holder of a debenture, entitled to be provided with a copy of the documents mentioned in section 78(3) by the trustee-manager may instead request for a summary financial statement from the trustee-manager, and the trustee-manager must send the summary financial statement to the requesting unitholder or holder of a debenture.”;

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(b) by deleting the word “listed” wherever it appears in subsections (3), (4), (7) and (8);

Amendment of section 80

38. Section 80 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the financial statements of a registered business trust or consolidated financial statements of a parent business trust by reason of an omission from the financial statements or consolidated financial statements, it is a defence for the person to prove that —

(a) the omission was not intentional; and

(b) the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 76 to be dealt with in the financial statements or consolidated financial statements.”.

Repeal and re-enactment of section 81

39. Section 81 of the principal Act is repealed and the following section substituted therefor:

“**Auditors**

81.—(1) A person that is not an accounting entity must not —

(a) knowingly consent to be appointed as an auditor for a registered business trust; or

(b) knowingly act as an auditor for a registered business trust.

(2) Without limiting subsection (1)(b), a person acts as an auditor for a registered business trust if the person prepares any report required by this Act to be prepared by an auditor of the registered business trust.

(3) A trustee-manager of a registered business trust must not appoint an accounting entity as an auditor of a registered business trust without obtaining the accounting entity’s prior consent.

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

(a) of a public accountant must be in writing signed by the public accountant;

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(b) of an accounting firm, or an accounting limited liability partnership, must be in writing signed by at least one partner of the firm or limited liability partnership; and

(c) of an accounting corporation must be in writing signed by at least one director of the corporation.

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(5) Where an accounting firm is appointed as the auditor of a registered business trust in the name of the firm, such appointment takes effect and operates as if the partners of the firm at the time of the appointment, who are public accountants at that time, are appointed as auditors of the registered business trust.

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(6) Where an accounting limited liability partnership is appointed as the auditor of a registered business trust in the name of the limited liability partnership, such appointment takes effect and operates as if —

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(a) the partners of the limited liability partnership who are practising as public accountants in the limited liability partnership (whether partners at the time the limited liability partnership was appointed as auditor or later); and

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(b) the employees of the limited liability partnership who are practising as public accountants in the limited liability partnership (whether employed at the time the limited liability partnership was appointed as auditor or later),

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are appointed as auditors of the registered business trust.

(7) Where an accounting corporation is appointed as the auditor of a registered business trust in the name of the corporation, such appointment takes effect and operates as if —

(a) the directors of the corporation who are practising as public accountants in the corporation (whether directors at the time the accounting corporation was appointed as auditor or later); and

(b) the employees of the corporation who are practising as public accountants in the corporation (whether employed at the time the accounting corporation was appointed as auditor or later),

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are appointed as auditors of the registered business trust.”.

Amendment of section 82

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40. Section 82 of the principal Act is amended —

(a) by deleting the words “a person or persons” in subsections (1) and (2) and substituting in each case the words “an accounting entity or accounting entities”;

(b) by inserting, immediately after the words “Subject to subsections (7) and (8)” in subsection (3), the words “and section 82F”;

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(c) by deleting the words “a public accountant” in subsection (3) and substituting the words “an accounting entity”;

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(d) by deleting the words “any vacancy” in subsection (3) and substituting the words “any casual vacancy”;

(e) by inserting, immediately after the words “to the trustee-manager” in subsection (5)(b), the words “(not exceeding a reasonable length)”;

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(f) by deleting the words “another person” in subsection (7)(a) and (b) and substituting in each case the words “another accounting entity”;

(g) by deleting the words “Any trustee-manager” in subsection (8) and substituting the words “A trustee-manager”;

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(h) by deleting the words “the Authority must” in subsection (8) and substituting the words “the Authority may”;

(i) by deleting the word “person” in subsection (11)(a) and substituting the words “accounting entity”;

(j) by deleting subsections (12) and (13);

(k) by inserting, immediately after the words “appointed by the trustee-manager of the registered business trust or by the Authority” in subsection (14)(b), the words “under this section or section 82F”; and

(l) by deleting subsection (15) and substituting the following subsection:

“(15) Any person who contravenes subsection (1), (5), (6), (8) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.”.

New sections 82A to 82F

41. The principal Act is amended by inserting, immediately after section 82, the following sections:

“Resignation of auditor of registered business trust that is not listed

82A.—(1) An auditor of a registered business trust that is not listed (other than a subsidiary registered business trust) may resign before the end of the term of office for which the auditor was appointed by giving the trustee-manager of the registered business trust a notice of resignation in writing.

(2) Where a notice of resignation is given under subsection (1), the auditor’s term of office expires —

(a) at the end of the day on which notice is given to the trustee-manager of the registered business trust; or

(b) if the notice specifies a time on a later day for the purpose, at that time.

(3) Within 14 days beginning on the date on which the trustee-manager of a registered business trust receives a notice of resignation under subsection (1), the trustee-manager must lodge with the Authority a notification of that fact in such form as the Authority may require.

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Resignation of relevant auditor

82B.—(1) A relevant auditor may, by giving the relevant person concerned a notice of resignation in writing, resign before the end of the term of office for which the relevant auditor was appointed, if —

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(a) the relevant auditor has applied for consent from the Authority to the resignation and provided a written statement of the relevant auditor's reasons for resigning and, at or about the same time as the application, notified the relevant person concerned in writing of the application to the Authority and provided that relevant person with the written statement of the relevant auditor's reasons for resigning; and

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(b) the consent of the Authority has been given.

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(2) The Authority must, as soon as practicable after receiving the application from a relevant auditor under subsection (1)(a), notify the relevant auditor and the relevant person concerned whether the Authority consents to the resignation of the relevant auditor.

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(3) A statement made by a relevant auditor in an application to the Authority under subsection (1)(a) or in answer to an inquiry by the Authority relating to the reasons for the application —

(a) is not admissible in evidence in any civil or criminal proceedings against the relevant auditor; and

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(b) subject to subsection (4), may not be made the ground of a prosecution, an action or a suit against the relevant auditor,

5 and a certificate by the Authority that the statement was made in the application or in the answer to the inquiry by the Authority is conclusive evidence that the statement was so made.

(4) Despite subsection (3), the statement mentioned in that subsection may be used in any disciplinary proceedings commenced under the Accountants Act 2004 against the relevant auditor.

(5) The resignation of a relevant auditor takes effect —

(a) on the day (if any) specified for the purpose in the notice of resignation;

15 (b) on the day on which the Authority notifies the relevant auditor and the relevant person concerned of the Authority's consent to the resignation; or

(c) on the day (if any) fixed by the Authority for the purpose,

whichever last occurs.

20 **Written statement to be disseminated unless application to court made**

82C.—(1) Where a relevant auditor gives the relevant person concerned a notice of resignation under section 82B, that relevant person must within 14 days after receiving the notice of resignation and the written statement of the relevant auditor's reasons for resigning (called in this section and sections 82D and 82E the written statement) send a copy of the written statement to every interested person concerned.

30 (2) Copies of the written statement need not be sent out if an application is made to the court within 14 days, beginning on the date on which the relevant person concerned received the written statement, by either that relevant person or any other person who claims to be aggrieved by the written statement, for a determination that the relevant auditor has abused the use of

the written statement or is using the provisions of this section to secure needless publicity for defamatory matter.

(3) In the case where an application is made under subsection (2) by —

(a) the relevant person — the relevant person must give notice of the application to the relevant auditor concerned; or

(b) any other person — that person must give notice of the application to the relevant person concerned and the relevant auditor concerned.

(4) If default is made in complying with subsection (1), the relevant person concerned shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Court may order written statement not to be sent out

82D.—(1) This section applies if an application has been made under section 82C(2) in relation to a written statement given by a relevant auditor.

(2) If the court is satisfied that the relevant auditor has abused the use of the written statement or is using the written statement to secure needless publicity for any defamatory matter, the court —

(a) must direct that copies of the written statement are not to be sent under section 82C(1); and

(b) may order the relevant auditor, though not a party to the application, to pay the applicant's costs on the application in whole or in part.

(3) If the court gives directions under subsection (2)(a), the relevant person concerned must, within 14 days beginning on the date on which the directions are given send a notice setting out the effect of the directions to —

(a) every interested person concerned; and

(b) unless already named as a party to the proceedings, the relevant auditor who gave the written statement.

(4) If the court decides not to grant the application, the relevant person concerned must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reasons —

- 5 (a) give notice of the decision to the relevant auditor who has given the written statement; and
- (b) send a copy of the written statement to every interested person concerned, and to that relevant auditor.

10 (5) If default is made in complying with subsection (3) or (4), the relevant person concerned shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Privilege against defamation

15 **82E.** A person is not liable to any action for defamation at the suit of any person —

- (a) in the absence of malice, in respect of the publication of the written statement to an interested person, pursuant to section 82C(1); or
- 20 (b) in respect of the publication of the written statement to an interested person, pursuant to section 82D(4)(b).

Appointment of new auditor in place of resigning auditor

82F.—(1) Subject to subsection (3), if —

- 25 (a) an auditor of a registered business trust that is not listed (other than a subsidiary registered business trust) gives notice of resignation under section 82A(1); or

- (b) a relevant auditor gives notice of resignation under section 82B(1), and the Authority approves the resignation of the relevant auditor under section 82B(2),

the relevant person concerned —

- (c) must call a general meeting of the unitholders of the registered business trust, the subsidiary company or unitholders of the subsidiary registered business trust (as the case may be) as soon as practicable, and in any case not more than 3 months after the date of the auditor's resignation, for the purpose of appointing an auditor in place of the auditor who desires to resign or has resigned; and

- (d) upon appointment of the new auditor, must lodge with the Authority a notification of such appointment within 14 days after the appointment.

(2) If the relevant person concerned fails to appoint an auditor in place of the auditor who desires to resign or has resigned, the Authority may, on the application in writing of any interested person concerned, make the appointment.

(3) Subsections (1) and (2) do not apply where the resigning auditor is not the sole auditor of the registered business trust, subsidiary company or subsidiary registered business trust, as the case may be.

(4) An auditor appointed pursuant to subsection (1) or (2) must, unless the auditor is removed or resigns, hold office until the conclusion of the next annual general meeting of the unitholders of the registered business trust, the subsidiary company or unitholders of the subsidiary registered business trust, as the case may be.

(5) If default is made in complying with subsection (1), the following persons shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000:

- (a) in the case of an auditor of a registered business trust that is not listed (other than a subsidiary registered

business trust) — the trustee-manager of the registered business trust;

(b) in the case of an auditor of a listed registered business trust — the trustee-manager of the listed registered business trust;

(c) in the case of an auditor of a subsidiary company — the subsidiary company and every director of the subsidiary company;

(d) in the case of an auditor of a subsidiary registered business trust — the trustee-manager of the subsidiary registered business trust.”.

Amendment of section 84

42.—(1) Section 84 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) An auditor of a registered business trust must report to the unitholders of the registered business trust —

(a) on the financial statements required to be laid before the unitholders in general meeting and on the accounting and other records of the registered business trust relating to those financial statements; and

(b) where the registered business trust is a parent business trust for which consolidated financial statements are prepared, on the consolidated financial statements.”;

(b) by deleting the word “accounts” wherever it appears in subsection (2) and substituting in each case the words “financial statements”;

(c) by deleting paragraph (a) of subsection (3) and substituting the following paragraphs:

- “(a) whether the financial statements and (if the registered business trust is a parent business trust for which consolidated financial statements are prepared) the consolidated financial statements, in the auditor’s opinion — 5
- (i) are in compliance with the requirements of the Accounting Standards; and
 - (ii) give a true and fair view of — 10
 - (A) the financial position and performance of the registered business trust; and
 - (B) if consolidated financial statements are required, the financial position and performance of the group; 15
- (aa) if the financial statements or consolidated financial statements do not comply with any requirement of the Accounting Standards and the approval of the Authority under section 76(9) to such non-compliance has not been obtained, whether such non-compliance is, in the opinion of the auditor, necessary for the financial statements or consolidated financial statements to give a true and fair view of any matter required by section 76 to be dealt with in those statements;” 20 25
- (d) by inserting, immediately after paragraph (b) of subsection (3), the following paragraph: 30
- “(ba) in the case where the registered business trust is a parent business trust, whether the accounting and other records kept by each subsidiary (where the subsidiary is a 35

corporation) or the trustee-manager of each subsidiary (where the subsidiary is a registered business trust), other than those of a subsidiary for which the auditor has not acted as auditor, have been, in the auditor's opinion, properly kept in accordance with this Act or any other written law applicable to the subsidiary in respect of the keeping of accounting and other records;";

(e) by deleting the word "accounts" wherever it appears in subsections (3)(c), (6)(a) and (8)(b) and substituting in each case the words "financial statements or consolidated financial statements";

(f) by deleting the words "referred to in paragraph (a)" in subsection (3)(d) and substituting the words "mentioned in paragraph (a), (aa)";

(g) by deleting the word "and" at the end of subsection (4)(a);

(h) by inserting, immediately after the words "other records" in subsection (4)(b), the words ", excluding registers,";

(i) by deleting the comma at the end of paragraph (b) of subsection (4) and substituting the word "; and", and by inserting immediately thereafter the following paragraph:

"(c) where consolidated financial statements are prepared otherwise than as one set of consolidated financial statements for the group, whether the auditor agrees with the reasons for preparing them in the form in which they are prepared, as given by the trustee-manager in the financial statements,";

(j) by deleting the words "referred to" in subsection (4) and substituting the word "mentioned";

(k) by inserting, immediately after subsection (4), the following subsection:

“(4A) An auditor of a registered business trust is not required to form an opinion in the auditor’s report as to whether the accounting and other records of subsidiaries (which are not incorporated or constituted in Singapore) of a parent business trust have been kept in accordance with this Act.”;

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- (l) by inserting, immediately after subsection (5), the following subsection:

“(5A) An auditor of a parent business trust for which consolidated financial statements are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary, and is entitled to require from any officer or auditor of any subsidiary, at the expense of the parent business trust, any information and explanations in relation to the affairs of the subsidiary that the auditor requires for the purpose of reporting on the consolidated financial statements.”;

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- (m) by inserting, immediately after the words “registered business trust” in subsection (8)(b), the words “or, if the registered business trust is a subsidiary, of the board of directors of the parent company or trustee-manager of the parent business trust”;

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- (n) by inserting, immediately after the words “a registered business trust” in subsections (9) and (10), the words “or a subsidiary of a registered business trust”;

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- (o) by deleting “\$20,000” in subsection (11)(b) and substituting “\$100,000”;

- (p) by deleting subsection (12) and substituting the following subsection:

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“(12) Any —

- (a) officer of the trustee-manager of a registered business trust who refuses or fails without lawful excuse to allow an auditor of the registered business trust

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access, in accordance with this section, to any accounting and other records, including registers, of the registered business trust in the officer's custody or control;

(b) officer or auditor of a subsidiary who refuses or fails without lawful excuse to allow an auditor of its parent business trust access, in accordance with this section, to any accounting and other records, including registers, of the subsidiary in the officer's or auditor's custody or control;

(c) officer of the trustee-manager of a registered business trust or officer or auditor of a subsidiary who refuses or fails without lawful excuse to give any information or explanation as and when required under this section; or

(d) officer of the trustee-manager of a registered business trust or officer or auditor of a subsidiary who otherwise hinders, obstructs or delays an auditor in the performance of the auditor's duties or the exercise of the auditor's powers,

shall be guilty of an offence.”;

(q) by inserting, immediately after subsection (12), the following subsection:

“(13) The references to the registers of a registered business trust in subsections (5) and (12) do not include any register kept by the trustee-manager of a registered business trust under Part 8A.”; and

(r) by deleting the word “accounts” in the section heading and substituting the words “financial statements”.

(2) Section 84 of the principal Act, as amended by subsection (1)(q), is further amended by deleting subsection (13) and substituting the following subsection:

“(13) The references to the registers of —

(a) a registered business trust in subsections (5) and (12)(a); or 5

(b) a subsidiary of a parent business trust in subsections (5A) and (12)(b),

do not include any register kept by the trustee-manager of a registered business trust or the trustee-manager of a subsidiary of a parent business trust, under Part 8A, or by a subsidiary of a parent business trust under Part 11A of the Companies Act 1967.”. 10

Amendment of section 85

43. Section 85 of the principal Act is amended by inserting, immediately after the words “a registered business trust” in subsections (1) and (2), the words “or subsidiary of a registered business trust”. 15

New section 85A

44. The principal Act is amended by inserting, immediately after section 85 in Division 2 of Part 10, the following section: 20

“Provisions indemnifying auditors

85A.—(1) Any provision, whether in the trust deed of the registered business trust or in any contract with the trustee-manager of a registered business trust or otherwise, for exempting any auditor of the registered business trust from, or indemnifying the auditor against, any liability which by law would otherwise attach to the auditor in respect of any negligence, default, breach of duty or breach of trust of which the auditor may be guilty in relation to the registered business trust is void. 25 30

(2) This section does not prevent a trustee-manager of a registered business trust from indemnifying an auditor against any liability incurred or that will be incurred by the auditor —

5 (a) in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or in which the auditor is acquitted; or

10 (b) in connection with any application under section 105 or any other provision of this Act, in which relief is granted to the auditor by the court.”.

Amendment of section 86

45. Section 86 of the principal Act is amended —

(a) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

15 “(b) ensure that the written statements mentioned in paragraph (a) are annexed to the financial statements of the registered business trust required under section 76(1) or the consolidated financial statements required under section 76(3).”;

20 (b) by deleting subsections (4) and (5) and substituting the following subsections:

25 “(4) Where the board of directors of the trustee-manager of a registered business trust is unable to provide a written statement in accordance with subsection (2), for the reason that —

30 (a) the board of directors is of the opinion that the assertions mentioned in subsection (2) if made in the written statement, would not be true; or

(b) there is a divergence of views among the directors of the trustee-manager as to the accuracy of the assertions mentioned in subsection (2) if they were made in the written statement,

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the trustee-manager need not annex the written statement required by subsection (2) to the financial statements of the registered business trust required under section 76(1) or the consolidated financial statements required under section 76(3), but the board of directors must provide an explanation, including the important factors for the inability to provide such a written statement, and the explanation must be annexed by the trustee-manager to the financial statements of the registered business trust required under section 76(1) or the consolidated financial statements required under section 76(3).

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(5) Where the chief executive officer of the trustee-manager of a registered business trust is unable to provide a written statement in accordance with subsection (3) for the reason that he or she is of the opinion that the assertion mentioned in subsection (3) if made in the written statement, would not be true, the trustee-manager need not annex the written statement required by subsection (3) to the financial statements of the registered business trust required under section 76(1) or the consolidated financial statements required under section 76(3), but the chief executive officer of the trustee-manager must provide an explanation, including the important factors for his or her inability to provide such a written statement, and the explanation must be annexed by the trustee-manager to the financial statements of the registered business trust required under section 76(1) or the consolidated financial statements required under section 76(3).”; and

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(c) by deleting the definitions of “chief executive officer”, “control”, “controlling shareholder” and “controlling unitholder” in subsection (10) and substituting the following definitions:

5 “control” —

(a) in relation to a corporation — means the capacity to determine the outcome of decisions on the financial and operating policies of the corporation, having regard to the following considerations:

10 (i) the practical influence that can be exerted (rather than the rights which can be enforced);

15 (ii) any practice or pattern of behaviour affecting the financial and operating policies of the corporation (even if it involves a breach of an agreement or a breach of trust),

20 but excludes any capacity to influence decisions on the financial and operating policies of a corporation where such influence is required to be exercised for the benefit of other persons pursuant to an obligation imposed under any written law, rule of law, contract or order of court; and

25 (b) in relation to a business trust — means the capacity to determine the outcome of decisions on the financial and operating policies of the business of the business trust, having regard to the following considerations:

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- (i) the practical influence that can be exerted (rather than the rights which can be enforced);
- (ii) any practice or pattern of behaviour affecting the financial or operating policies of the business trust (even if the practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but excludes any capacity to influence decisions on such financial and operating policies where such influence is required to be exercised for the benefit of other persons pursuant to an obligation imposed under any written law, rule of law, contract or order of court;

“controlling shareholder”, in relation to a corporation, means —

- (a) a person who has an interest in the voting shares of a corporation and who exercises control over the corporation; or
- (b) a person who has an interest in the voting shares of the corporation of an aggregate of not less than 30% of the total votes attached to all voting shares in the corporation, unless that person does not exercise control over the corporation;

“controlling unitholder”, in relation to a registered business trust, means —

(a) a person who has an interest or interests in units in the registered business trust and who exercises control over the registered business trust; or

(b) a person who has an interest or interests in units representing not less than 30% of the total voting rights of all the unitholders of the registered business trust, unless that person does not exercise control over the registered business trust;”.

Amendment of section 87

46. Section 87 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) The trustee-manager of a registered business trust must attach a statement of its policies and practices in relation to its management and governance of the registered business trust, containing such information and description as may be prescribed by the Authority, to —

(a) the financial statements of the registered business trust required under section 76(1); or

(b) in a case where section 76(3) is applicable and the registered business trust is a parent business trust, the consolidated financial statements of the group and balance sheet of the parent business trust.”.

Amendment of section 89

47. Section 89 of the principal Act is amended —

(a) by deleting the words “referred to in this Part as” in subsection (1) and substituting the words “called in this Part”; and

- (b) by inserting, immediately after the words “advocate and solicitor” in subsections (4) and (5), the words “, or a legal counsel mentioned in section 128A of the Evidence Act 1893,”.

Amendment of section 93

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48. Section 93 of the principal Act is amended —

- (a) by inserting, immediately after the words “balance sheet,” in subsection (1), the words “financial statements,”; and
- (b) by deleting the words “any account, balance sheet, report or other document” in subsection (2) and substituting the words “a document”.

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New section 93A

49. The principal Act is amended by inserting, immediately after section 93, the following section:

“Electronic transmission in accordance with trust deed, etc.

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93A.—(1) Despite sections 92 and 93, where a notice of meeting or any accounts, balance sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the trust deed of a registered business trust by the trustee-manager of the registered business trust or the directors of the trustee-manager to a unitholder of the registered business trust, that notice or document may be given, sent or served using electronic communications with the express, implied or deemed consent of the unitholder in accordance with the trust deed of the registered business trust.

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(2) For the purposes of this section, a unitholder has given implied consent if the trust deed of a registered business trust —

- (a) provides for the use of electronic communications;
- (b) specifies the manner in which electronic communications is to be used; and

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(c) provides that the unitholder agrees to receive such notice or document by way of such electronic communications and does not have a right to elect to receive a physical copy of such notice or document.

5 (3) For the purposes of this section, but subject to regulations mentioned in subsection (4), a unitholder is deemed to have consented if —

10 (a) the unitholder was by written notice given an opportunity to elect, within the period of time specified in the notice, whether to receive the notice or document by way of electronic communications or as a physical copy; and

(b) the unitholder failed to make an election within the time so specified.

15 (4) The Authority may make regulations under section 114 —

(a) to exclude any notice or document or any class of notices or documents from the application of this section;

20 (b) to provide for safeguards for the use of electronic communications under this section; and

25 (c) without limiting paragraph (b), to provide that a unitholder who is deemed to have consented to receive notices or documents by way of electronic communications may make a fresh election to receive such notice or document as a physical copy and the manner in which the fresh election may be made.”.

Amendment of section 97

50. Section 97 of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

30 “(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except —

(a) the power of appointment conferred by this subsection; and

(b) the power to make subsidiary legislation.

(1A) The Authority may, by notification in the *Gazette*, appoint one or more of its officers to exercise the power under section 112(2) to grant an exemption to a particular person, or in respect of any registered business trust, matter or transaction (not being an exemption granted to a class of persons or in respect of a class of registered business trusts, matters or transactions), or to revoke any such exemption.”.

Amendment of section 98

51. Section 98 of the principal Act is amended —

(a) by inserting, immediately after the word “guidelines” in subsection (1), the words “, policy statements, practice notes”;

(b) by inserting, immediately after the word “guideline” wherever it appears in subsections (2), (3), (4)(a) and (b) and (8), the words “, policy statement, practice note”;

(c) by deleting the words “or guideline” in subsections (5) and (7) and substituting in each case the words “, guideline, policy statement or practice note”.

Amendment of section 99

52. Section 99(3) of the principal Act is amended by inserting, immediately after the word “accounts,” wherever it appears, the words “financial statements,”.

Amendment of section 104

53. Section 104 of the principal Act is amended —

(a) by deleting the words “referred to” in subsections (3) and (8)(a) and (b) and substituting in each case the word “mentioned”;

(b) by inserting, immediately after the word “Where” in subsection (10), the words “the Authority or”;

(c) by deleting the words “subsection (1) or (2)” in subsection (10) and substituting the words “subsection (1)(b) or (2)(b)”; and

(d) by deleting the words “that person” in subsection (10) and substituting the words “the Authority or that person (as the case may be)”.

Amendment of section 107

54. Section 107 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) Any person who —

(a) signs any document lodged with the Authority; or

(b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him or her by the Authority,

must use due care to ensure that the document is not false or misleading in any material particular.”.

Amendment of section 108

55. Section 108 of the principal Act is amended by deleting the word “accession” in paragraph (b) and substituting the word “omission”.

Repeal and re-enactment of section 109 and new section 109A

56. Section 109 of the principal Act is repealed and the following sections substituted therefor:

“Offences by corporations

109.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of his or her actual or apparent authority; and

(b) the officer, employee or agent had that state of mind, is evidence that the corporation had that state of mind.

(2) Where a corporation commits an offence (other than an offence under Division 1A of Part 10) under this Act, a person —

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(a) who is —

(i) an officer of the corporation; or

(ii) an individual involved in the management of the corporation and in a position to influence the conduct of the corporation in relation to the commission of the offence; and

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(b) who —

(i) consented or connived, or conspired with others, to effect the commission of the offence;

(ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the corporation; or

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(iii) knew or ought reasonably to have known that the offence by the corporation (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

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shall be guilty of the same offence as is the corporation, and shall be liable on conviction to be punished accordingly.

25

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the corporation if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the corporation would bear.

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(4) To avoid doubt, this section does not affect the application of —

(a) Chapters 5 and 5A of the Penal Code 1871; or

(b) the Evidence Act 1893 or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of the corporation for an offence under this Act, and applies whether or not the corporation is convicted of the offence.

(6) In this section —

“corporation” includes a limited liability partnership within the meaning of section 2(1) of the Limited Liability Partnerships Act 2005;

“officer”, in relation to a corporation, means any director, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —

(a) any person purporting to act in any such capacity; and

(b) for a corporation whose affairs are managed by its members, any of those members as if the member were a director of the corporation;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

(7) The Authority may make regulations to provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to any corporation formed or recognised under the law of a jurisdiction outside Singapore.

Offences by unincorporated associations or partnerships

109A.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or partnership engaged in that conduct within the scope of his or her actual or apparent authority; and

(b) the employee or agent had that state of mind, 5

is evidence that the unincorporated association or partnership had that state of mind.

(2) Where an unincorporated association or a partnership commits an offence under this Act, a person —

(a) who is — 10

(i) an officer of the unincorporated association or a member of its governing body;

(ii) a partner in the partnership; or

(iii) an individual involved in the management of the unincorporated association or partnership and in a position to influence the conduct of the unincorporated association or partnership (as the case may be) in relation to the commission of the offence; and 15

(b) who — 20

(i) consented or connived, or conspired with others, to effect the commission of the offence;

(ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the unincorporated association or partnership; or 25

(iii) knew or ought reasonably to have known that the offence by the unincorporated association or partnership (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the unincorporated association or partnership (as the case may be), and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the unincorporated association or partnership if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the unincorporated association or partnership would bear.

(4) To avoid doubt, this section does not affect the application of —

(a) Chapters 5 and 5A of the Penal Code 1871; or

(b) the Evidence Act 1893 or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of an unincorporated association or a partnership for an offence under this Act, and applies whether or not the unincorporated association or partnership is convicted of the offence.

(6) In this section —

“officer”, in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, and includes —

(a) any person holding a position analogous to that of president, secretary or member of a committee of the unincorporated association; and

(b) any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and 5

(b) the person’s reasons for the intention, opinion, belief or purpose.

(7) The Authority may make regulations to provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to any unincorporated association or partnership formed or recognised under the law of a jurisdiction outside Singapore.” 10

Amendment of section 112

57. Section 112 of the principal Act is amended — 15

(a) by deleting the words “specified in any written direction” in subsection (2) and substituting the words “imposed by the Authority under this Act”;

(b) by deleting the words “terms or conditions” in subsection (3)(a) and substituting the words “conditions or restrictions”; 20

(c) by inserting, immediately after subsection (3), the following subsection:

“(3A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.”; 25

(d) by deleting the words “term or condition” in subsection (4) and substituting the words “condition or restriction”; and

(e) by inserting, immediately after the words “subsection (3)(a)” in subsection (4), the words “(including any condition or restriction added or varied under subsection (3A))”. 30

Amendment of section 113

58.—(1) Section 113 of the principal Act is amended —

(a) by deleting the word “Schedule” in subsection (1) and substituting the words “First, Second or Third Schedule”;
5 and

(b) by deleting the word “Schedule” in the section heading and substituting the word “Schedules”.

(2) Section 113(1) of the principal Act, as amended by subsection (1)(a), is further amended by deleting the words “or Third Schedule” and substituting the words “, Third or Fourth Schedule”.
10

Amendment of section 114

59. Section 114 of the principal Act is amended —

(a) by deleting the words “annual accounts” in subsection (2)(d) and substituting the words “annual financial statements”; and
15

(b) by inserting, immediately after paragraph (a) of subsection (3), the following paragraphs:

“(aa) may relate to all, or any class, category or description of persons, trustee-managers or business trusts, and may make different provisions for different classes, categories or descriptions of persons, trustee-managers or business trusts, or to a particular person, trustee-manager or business trust;
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(ab) may contain provisions of a saving or transitional nature;”.

Amendment and renaming of Schedule

60. The Schedule to the principal Act is amended —
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(a) by renaming the Schedule as the First Schedule; and

(b) by deleting paragraph 3 and substituting the following paragraph:

“3. A trust under which each of the unitholders is a related corporation of the trustee, except for a trust that has received approval-in-principle, or eligibility-to-list, for its admission to the official list of an approved exchange and such approval-in-principle or eligibility-to-list has not expired or been revoked.”.

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New Second and Third Schedules

61. The principal Act is amended by inserting, immediately after the First Schedule as renamed by section 60(a), the following Schedules:

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“SECOND SCHEDULE

Sections 52F(1) and 113

REGISTERED BUSINESS TRUSTS TO WHICH PART 8A DOES NOT APPLY

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1. Part 8A does not apply to any of the following registered business trusts:

(a) a registered business trust all or any of the units of which are listed for quotation on the official list of an approved exchange in Singapore and to which Division 2 of Part 7 of the Securities and Futures Act 2001 applies;

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(b) a registered business trust, all the units of which are wholly-owned by the Government;

(c) a registered business trust all the units of which are wholly-owned by a statutory body established by or under a public Act for a public purpose;

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(d) a registered business trust all the units of which are wholly-owned by the trustee-manager of a registered business trust mentioned in sub-paragraph (a), (b) or (c), on behalf of the registered business trust mentioned in sub-paragraph (a), (b) or (c), as the case may be;

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(e) a registered business trust all or any of the units of which are listed on a securities exchange in a country or jurisdiction outside Singapore and where the trustee-manager of the registered business trust or the registered business trust is subject to —

(i) regulatory disclosure requirements in relation to the registered business trust; and

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- (ii) requirements relating to adequate transparency in respect of the registered business trust's controllers (as defined in section 52G),

imposed through stock exchange rules, law or other enforceable means.

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THIRD SCHEDULE

Sections 52G and 113

MEANINGS OF "SIGNIFICANT CONTROL" AND "SIGNIFICANT INTEREST"

10 **Definition of "significant control"**

1. For the purposes of Part 8A, an individual or a legal entity has significant control over a registered business trust, if the individual or legal entity —

(a) holds the right (directly or indirectly) to appoint or remove the directors of the trustee-manager of the registered business trust, where such directors hold a majority of the voting rights at any meeting of the directors on all or substantially all matters;

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(b) holds (directly or indirectly) more than 25% of the rights to vote on any matter that is to be decided upon by a vote of the unitholders of the registered business trust; or

20

(c) has the right to exercise, or actually exercises, significant influence or control over the trustee-manager of the registered business trust.

2. For the purposes of Part 8A, an individual or a legal entity has significant control over a corporation, if the individual or legal entity —

(a) holds the right (directly or indirectly) to appoint or remove the directors or equivalent persons of the corporation, where such directors or equivalent persons hold a majority of the voting rights at any meeting of the directors or equivalent persons on all or substantially all matters;

25

(b) holds (directly or indirectly) more than 25% of the rights to vote on any matter that is to be decided upon by a vote of the members or equivalent persons of the corporation; or

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(c) has the right to exercise, or actually exercises, significant influence or control over the corporation.

3. For the purposes of Part 8A, an individual or a legal entity has significant control over a limited liability partnership if the individual or legal entity has significant control as defined in paragraph 1 of the Seventh Schedule to the Limited Liability Partnerships Act 2005.

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4. For the purposes of Part 8A, an individual has significant control over a trustee of an express trust to which Part 7 of the Trustees Act 1967 applies, if the individual is an “effective controller” of the trustee, as defined in section 83(1) of the Trustees Act 1967.

Definition of “significant interest”

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5. For the purposes of Part 8A, an individual or a legal entity has significant interest in a registered business trust if the individual or legal entity (as the case may be) has an interest in more than 25% of the units in the registered business trust.

6.—(1) For the purposes of Part 8A, an individual or a legal entity has significant interest in a corporation having a share capital —

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(a) if the individual or legal entity (as the case may be) has an interest in more than 25% of the shares in the corporation; or

(b) if —

(i) the individual or legal entity (as the case may be) has an interest in one or more voting shares in the corporation; and

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(ii) the total votes attached to that share, or those shares, is more than 25% of the total voting power in the corporation.

(2) In sub-paragraph (1)(a), “share” —

(a) in relation to a corporation other than a VCC, has the meaning given by section 4 of the Companies Act 1967; and

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(b) in relation to a VCC, has the meaning given by section 2 of the Variable Capital Companies Act 2018.

(3) In sub-paragraph (1)(b), “voting share” has the meaning given by section 4(1) of the Companies Act 1967, but does not include any treasury share or any share mentioned in section 21(4B) or (6C) of the Companies Act 1967.

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7. For the purposes of Part 8A, an individual or a legal entity has a significant interest in a corporation that does not have a share capital if the individual or legal entity (as the case may be) holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the corporation.

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8. For the purposes of Part 8A, an individual or a legal entity has a significant interest in a limited liability partnership if the individual or legal entity has significant interest as defined in paragraph 2 of the Seventh Schedule to the Limited Liability Partnerships Act 2005.

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Supplementary provisions

9.—(1) Subject to sub-paragraphs (2), (3) and (5), section 4(1) to (7), (9), (10) and (11) of the Securities and Futures Act 2001 applies in determining whether a person has an interest in a unit in a registered business trust or an interest in a share.

(2) If 2 or more persons jointly have an interest in a unit in a registered business trust or in a share, or jointly hold a right, each of the persons is considered for the purposes of this Schedule as having an interest in that unit or that share, or as holding that right, as the case may be.

(3) If units in a registered business trust or shares in respect of which a person has an interest and the units or shares in respect of which another person has an interest are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as having an interest in the combined units or shares of both of them.

(4) If the rights held by a person and the rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined rights of both of them.

(5) A unit, share or right held by a person as nominee for another is to be considered for the purposes of this Schedule as held by the other (and not by the nominee).

(6) In this paragraph —

(a) a “joint arrangement” is an arrangement between the persons having an interest in units or shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective units or shares (or rights) jointly in a way that is pre-determined by the arrangement; and

(b) “arrangement” includes —

(i) any scheme, agreement or understanding, whether or not it is legally enforceable; and

(ii) any convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).”

New Fourth Schedule

62. The principal Act is amended by inserting, immediately after the Third Schedule as inserted by section 61, the following Schedule:

“FOURTH SCHEDULE

Sections 76(13) and 113

CONTENTS OF DIRECTORS’ STATEMENT

1. A statement as to whether in the opinion of the directors of the trustee-manager — 5
 - (a) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the registered business trust and (if applicable) of the financial position and performance of the group for the period covered by the financial statements or consolidated financial statements; and 10
 - (b) at the date of the statement there are reasonable grounds to believe that the trustee-manager will be able to pay the debts of the registered business trust, out of the trust property of the registered business trust, as and when they fall due. 15

2. Where any option has been granted by the trustee-manager of a registered business trust, other than a parent business trust for which consolidated financial statements are required, during the period covered by the financial statements to take up unissued units in the registered business trust — 20
 - (a) the number and class of units in respect of which the option has been granted;
 - (b) the date of expiration of the option;
 - (c) the basis upon which the option may be exercised; and
 - (d) whether the person to whom the option has been granted has any right to participate by virtue of the option in any issue of units of any other registered business trust. 25

3. Where any of the particulars required by paragraph 2 have been stated in a previous directors’ statement, they may be stated by reference to that statement. 30

4. Where a parent business trust or any of its subsidiaries has at any time granted to a person an option to have units in the parent business trust issued to the person, or units or shares in a subsidiary issued to the person, the directors’ statement of the parent business trust must state the name of the registered business trust or subsidiary in respect of the units or shares (as the case may be) in which the option was granted and the other particulars required under paragraphs 2, 5 and 6. 35

5. The particulars of units issued during the period to which the statement relates by virtue of the exercise of options to take up unissued units of the registered business trust, whether granted before or during that period.

6. The number and class of unissued units of the registered business trust under option as at the end of the period to which the statement relates, the price, or method of fixing the price, of issue of those units, the date of expiration of the option and the rights (if any) of the persons to whom the options have been granted to participate by virtue of the options in any issue of units of any other registered business trust.

7. The names of the persons who are the directors of the trustee-manager in office at the date of the statement.

8. Whether at the end of the financial year to which the financial statements or, where the registered business trust is a parent business trust, consolidated financial statements relate —

(a) there subsist arrangements to which the trustee-manager of the registered business trust is a party on behalf of the registered business trust, being arrangements whose objects are, or one of whose objects is, to enable directors of the trustee-manager to acquire benefits by means of the acquisition of units in, or debentures of, the registered business trust or shares in, or debentures of, any body corporate; or

(b) there have, at any time in that year, subsisted such arrangements as aforesaid to which the trustee-manager of the registered business trust was a party on behalf of the registered business trust,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the trustee-manager and held, or whose nominees held, units, shares or debentures acquired pursuant to the arrangements.

9. As respects each person who, at the end of the financial year, was a director of the trustee-manager of the registered business trust —

(a) whether or not (according to the register kept by the trustee-manager for the purposes of section 13 relating to the obligation of a director of a trustee-manager to notify it of his or her interests in units or derivatives of units in, or debentures of, the registered business trust) he or she was, at the end of that year, interested in such units or derivatives of units or debentures; and

(b) if he or she was so interested, the number and amount of units or derivatives of units in, and debentures of, the registered business trust in which, according to that register, he or she was then interested and whether or not, according to that register, he or she

was, at the beginning of that year (or, if he or she was not then a director, when he or she became a director), interested in units or derivatives of units in, or debentures of, the registered business trust and, if he or she was so interested, the number and amount of units or derivatives of units in, and debentures of, the registered business trust in which, according to that register, he or she was interested at the beginning of that year or (as the case may be), when he or she became a director.”.

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Saving and transitional provisions

63.—(1) Despite section 16, section 46 of the principal Act as in force immediately before the date of commencement of section 16 continues to apply to or in relation to any application under section 46(1) of the principal Act made before that date.

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(2) Despite section 17, section 52 of the principal Act as in force immediately before the date of commencement of section 17 continues to apply to or in relation to any notice that the Authority published in the *Gazette* and sent to the trustee-manager of a registered business trust by registered post, under section 52(2) of the principal Act, before that date.

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(3) Despite sections 20, 28, 32, 33, 34, 36, 37, 38, 42, 45 and 46 —

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(a) section 53 of the unamended Act continues to apply to or in relation to a trustee-manager of a registered business trust in respect of the holding of a relevant annual general meeting;

(b) section 74 of the unamended Act continues to apply to or in relation to a trustee-manager of a registered business trust in respect of the lodgment of a return mentioned in that section, for a relevant annual general meeting;

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(c) section 75 of the unamended Act continues to apply to or in relation to the trustee-manager of a registered business trust in respect of —

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(i) the keeping of accounting records and other records mentioned in section 75(1) of the unamended Act, as will enable true and fair accounts for any relevant

period, and documents required to be attached to those accounts, to be prepared from time to time; and

(ii) the devising and maintaining of a system of internal accounting controls mentioned in section 75(3) of the unamended Act, to permit the preparation of true and fair accounts for any relevant period;

(d) section 76 of the unamended Act continues to apply to or in relation to a trustee-manager of a registered business trust in respect of the laying before the unitholders of the registered business trust at their annual general meeting, a profit and loss account, balance sheet and cash flow statement for any relevant period, with the accompanying directors' report, statement mentioned in section 76(18) of the unamended Act, and auditor's report;

(e) section 77 of the unamended Act continues to apply to or in relation to any requirement of the unamended Act relating to the form and content of accounts or to the form and content of the directors' report required by section 76(11) of the unamended Act, in respect of accounts or any directors' report, for any relevant period;

(f) section 78 of the unamended Act continues to apply to or in relation to a trustee-manager of a registered business trust in respect of the sending of a profit and loss account, balance sheet and cash flow statement, for any relevant period (and the documents that must be attached thereto or accompanied therewith), and the providing of a profit and loss account and balance sheet for any relevant period (together with a copy of the auditor's report thereon);

(g) section 79 of the unamended Act continues to apply to or in relation to a trustee-manager of a registered business trust in respect of the provision of a summary financial statement derived from any annual accounts and directors' report, for any relevant period;

(h) section 80 of the unamended Act applies to or in relation to —

- (i) any director of a trustee-manager of a registered business trust who fails to take all reasonable steps to secure compliance by the trustee-manager with section 75, 76, 77, 78 or 79 of the unamended Act, as applied by sub-paragraph (c), (d), (e), (f) or (g) (each called in this paragraph a relevant provision); 5
- (ii) any director who has by his or her own wilful act been the cause of any contravention by the trustee-manager of any relevant provision; and
- (iii) any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, any relevant provision; 10
- (i) section 84 of the unamended Act continues to apply to or in relation to an auditor of a registered business trust in respect of a report mentioned in that section, on accounts for any relevant period required to be laid before the unitholders in general meeting, and on accounting and other records of the registered business trust relating to those accounts; 15
- (j) section 86 of the unamended Act continues to apply to or in relation to the trustee-manager of a registered business trust in respect of a written statement mentioned in section 86(1)(a) of the unamended Act, where the written statement is annexed to a profit and loss account for any relevant period; and 20 25
- (k) section 87 of the unamended Act continues to apply to or in relation to a trustee-manager of a registered business trust in respect of the attaching of a statement mentioned in section 87(1) of the unamended Act, to a profit and loss account for any relevant period, 30

as if sections 20, 28, 32, 33, 34, 36, 37, 38, 42, 45 and 46 had not been enacted.

(4) Despite section 25, section 65 of the principal Act as in force immediately before the date of commencement of section 25 continues to apply to or in relation to any special resolution or any 35

resolution passed by any class of unitholders of the registered business trust whether agreed to by all the unitholders of that class or not, passed or made before that date, as if section 25 had not been enacted.

5 (5) Despite section 40(j), section 82(13) of the principal Act as in force immediately before the date of commencement of section 40(j) continues to apply to or in relation to an auditor of a registered business trust that gives written notice before that date to the trustee-manager of the registered business trust that the auditor
10 desires to resign, as if section 40(j) had not been enacted.

(6) Section 41 does not apply to or in relation to any auditor of a registered business trust that gives written notice before the date of commencement of section 41 to the trustee-manager of the registered business trust that the auditor desires to resign.

15 (7) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

20 (8) In this section —

“auditor’s report” means the auditor’s report mentioned in section 84 of the unamended Act;

“balance sheet” means the balance sheet mentioned in section 76(5)(a) of the unamended Act;

25 “cash flow statement” means the cash flow statement mentioned in section 76(5)(b) of the unamended Act;

“directors’ report” means the report mentioned in section 76(10) of the unamended Act;

30 “profit and loss account” means the profit and loss account of a registered business trust required to be laid before the unitholders of the registered business trust at their annual general meeting under section 76(1) of the unamended Act;

“relevant annual general meeting” means an annual general meeting of the unitholders of a registered business trust, at

which the profit and loss account for any relevant period is, under the unamended Act, required to be laid before the unitholders of the registered business trust;

“relevant date” means the date of commencement of sections 20, 28, 32, 33, 34, 36, 37, 38, 42, 45 and 46;

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“relevant period” means any period in respect of which any profit and loss account of a registered business trust is made up, which ends before the relevant date;

“summary financial statement” means a summary financial statement mentioned in section 79 of the unamended Act;

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“unamended Act” means the principal Act as in force immediately before the relevant date.

EXPLANATORY STATEMENT

This Bill seeks to amend the Business Trusts Act 2004 (the Act) for the following purposes:

- (a) to align provisions in the Act with amendments that were made to the Companies Act 1967 by the Companies (Amendment) Act 2014 and the Companies (Amendment) Act 2017;
- (b) to lower the percentage of voting rights required to remove a trustee-manager of a registered business trust;
- (c) to empower the Monetary Authority of Singapore (the Authority) to deregister a registered business trust that has been wound up under the Act;
- (d) to provide for the passing of resolutions by written means;
- (e) to align provisions in the Act with certain provisions in the Securities and Futures Act 2001;
- (f) to make other miscellaneous and technical amendments.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to insert the new definitions of “accounting corporation”, “accounting entity”, “accounting firm”, “accounting limited liability partnership”, “Accounting Standards”, “chief executive officer”, “financial statements”, “foreign company”, “limited liability partnership”, “listed”,

“summary financial statement”, “unlisted registered business trust” and “VCC”. The clause also replaces the definition of “financial year”.

Clause 3 amends section 7 to require a trustee-manager of a registered business trust to take all reasonable steps to secure that each secretary of the trustee-manager is a person who satisfies the requirements in section 171(1AA) of the Companies Act 1967 and to clarify the penalty that applies to an offence mentioned in section 7(2).

Clause 4 amends section 10(3) to prohibit a trustee-manager of a registered business trust from making improper use of its position as a trustee-manager to gain an advantage for itself or for any other person to the detriment of the unitholders of the registered business trust. This amendment is intended to align section 10(3) with section 157(2) of the Companies Act 1967.

Clause 5 amends section 11(2) to prohibit an officer or agent of the trustee-manager of a registered business trust from making improper use of his, her or its position as an officer or agent of the trustee-manager to gain an advantage for the officer, agent or any other person to the detriment of the unitholders of the registered business trust. This amendment is intended to align section 11(2) with section 157(2) of the Companies Act 1967.

Clause 6 repeals and re-enacts section 12 to require, in addition to every director of a trustee-manager of a registered business trust, every chief executive officer of the trustee-manager of the registered business trust, to disclose particulars of his or her interest in any transaction or proposed transaction (as defined in that section). Particulars of the interest of a director or chief executive officer in the transaction or proposed transaction may be disclosed through a declaration at a meeting of the directors of the trustee-manager or a written notice to the trustee-manager. This amendment is intended to align section 12 with section 156 of the Companies Act 1967. The clause also provides for saving and transitional provisions in connection with the application of section 12 to chief executive officers.

Clause 7 amends section 13 to align section 13 with sections 164 and 165 of the Companies Act 1967. The clause —

- (a) inserts a new subsection (1A) to require a trustee-manager of a registered business trust to keep a register showing specified particulars of each chief executive officer of the trustee-manager;
- (b) incorporates consequential amendments arising from the new subsection (1A); and
- (c) provides saving and transitional provisions in connection with the application of section 13 to chief executive officers.

Additionally, the clause repeals subsection (13) because subsection (18) provides that subsections (8) to (15) do not apply in respect of a registered business trust all or any of the units of which are listed for quotation on the official

list of an approved exchange and to which Subdivision (2) of Division 2 of Part 7 of the Securities and Futures Act 2001 applies. As such, subsection (13) is not necessary because there will not be a situation where a registered business trust mentioned in section 13(8) is listed on an approved exchange.

Clause 8 repeals and re-enacts section 20 to provide that despite any provision in the trust deed of a registered business trust, the trustee-manager of a registered business trust may be removed as the trustee-manager by the unitholders of the registered business trust only if —

- (a) a resolution to remove the trustee-manager is approved by the unitholders holding in aggregate a majority of the voting rights of all the unitholders of the registered business trust who, being entitled to do so, vote in person or where proxies are allowed, by proxy present at a meeting of the unitholders of the registered business trust; and
- (b) the removal of the trustee-manager is in accordance with such procedures as the Authority may prescribe.

Clause 8 also provides that any provision in the trust deed of a registered business trust is void insofar as it would have the effect of allowing the removal of a trustee-manager other than in accordance with section 20(1), or not allowing the removal of a trustee-manager despite the conditions in section 20(1) being satisfied.

Clause 9 repeals and re-enacts section 27 and inserts new sections 27A, 27B and 27C.

The new section 27 provides that any provision which seeks to exempt an officer of a trustee-manager from or provides an indemnity for an officer of a trustee-manager against any liability attaching to the officer in connection with any negligence, default, breach of duty or breach of trust in relation to the registered business trust is void. The new section 27(3) permits a trustee-manager of a registered business trust to purchase and maintain insurance for an officer of the trustee-manager against liability attaching to the officer in connection with any negligence, default, breach of duty or breach of trust in relation to the registered business trust. These amendments are intended to align section 27 with sections 172 and 172A of the Companies Act 1967.

The new sections 27A, 27B and 27C are based on sections 172B, 163A and 163B of the Companies Act 1967, respectively.

The new section 27A permits a trustee-manager of a registered business trust to provide an indemnity for an officer of the trustee-manager against liability incurred by the officer to a person other than the trustee-manager in its capacity as trustee-manager of the registered business trust, except for certain specified liabilities.

The new section 27B allows a trustee-manager of a registered business trust to lend, on specified terms, funds to a director if the funds are used to meet expenditure incurred or to be incurred by the director in defending certain criminal or civil proceedings, or in connection with an application for certain reliefs, or to enable the director to avoid incurring such expenditure.

The new section 27C allows a trustee-manager of a registered business trust to lend funds to a director to meet expenditure incurred or to be incurred by the director in defending himself or herself in any investigation by a regulatory authority or against specified action proposed to be taken by a regulatory authority, or to enable the director to avoid incurring such expenditure.

Clause 10 makes a technical amendment to section 31(6).

Clause 11 amends section 33(2) by removing the requirement for the trustee-manager of a registered business trust to, upon a declaration to make a distribution of profits, income or other payments or returns from the trust property of the registered business trust, give notice of that declaration to the unitholders in one or more newspapers circulating in Singapore. The clause also amends section 33(2) to provide that upon such a declaration, the trustee-manager must comply with any requirement relating to the publication or dissemination of the declaration as the Authority may prescribe.

Clause 12 amends section 40A —

- (a) to enable an individual to acquire shares in a subject trust under the section;
- (b) to insert a new subsection (2A) to provide that where a transferee offers alternative terms to the unitholders of the subject trust for the acquisition of the units in the subject trust, the dissenting unitholder is entitled to elect which of the alternative terms the unitholder prefers within the period stipulated in that subsection;
- (c) to insert a new subsection (2B) to require a transferee, who offers alternative terms to the unitholders of the subject trust, to specify which of the terms will apply to a dissenting shareholder who fails to make an election within the time allowed under the new subsection (2A);
- (d) to insert a new subsection (2C) which states that units issued after the date of the transferee's offer to acquire the units in the subject trust will be disregarded for purposes of determining whether the threshold of 90% of the total number of units, or units in a particular class, of the subject trust has been attained;
- (e) to amend subsection (3) to provide that where a transferee has given notice to any dissenting unitholder that the transferee desires to acquire units of the dissenting unitholder, the dissenting unitholder is entitled

to require the trustee-manager of the subject trust, by a written demand served on the trustee-manager, to supply the dissenting unitholder with a written statement of the names and addresses of all other dissenting unitholders as shown in the register of unitholders of the subject trust, within the period stipulated in that subsection;

- (f) to replace subsections (8) and (9) so that all forms of consideration paid under an offer to acquire units in a subject trust which are held in trust by the trustee of the subject trust for any person, may or must (as the case may be) be transferred to the Official Receiver within the specified period and be dealt with by the Official Receiver in the manner stipulated in subsection (9); and
- (g) to amend subsection (14) and insert 3 new subsections (15), (16) and (17) to define the terms used in the section and the new sections 40B and 40C.

The amendments to section 40A are intended to align section 40A with section 215 of the Companies Act 1967.

Clause 13 inserts new sections 40B and 40C, which are based on sections 215AA and 215AB of the Companies Act 1967.

The new section 40B sets out the modifications to section 40A where an offer to acquire units in a subject trust is made by 2 or more persons jointly.

The new section 40C provides that —

- (a) where a subject trust has unitholders to whom an offer to acquire units in the subject trust could not be communicated, the offer does not fail under section 40A if these unitholders have no address in Singapore registered with the trustee-manager of the registered business trust, the offer was not communicated to them to avoid contravening a foreign law or because communication to these unitholders would be onerous, and reasonable efforts have been made to publicise details of the offer; and
- (b) where an offer is made to acquire units in a subject trust, the offer does not fail under section 40A if there are persons for whom it is impossible or more difficult to accept the offer by reason of the law of a country or jurisdiction outside Singapore.

Clause 14 amends section 42 to expand the scope of the section to allow a complainant to bring an arbitration in the name and on behalf of all the unitholders of a registered business trust as a whole or intervene in an arbitration to which the trustee-manager, on behalf of the registered business trust, is party for the purpose of prosecuting, defending or discontinuing the arbitration on behalf of the trustee-manager. This amendment is intended to align section 42 with section 216A of the Companies Act 1967.

Clause 15 makes an editorial amendment to the section heading of section 43.

Clause 16 amends section 46 to insert a new subsection (2A) to empower the court, in relation to certain applications for winding up a registered business trust, to order that interests in units held by one or more unitholders of the registered business trust be purchased by the trustee-manager of the registered business trust or other unitholders of the registered business trust, instead of winding up the registered business trust. The new subsection (2A) is based on section 125(3) of the Insolvency, Restructuring and Dissolution Act 2018, which in turn was based on section 254(2A) of the Companies Act 1967 as in force before it was repealed by the Insolvency, Restructuring and Dissolution Act 2018.

Clause 17 amends section 52 —

- (a) to provide in subsection (1) that the letter stating the Authority’s belief that the trustee-manager of a registered business trust is not managing or operating the business of the registered business trust, must also be sent to the trustee-manager’s directors and secretaries and the unitholders of the registered business trust;
- (b) to insert a new subsection (1A) to provide that the Authority may have regard to prescribed circumstances in determining whether there is reasonable ground to believe that a trustee-manager of a registered business trust is not managing or operating the business of the registered business trust;
- (c) to shorten the period under subsection (2) upon the expiry of which the Authority may apply to court to appoint a liquidator with respect to the registered business trust, and to provide that the Authority may so apply unless cause is shown in the form and manner specified in the new section 52B; and
- (d) to insert a new subsection (6) to require the Authority to ensure the substance of the notices mentioned in subsections (2) and (3) to be published in the *Gazette* is also published on the Authority’s website.

These amendments are intended to align section 52 with section 344 of the Companies Act 1967.

Clause 18 inserts new sections 52A to 52E.

The new section 52A empowers the Authority to deregister any registered business trust that has been wound up because such a registered business trust will cease to exist. The new section 52A also provides that the trustee-manager of such a registered business trust does not need to apply to the Authority to deregister the registered business trust under section 51. This is because it is currently not clear whether a trustee-manager of a registered business trust that has been wound up must apply to the Authority to deregister the registered business trust. The new

section 52A does not apply to a registered business trust mentioned in section 52(3).

The new section 52B (based on section 344C of the Companies Act 1967) sets out the grounds and manner for an objection to the appointment of a liquidator and deregistration of a registered business trust under section 52.

The new section 52C (based on section 344F of the Companies Act 1967) empowers the Authority to, on its own initiative, reinstate the registration of a business trust which was deregistered as a result of the Authority's mistake.

The new section 52D (based on section 344G of the Companies Act 1967) sets out the effect of reinstatement of the registration of a business trust that had been deregistered.

The new section 52E (based on section 344H of the Companies Act 1967) provides that where a business trust has been deregistered under section 51, 52 or 52A, the trustee-manager of the registered business trust (where no liquidator was appointed under section 48(1)) or the liquidator (where a liquidator was appointed under section 48(1)) must ensure that all books and papers of the business trust are retained for a period of at least 5 years after the date on which the business trust was deregistered.

Clause 19 inserts a new Part 8A. The new Part 8A (consisting of new sections 52F to 52Q) relates to the register of controllers of a registered business trust.

The new section 52F (based on section 386AA of the Companies Act 1967) sets out the application of the new Part 8A. The new Part 8A applies to all registered business trusts other than a registered business trust that is set out in the new Second Schedule (inserted by clause 61).

The obligation to comply with the new Part 8A extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not and the new Part 8A also extends to acts done or omitted to be done outside Singapore.

The new section 52G (based on section 386AB of the Companies Act 1967) defines, for the purposes of the new Part 8A, the terms "controller", "corporate controller", "individual controller", "legal entity", "member of the public", "register of controllers" or "register", "significant control" and "significant interest". The term "controller" encompasses a "corporate controller" and an "individual controller" which are defined as follows:

- (a) a "corporate controller" is a legal entity which has a significant interest in, or significant control over, a registered business trust, corporation (that is not listed) or limited liability partnership, or is a substantial

shareholder of a listed corporation within the meaning of section 2(6) of the Securities and Futures Act 2001;

- (b) an “individual controller” is an individual who has a significant interest in, or significant control over, a registered business trust, corporation (that is not listed) or a limited liability partnership, or who has significant control over a trustee of an express trust to which Part 7 of the Trustees Act 1967 applies, or who is a substantial shareholder of a listed corporation within the meaning of section 2(6) of the Securities and Futures Act 2001.

The terms “significant control” and “significant interest” are defined to have the meanings given to those terms in the new Third Schedule (inserted by clause 61).

The new section 52H (based on section 386AC of the Companies Act 1967) defines the meaning of “registrable” for the purposes of the new Part 8A. The obligations under the new Part 8A generally relate to registrable controllers. So, the new section 52J requires the trustee-manager of a registered business trust to keep a register of registrable controllers and the duties imposed under new sections 52K to 52O and sections 52P and 52Q apply in relation to registrable controllers. In general, a “controller” of a registered business trust is registrable unless the controller’s significant interest in or significant control over the registered business trust, is through certain controllers specified in the new section 52H.

The new section 52I (based on section 386AE of the Companies Act 1967) defines the meaning of “legal privilege” for the purpose of the new Part 8A, in particular the new section 52K.

The new section 52J (based on section 386AF of the Companies Act 1967) provides that a trustee-manager of a registered business trust must keep a register of its registrable controllers and sets out certain duties of the trustee-manager in relation to the register. Except for certain exceptions, a trustee-manager must not disclose, or make available for inspection, the register or any particulars contained in the register to any member of the public.

The new section 52K (based on section 386AG of the Companies Act 1967) provides that a trustee-manager of a registered business trust must take reasonable steps to find out and identify the registrable controllers of the registered business trust and has a duty to send notices to certain persons for that purpose.

The new section 52L (based on section 386AH of the Companies Act 1967) sets out the steps that a trustee-manager of a registered business trust must take where it knows or has reasonable grounds to believe that a relevant change (as defined in the section) has occurred in the particulars of a registrable controller that are stated in the registered business trust’s register of controllers.

The new section 52M (based on section 386AI of the Companies Act 1967) sets out the steps that a trustee-manager of a registered business trust must take where the trustee-manager knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the registered business trust's register of controllers is incorrect.

The new section 52N (based on section 386AJ of the Companies Act 1967) requires a person who knows or ought reasonably to know that the person is a registrable controller in relation to a registered business trust to notify the trustee-manager of the registered business trust of that fact and certain other particulars.

The new section 52O (based on section 386AK of the Companies Act 1967) requires a registrable controller in relation to a registered business trust who knows, or ought reasonably to know, that a relevant change (as defined in the section) has occurred in the prescribed particulars of the registrable controller to notify the trustee-manager of the registered business trust of the relevant change.

The new section 52P (based on section 386AM of the Companies Act 1967) confers on the Authority certain powers of production, inspection, inquiry and other powers of enforcement. The powers of enforcement may be exercised by a public agency (as defined in the section) to enable the public agency to administer or enforce any written law.

The new section 52Q (based on section 386AN of the Companies Act 1967) provides that the Authority may maintain a central register of controllers of registered business trusts. Where the Authority maintains such a register, the central register may consist of the particulars contained in the registers kept by the trustee-managers of registered business trusts to which the new Part 8A applies. The Authority may require any trustee-manager to which the new Part 8A applies to lodge with the Authority the particulars contained in the register of controllers kept by that trustee-manager and to keep the Authority updated as to changes in the registered business trust's register of controllers. Except for certain exceptions, the Authority must not disclose, or make available for inspection, the register or any particulars contained in the register to any member of the public.

Clause 20 amends section 53 —

- (a) by deleting and substituting subsections (1) and (2) to tie the requirement imposed on a trustee-manager of a registered business trust to hold an annual general meeting to certain deadlines after the end of the financial year of the registered business trust, and to allow the Authority to extend the deadlines for the holding of the annual general meeting; and
- (b) by inserting a new subsection (5) to empower the Authority, by order in the *Gazette*, to specify some other deadline for the holding of the

annual general meeting in substitution of the deadlines prescribed in the new subsection (1).

This amendment is intended to align section 53 with section 175 of the Companies Act 1967.

Clause 21 makes the following amendments to section 56:

- (a) it amends subsection (1) —
 - (i) to lower the threshold to demand for a poll at a meeting of the unitholders of the registered business trust on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting, from 10% to 5% of the total voting rights of all the unitholders having the right to vote at the meeting; and
 - (ii) to allow trustee-managers of registered business trusts to require unitholders to send the instrument appointing their proxies to the trustee-manager not less than 72 hours before the time of a meeting, to give the trustee-manager more time to process the instruments;
- (b) it inserts a new subsection (1A) to provide saving and transitional provisions for the amendments to subsection (1).

These amendments are intended to align section 56 with section 178 of the Companies Act 1967.

Clause 22 amends section 60 —

- (a) to insert new subsections (2A) and (2B) to allow a relevant intermediary to appoint more than 2 proxies who are entitled to vote at a meeting by a show of hands; and
- (b) to insert a new subsection (8) to define the terms “banking corporation”, “relevant intermediary” and “wholly owned subsidiary”.

These amendments are intended to align section 60 with section 181 of the Companies Act 1967.

Clause 23 amends section 62 to set out the requirements for the circulation of a unitholder’s resolution where the resolution is proposed to be passed by written means. These amendments are intended to align section 62 with section 183 of the Companies Act 1967.

Clause 24 inserts new sections 63A to 63G.

The new section 63A (based on section 184A of the Companies Act 1967) provides that unitholders of an unlisted registered business trust (as defined in section 2 as amended by clause 2) may pass a resolution by written means unless it

is a resolution for which special notice is required. The new section 63A also sets out the majority of the unitholders that is required for passing such a resolution and what constitutes an agreement by a unitholder to the resolution.

The new section 63B (based on section 184B of the Companies Act 1967) sets out certain requirements for the passing of a resolution by written means, non-compliance with which will invalidate the resolution.

The new section 63C (based on section 184C of the Companies Act 1967) sets out the requirements which the directors of a trustee-manager of an unlisted registered business trust must comply with if they wish to seek agreement to a resolution by written means.

The new section 63D (based on section 184D of the Companies Act 1967) provides that a unitholder or unitholders of an unlisted registered business trust (representing at least 5% of total voting rights) may, by notice, require that a general meeting be convened for a resolution proposed to be passed by written means.

The new section 63E (based on section 184DA of the Companies Act 1967) provides that, subject to the trust deed of an unlisted registered business trust, a proposed written resolution of the unitholders of the unlisted registered business trust will lapse after the period of 28 days starting on the date on which the written resolution is circulated to the unitholders, if the required majority vote is not attained.

The new section 63F (based on section 184E of the Companies Act 1967) requires the trustee-manager of an unlisted registered business trust to notify the unitholders of the unlisted registered business trust of the passing of a resolution by written means.

The new section 63G (based on section 184F of the Companies Act 1967) requires the trustee-manager of an unlisted registered business trust to enter resolutions which have been passed by written means in a book similar to the minutes of a general meeting of the unitholders of the unlisted registered business trust. Such record will be taken as evidence of the proceedings in passing a resolution.

Clause 25 amends subsection (1) of section 65 to shorten the time within which a copy of the resolutions specified in that subsection are required to be lodged with the Authority. These amendments are intended to align section 65 with section 186 of the Companies Act 1967.

Clause 26 amends section 67 to require the trustee-manager of a registered business trust to keep minute books containing all resolutions passed by written means. These amendments are intended to align section 67 with section 188 of the Companies Act 1967.

Clause 27 amends section 68 to require the minute books kept pursuant to the amended section 67 to be made available for inspection. This amendment is intended to align section 68 with section 189 of the Companies Act 1967.

Clause 28 repeals and re-enacts Division 3 of Part 9.

The new section 74 (based on section 197 of the Companies Act 1967) —

- (a) ties the requirement imposed on the trustee-manager of a registered business trust to lodge with the Authority an annual return after the annual general meeting of the unitholders of the registered business trust to certain deadlines after the end of the financial year of the registered business trust, and to allow the Authority to extend the deadlines for lodging the annual return; and
- (b) makes clear that the annual return must be in such form, contain such information and be accompanied by such documents as may be prescribed by the Authority (in addition to prescribed statements and particulars).

The new section 74A (based on section 198 of the Companies Act 1967) sets out —

- (a) how a financial year, including the last day of a financial year, is to be calculated;
- (b) the maximum duration of a financial year; and
- (c) how the last day of the financial year may be changed by the trustee-manager of a registered business trust and the limits to such changes.

Clause 29 amends the heading of Part 10 as a consequence of the replacement of the references to “accounts” with “financial statements”.

Clause 30 inserts a new Division 1 of Part 10 and section 74B to set out the definitions of terms that are used in Part 10.

Clause 31 makes a consequential amendment to the heading of the existing Division 1 of Part 10.

Clause 32 amends section 75 to replace references to “accounts” with “financial statements”. These amendments are intended to align section 75 with section 199 of the Companies Act 1967.

Clause 33 repeals and re-enacts section 76 and inserts a new section 76A.

The new section 76 (based on section 201 of the Companies Act 1967) —

- (a) substitutes the references to “profit and loss account”, “balance sheet”, “cash flow statement” and “accounts” with “financial statements”;

- (b) provides that the trustee-manager of a registered business trust must lay before the unitholders of the registered business trust at their annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held;
- (c) provides that the financial statements mentioned in section 76(1) must comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the registered business trust;
- (d) provides that the trustee-manager of a registered business trust which is a parent business trust need not comply with section 76(1) but must make up and lay before the unitholders of the registered business trust, in their annual general meeting, consolidated financial statements of the group for the financial year in respect of which the annual general meeting is held and a balance sheet dealing with the state of affairs of the parent business trust, where the consolidated financial statements and balance sheet must satisfy the specified requirements;
- (e) allows the financial statements of a registered business trust to be audited less than 14 days before the annual general meeting of the unitholders of the registered business trust, if all the persons who are entitled to receive notice of general meetings of the unitholders of the registered business trust agree;
- (f) provides that the trustee-manager of a registered business trust must state certain additional information in the financial statements where at the end of the financial year, the registered business trust is the subsidiary of a corporation or another registered business trust;
- (g) provides the circumstances under which the financial statements or consolidated financial statements need not comply with any requirement of the Accounting Standards for the purposes of section 76(1) or (3) and the obligations of the trustee-manager in such circumstances;
- (h) empowers the Authority to substitute other accounting standards for the Accounting Standards by order in the *Gazette*; and
- (i) requires 2 directors of the trustee-manager of the registered business trust, on behalf of all the directors of the trustee-manager, to sign a statement containing the information set out in the new Fourth Schedule (inserted by clause 62). The statement, which will contain the list of all the directors of the trustee-manager, will accompany the audited financial statements of the registered business trust.

The new section 76A (based on section 201AA of the Companies Act 1967) requires a trustee-manager of a registered business trust to keep at the registered

office of the trustee-manager, or any other place that the trustee-manager thinks fit, a copy of each document that was laid before the unitholders of the registered business trust at their annual general meeting. The Authority is empowered to inspect or require the trustee-manager to produce the documents that are required to be kept.

Clause 34 amends section 77 —

- (a) to substitute the references to “accounts” with “financial statements”;
- (b) to apply the section to consolidated financial statements (in addition to financial statements); and
- (c) to delete references to the directors’ report, the requirement for which has been deleted by the repeal and re-enactment of section 76 by clause 33 and to replace them with references to directors’ statements (as defined in the new section 74B (inserted by clause 30)).

These amendments are intended to align section 77 with section 202 of the Companies Act 1967.

Clause 35 inserts new sections 77A and 77B, which are based on sections 202A and 202B of the Companies Act 1967, respectively.

The new section 77A empowers the trustee-manager of a registered business trust to cause the financial statements, or consolidated financial statements or balance sheet, to be revised if the trustee-manager is of the view that these documents do not comply with the requirements of the Act.

The new section 77B empowers the Authority to apply to the court for a declaration that the financial statements, or consolidated financial statements or balance sheet, of a registered business trust do not comply with the requirements of the Act, and for an order to require the trustee-manager of the registered business trust to revise any of these documents, if it appears to the Authority that the documents do not comply with the requirements of the Act. The Authority may make the application if, upon giving notice of this to the trustee-manager, the Authority does not get any response from the trustee-manager, the Authority is not satisfied with the explanation given by the trustee-manager with respect to the documents, or the Authority does not agree with the manner in which the trustee-manager has proposed to revise the documents.

Clause 36 repeals and re-enacts section 78 (based on section 203 of the Companies Act 1967) —

- (a) to substitute the references to “profit and loss account”, “balance sheet” and “cash flow statement” with “financial statements”;
- (b) to apply section 78 to consolidated financial statements and balance sheets (which will apply in the case of a parent business trust); and

- (c) to allow a trustee-manager of a registered business trust to send the financial statements, or consolidated financial statements, balance sheet and related documents, less than 14 days before the date of the general meeting of the unitholders of the registered business trust if all the persons entitled to receive notice of general meetings consent.

Clause 37 amends section 79 (based on section 203A of the Companies Act 1967) —

- (a) to allow a trustee-manager of a registered business trust (whether listed or not) to send to the unitholders of the registered business trust summary financial statements, instead of the documents mentioned in section 78(1), in prescribed cases;
- (b) to substitute the references to “accounts” and to the report of the directors of the trustee-manager of the registered business trust, with “financial statements or consolidated financial statements”, and the “directors’ statement” (as defined in the new section 74B (inserted by clause 30)), respectively;
- (c) to clarify that the trustee-manager of a registered business trust is responsible for ensuring that the summary financial statements comply with the requirements specified in subsections (5) and (6); and
- (d) to delete the definition of “listed registered business trust” in subsection (9) as it is no longer used in the section.

Clause 38 amends section 80 to substitute the references to “accounts” with references to the “financial statements of a registered business trust or the consolidated financial statements of a parent business trust”.

Clause 39 repeals and re-enacts section 81 (based on section 10 of the Companies Act 1967) to remove the provisions relating to auditor independence and to apply the section to accounting limited liability partnerships.

Clause 40 amends section 82 (based on section 205 of the Companies Act 1967) —

- (a) to clarify that a trustee-manager of a registered business trust may only appoint an accounting entity or accounting entities to be the auditor or auditors of the registered business trust;
- (b) to provide that the power of a trustee-manager of a registered business trust to appoint an accounting entity to fill any casual vacancy in the office of auditor of the trustee-manager is subject to the new section 82F (inserted by clause 41);
- (c) to amend subsection (8) to provide that the Authority has the discretion, but is not required, to appoint an auditor for a registered business trust if the unitholders of the registered business trust do not

appoint another auditor where an auditor of the registered business trust is removed from office at a general meeting of the unitholders of the registered business trust; and

- (d) to delete subsections (12) and (13) as a consequence of the insertion of the new sections 82A to 82F (inserted by clause 41).

Clause 41 inserts new sections 82A to 82F, which are based on sections 205AA to 205AF of the Companies Act 1967, respectively.

The new section 82A provides that an auditor of a registered business trust that is not listed (other than a subsidiary registered business trust) may resign before the end of the term of office for which the auditor was appointed by giving the trustee-manager of the registered business trust a written notice of resignation.

The new section 82B provides that an auditor of a listed registered business trust or an auditor of a relevant subsidiary, may resign before the end of the term of office for which the auditor was appointed if the auditor has applied for and obtained consent from the Authority to the resignation, and has notified the relevant person (as defined in the new section 74B (inserted by clause 30)) of the auditor's application.

A statement made by an auditor in an application to the Authority under the new section 82B(1)(a) or in answer to an inquiry by the Authority relating to the reasons for the application for consent is not admissible in evidence in any civil or criminal proceedings against the auditor and subject to the new section 82B(4), may not be made the ground of a prosecution, an action or suit against the auditor. However, if the statement or answer contains information that suggests that some wrongdoing has been committed by the auditor, enforcement agencies will be able to investigate and secure other statements or evidence that can be used to prosecute the auditor.

The new section 82C requires a relevant person which receives a notice of resignation from an auditor of a listed registered business trust or an auditor of a subsidiary company or subsidiary registered business trust, and a written statement of the auditor's reasons for the auditor's resignation under the new section 82B, to send a copy of the written statement to every interested person (as defined in the new section 74B (inserted by clause 30)), unless an application is made to the court for a determination that the auditor has abused the use of the written statement or is using the procedure in the new section 82C to secure needless publicity for defamatory matter.

The new section 82D sets out the procedure and the court's powers following an application to the court for an order to not send the written statement of the auditor's reasons for resignation to interested persons.

The new section 82E provides that a person will not be liable to any action for defamation in respect of publication of a written statement of an auditor's reasons

for resignation if there is an absence of malice or if the publication is made upon a refusal of an application made to the court under the new section 82C.

The new section 82F requires the relevant person to call a general meeting of the unitholders of the registered business trust, the subsidiary company or unitholders of the subsidiary registered business trust (as the case may be) to appoint an auditor in place of the auditor who desires to resign or has resigned, failing which the Authority may, on the application of any interested person, make the appointment.

Clause 42 amends section 84 to align section 84 with section 207 of the Companies Act 1967. In particular, the amendments —

- (a) substitute the references to “accounts” with “financial statements”;
- (b) make amendments arising from the amendment to section 76 to provide that the trustee-manager of a registered business trust which is a parent business trust need not comply with section 76(1) but must make up and lay before the unitholders of the registered business trust, in their annual general meeting, consolidated financial statements of the group and a balance sheet dealing with the state of affairs of the parent business trust;
- (c) provide for certain matters that an auditor of a registered business trust must state in a report under the section;
- (d) provide that where consolidated financial statements are prepared otherwise than as one set of consolidated financial statements for the group, the auditor must form an opinion as to whether the auditor agrees with the reasons given by the trustee-manager of the registered business trust in the financial statements, for preparing them in that form;
- (e) provide that an auditor is not required to form an opinion on whether the accounting and other records of subsidiaries of a parent business trust (which are not incorporated or constituted in Singapore) have been kept in accordance with the Act;
- (f) provide that the auditor of a parent business trust for which consolidated financial statements are required has a right of access at all times to the accounting and other records of any subsidiary of the parent business trust, and is entitled to require certain information and explanations, for the purpose of reporting on the consolidated financial statements;
- (g) amend subsections (9) and (12) to impose certain obligations on an auditor of a subsidiary of a registered business trust; and

- (h) provide in the new subsection (13) that specified references to the registers of a registered business trust or a subsidiary of a parent business trust do not include a register of controllers kept under the new Part 8A or under Part 11A of the Companies Act 1967.

Clause 43 amends section 85(1) and (2) to include a reference to an auditor of a subsidiary of a registered business trust.

Clause 44 inserts a new section 85A (based on section 208A of the Companies Act 1967) to render any provision for exempting any auditor of a registered business trust from or indemnifying the auditor against any liability in respect of any negligence, default, breach of duty or breach of trust of which the auditor may be guilty in relation to the registered business trust, void. However, a trustee-manager of a registered business trust may indemnify an auditor against any liability incurred or will be incurred in defending any proceedings in which judgment is given in the auditor's favour or in which the auditor is acquitted, or in connection with any application under section 105 or any other provision of the Act, in which relief is granted to the auditor by the court.

Clause 45 amends section 86 to substitute references to "profit and loss account" with "financial statements" of the registered business trust required under section 76(1) and to include references to "consolidated financial statements" required under section 76(3). The clause also amends subsection (10) to remove the definition of "chief executive officer" (because this term is defined in section 2 (as amended by clause 2)), to amend the definition of "control" to include control in relation to a business trust, and to make other amendments to align the definitions in section 86 with definitions in the Fourth Schedule to the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018 (G.N. No. S 664/2018).

Clause 46 amends section 87(1) to substitute the reference to "profit and loss account" with "financial statements" and to include a reference to consolidated financial statements of the group and the balance sheet of the parent business trust required under section 76(3).

Clause 47 amends section 89 to include legal counsel mentioned in section 128A of the Evidence Act 1893 in subsections (4) and (5). These amendments are intended to align section 89 with section 311 of the Securities and Futures Act 2001.

Clause 48 amends section 93 to align section 93 with section 387B of the Companies Act 1967. In particular, the amendments provide that the financial statements may be sent, etc., to a unitholder of the registered business trust, an officer of the trustee-manager of the registered business trust or an auditor of the registered business trust using electronic communications.

Clause 49 inserts a new section 93A (based on section 387C of the Companies Act 1967). The new section 93A provides that certain documents may be given,

sent or served by the trustee-manager of a registered business trust using electronic communications in accordance with the trust deed of the registered business trust.

Clause 50 amends section 97 to provide that the Authority may by notification in the *Gazette* appoint one or more of its officers to exercise the power in section 112(2) to grant an exemption to a particular person, or in respect of any particular registered business trust, matter or transaction, or to revoke any such exemption.

Clause 51 amends section 98 to apply the section to policy statements and practice notes.

Clause 52 amends section 99(3) to require a person that is required to maintain or keep any financial statements to comply with the requirements in section 99(3)(a) and (b).

Clause 53 makes technical amendments to section 104.

Clause 54 amends section 107(3) to provide that a person who lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the person by the Authority must use due care to ensure that the document is not false or misleading in any material particular.

Clause 55 corrects a typographical error in section 108(b).

Clause 56 repeals and re-enacts section 109 and inserts a new section 109A.

The new section 109 provides for the circumstances under which certain persons of a corporation assume liability for an offence that the corporation commits under the Act. The clause also states what constitutes evidence that a corporation had a particular state of mind, where it is necessary to prove the state of mind of the corporation in a proceeding for an offence under the Act.

The new section 109A provides for the circumstances under which certain persons of an unincorporated association or a partnership assume liability for an offence that the unincorporated association or partnership commits under the Act. The clause also states what constitutes evidence that an unincorporated association or a partnership had a particular state of mind, where it is necessary to prove the state of mind of the unincorporated association or partnership in a proceeding for an offence under the Act.

Clause 57 amends section 112 to provide that the Authority may, on the application of any person, exempt the person or any registered business trust, matter or transaction from any requirement imposed by the Authority under the Act. This amendment is to align section 112 with section 100(4)(b) of the Payment Services Act 2019. The clause also amends section 112 to empower the Authority to add to, vary or revoke any condition or restriction imposed under the section.

Clause 58 amends section 113 to empower the Authority to amend the First, Second, Third or Fourth Schedule.

Clause 59 amends section 114 to substitute the reference to “accounts” in subsection (2)(d) with “financial statements”. The clause also inserts a new subsection (3)(aa) to provide that regulations under the Act may relate to all, or any class, category or description of persons, trustee-managers or business trusts, and may make different provisions for different classes, categories or descriptions of persons, trustee-managers or business trusts, or to a particular person, trustee-manager or business trust.

Clause 60 renames the Schedule as the First Schedule and amends paragraph 3 of that Schedule to provide that a trust that has received approval-in-principle, or eligibility-to-list, for its admission to the official list of an approved exchange (and where such approval-in-principle or eligibility-to-list has not expired or been revoked) is a trust that is to be regarded as a business trust for the purposes of the Act.

Clause 61 inserts new Second and Third Schedules.

The new Second Schedule (based on the Fourteenth Schedule to the Companies Act 1967) sets out the registered business trusts to which the new Part 8A (inserted by clause 19) does not apply.

The new Third Schedule (based on the Sixteenth Schedule to the Companies Act 1967) sets out for the purposes of the new Part 8A, the meanings of “significant control” and “significant interest”.

Clause 62 inserts a new Fourth Schedule.

The new Fourth Schedule sets out the contents of a directors’ statement mentioned in the new section 76(13) (inserted by clause 33). This is a consequential amendment arising from the abolition of a separate directors’ report. The new Fourth Schedule is based on the Twelfth Schedule to the Companies Act 1967.

Clause 63 contains saving and transitional provisions. The Minister is further empowered to make regulations of a saving or transitional nature, within 2 years after the relevant amendment comes into force.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
