

MUTUAL FUNDS ORDER, 2001

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation, commencement and long title.
2. Interpretation.
3. Regulations.
4. Mutual funds.
5. Bearer shares.

PART II

REGULATION OF OPERATION OF MUTUAL FUNDS

6. Operation of mutual funds restricted.
7. Application for mutual fund licence or permission.
8. Criteria for considering applications.
9. Provisional mutual fund licences and permissions.
10. Issue of mutual fund licences or permissions.
11. Operator's licences and permissions.
12. Effect of operators' licences and permissions.
13. Trustee or custodian.
14. Licences and permissions generally.
15. Conditions.

PART III

CONTROL AND SUPERVISION

Chapter 1

Appeals to the Court and Register

16. Appeals to the High Court.
17. Powers to High Court.
18. The Register.

Chapter 2

Accounts and Administration

19. Accounts, audits and reports.
20. Mutual fund's name.
21. Amendment of registered fund's memorandum etc.
22. Change of manager etc.
23. Duty of manager etc. to inform Authority of certain matters.
24. Duty of auditors to inform Authority.
25. Further information.
26. Explanations.
27. Access to documents etc.

Chapter 3

Investigations etc.

28. Investigations.
29. Registered fund's insolvency etc.
30. Insolvency of manager etc.
31. Winding-up order etc.

PART IV

**CODES OF PRACTICE, CONFIDENTIALITY, PERMITTED DISCLOSURE AND
RECOGNISED JURISDICTIONS**

- 32. Codes of Practice.
- 33. Confidentiality.
- 34. Disclosure to other supervisory authorities.
- 35. Recognised authorisations.

PART V

MISCELLANEOUS

- 36. Immunity etc.
- 37. Offences and penalties.
- 38. Onus of proof, presumption.
- 39. Offences by bodies corporate.
- 40. Giving of notice.
- 41. Annual and other fees.
- 42. Tax and filing exemptions.
- 43. Exemption from Order.
- 44. Transitional provision.

FIRST SCHEDULE

Revocation of Licences and Permissions

SECOND SCHEDULE

Investigations etc.

Part 1

Investigations under section 28 — Supplementary provisions

Part 2

Direction under section 29 — Authority's consequential powers

No. S 18

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

MUTUAL FUNDS ORDER, 2001

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Mutual Funds Order, 2001 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the regulation of mutual funds in Brunei Darussalam, the supervision and licensing of such funds and of persons promoting and providing services in connection therewith and for other matters related to mutual funds".

Interpretation.

2. (1) In this Order, except where the context otherwise requires —

"administrative service", in relation to a registered fund, means any service which is administrative in nature but is neither a management service nor service as a trustee or custodian;

"administrator" means, in relation to a registered fund, a person who provides one or more administrative services as regards the fund;

"approved auditor" has the meaning ascribed thereto in the International Business Companies Order, 2000 (S 56/2000);

"arrangement" includes a proposed arrangement;

"Authority" means such person or body as is appointed by His Majesty the Sultan and Yang Di-Pertuan to be the Authority for the purposes of this Order;

"bearer share" has the meaning given by section 5(2);

"category", in relation to a mutual fund, means a private fund, professional fund or public fund;

"current" means in force for the time being or, as regards a permission, given and not withdrawn;

"custodial licence" means a licence issued for the purposes of section 13;

"custodial permission" means a permission given for the purposes of section 13;

"custodian", in relation to a mutual fund, means any person who —

- (a) pursuant to or under a trust deed or other instrument or agreement (whether executed or made under the law of Brunei Darussalam or that of a country, territory or recognised jurisdiction outside Brunei Darussalam); or
- (b) under the law of such a country, territory or recognised jurisdiction, is the person in whom the property of the fund is vested or the person who is otherwise responsible to the fund or its participants for the safe-keeping of that property;

"dedicated shares" has the meaning ascribed thereto in Part XIA of the International Business Companies Order, 2000 (S 56/2000);

"designated day", in relation to a fund described in section 7(4), means the day specified as such under section 10(1)(d);

"director" includes an alternate or substitute director and any person occupying the position of director of a company, by whatever name so called;

"fund interest" means, in relation to a mutual fund, a share, an interest in a limited or other partnership, a unit of participation in a unit trust to which this Order applies or any other security which is a unit of proprietorship (however that unit is described) which —

- (a) is issued or is otherwise offered by the fund; and
- (b) represents rights in or carries an entitlement to receive income or participate in profits or other gains or which otherwise confers or constitutes an entitlement so to receive and participate,

but "fund interest" does not include a bearer share;

"inspector" means a person appointed under section 28(2);

"Islamic fund" means a mutual fund which does not offend against the Islamic Religion;

"jurisdiction", except in the expression "recognised jurisdiction", means —

- (a) a legal jurisdiction extending to —
 - (i) every place within a particular state;
 - (ii) where a state is a federation or confederation (whether it is styled or otherwise described as being such), every place within a state, province, canton or other federal or confederated territory which forms part of the state;
 - (iii) where a state is a unitary state with two or more distinct legal systems, every place to which any particular such system applies; and
- (b) the civil jurisdiction of a court or other tribunal which extends to two or more independent states and which is created by a treaty or other international agreement between those states;

"management service", in relation to a mutual fund, includes any of the following

- (a) giving investment advice;
- (b) acquiring, disposing of or otherwise dealing in investments or other property on behalf of a mutual fund;
- (c) the exercise of day to day control over the management of a mutual fund's assets;
- (d) any other service or activity which is prescribed for the purposes of this definition;

"manager", in relation to a registered fund, means subject to subsection (5), the person who provides one or more management services as regards the fund, and in this Order, apart from sections 4, 25, 28(9) and 39, "manage", "management" and kindred words shall be construed in accordance with the foregoing;

"Minister" means the Minister of Finance;

"mutual fund" shall be construed in accordance with section 4 and any related reference to a "fund" shall be construed accordingly;

"mutual fund licence" means a licence issued on an application under section 7;

"mutual fund permission" means a permission given on an application under section 7;

"operator's licence" means a licence described in section 11;

"operator's permission" means a permission described in section 11;

"participant", in relation to a mutual fund, shall be construed in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 4(1) (and regardless of whether the fund concerned refers to those participating therein as participants, members or otherwise);

"prescribed" means prescribed by regulations made under section 3;

"private fund" means a mutual fund which is not a professional fund and whose terms —

- (a) limit the number of participants for the time being to not more than 50, and
- (b) enable the participants at any time to remove from office in terms provided by the mutual fund the person who is the manager of the mutual fund for the time being;

"a professional fund" means a mutual fund whose terms —

- (a) limit the number of participants for the time being to not more than 50; and
- (b) also require each participant to contribute, subject to subsection (2), not less than \$500,000 or, if the mutual fund is not denominated in the currency of Brunei Darussalam, not less than an equivalent amount in the currency in which the mutual fund is denominated, such amount being calculated by reference to the foreign exchange rate obtaining in Brunei Darussalam on the designated day;

"prospectus" means any kind of offering document, whether the document is a single document or one of a series and however it is described;

"public fund" means any mutual fund other than a professional fund or a private fund;

"recognised authorisation" shall be construed in accordance with section 35;

"recognised jurisdiction" means a jurisdiction which is for the time being recognised for the purposes of this Order by an order made by the Minister and published in the *Gazette*;

"record" includes any electronic or other means of storing information which enables the information when stored to be retrieved or reproduced;

"Register" means the register established pursuant to section 18;

"registered fund" means a mutual fund to which a current mutual fund licence or a current mutual fund permission relates;

"regulations" means regulations made under section 3;

"shares" shall, where the context so admits, have the meaning ascribed thereto in the International Business Companies Order, 2000 (S 56/2000);

"unit trust to which this Order applies" means a unit trust which, whether it is established under the laws of Brunei Darussalam or under those of any jurisdiction outside Brunei Darussalam, is by virtue of section 4 a mutual fund.

(2) Where in relation to a particular mutual fund the currency used as regards its fund interests is a currency other than that of Brunei Darussalam, in applying this Order as regards that fund, the definition of "professional fund" in subsection (1) shall be construed and have effect as if for "\$500,000" there were substituted "the amount of the currency used as regards the mutual fund's fund interests needed on the designated day to purchase \$500,000".

(3) For the purposes of this Order, an individual shall be regarded as being ordinarily resident in Brunei Darussalam during any period of 12 months if during that period he has resided in Brunei Darussalam for an aggregate period of at least 170 days or if he establishes to the satisfaction of the Authority that he has a genuine intention of so residing and holds any necessary permits to live, and be employed in Brunei Darussalam.

(4) For the purposes of this Order —

(a) a company registered under the Companies Act (Chapter 39) or the International Business Companies Order, 2000 (S 56/2000) shall be deemed to be ordinarily resident at its registered office or, in case another address has been furnished in relation to it at such registered office or, if the Authority so determines, at that other address;

(b) every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident —

(i) in case its registered or principal office or place of business is in Brunei Darussalam, at such registered office or place or, in case another address has been so furnished in relation to it, at such office or place or, if the Authority so determines, at that other address; or

(ii) in case its principal office or place of business is outside Brunei Darussalam, at any office or place in Brunei Darussalam at which it carries on business or, in case another address has been so furnished in

relation to it, at such office or place or, if the Authority so determines, at that other address.

(5) References in this Order to a manager include, except where the context otherwise requires, references to a person appointed pursuant to paragraph 4(1)(d) of the Second Schedule to be the manager of a registered fund.

Regulations.

3. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make the following regulations —

- (a) prescribing any matter referred to in this Order as prescribed or to be prescribed;
- (b) regulating the use of any name or any word or expression in a name connected with mutual funds;
- (c) designating mutual funds or a class or classes thereof as private funds;
- (d) regulating the publication of advertisements offering the services of dealers in securities or offering securities for purchase or sale and the form or content of such advertisements;
- (e) regulating the particulars to be included in a statement by the manager under section 7(3);
- (f) without limitation making such incidental or supplementary provisions as may appear to the Minister to be necessary or proper for any purpose of this Order or in consequence of, or to give full effect to, any of its provisions including prudential and due diligence principles, principles of supervision, operation and marketing, capitalisation, methods of valuation and any other relevant matter.
- (g) prescribing any fees in respect of any requirements under this Order.

(2) Regulations made under this Order may make different provisions for different cases or classes of case and for different purposes of the same provision.

Mutual funds.

4. (1) Subject to the following provisions of this section, for the purposes of this Order each of the following is a mutual fund —

- (a) an arrangement under which property belongs beneficially to, and is managed, either as a whole or in two or more separate parts, by or on behalf

of, a body corporate whether incorporated or otherwise established in Brunei Darussalam or elsewhere) having as its purpose or effect —

- (i) the investment of its funds with the aim of spreading investment risk; and
 - (ii) to give the persons taking part in the arrangement ("the participants") the benefit of the results of the management of those funds by or on behalf of that body and to participate in or receive profits or other gains or income arising from the acquisition, holding, management or disposal of the property or any part thereof or of any sums paid out of such profits or income;
- (b) a unit trust, a limited or other partnership or other arrangement with respect to property, whose purpose or effect is —
- (i) to enable persons taking part in the arrangement ("the participants"), whether by becoming owners of the property or any part thereof or otherwise, to participate in or receive profits or other gains or income arising from the acquisition, holding, management or disposal of the property or any part thereof or of any sums paid out of such profits or income; and
 - (ii) to spread risk by means of pooling in the manner described in subsection (3)(a);

and in this subsection "property" means property of any description, including money or any fund interest;

(2) In the case of such an arrangement as is mentioned in subsection (1)(a), the rights of the participants must be represented by shares in or securities of that body at least some of which shares or securities, either on demand or within a specified period after demand —

- (a) are redeemable or repurchasable at the option of the participant concerned; or
- (b) the body ensures can be sold by the participants at a price, whether incorporating a premium or profit or a discount or loss, related to the value of the property to which they relate.

(3) A unit trust, partnership or other arrangement such as is mentioned in subsection (1)(b) —

- (a) must be such that the participants do not have day to day control over the management of the property, whether or not they have rights to attend and vote at meetings of the body or to be consulted or to give directions;
- (b) must have both of the characteristics mentioned in subsection (4); and

- (c) must be such that —
 - (i) at least some of the fund interests issued or otherwise offered under the arrangement are, under the arrangement, redeemable or repurchasable at the option of the participant concerned on demand or within a specified period after demand; or
 - (ii) must be such that the fund interests issued or otherwise offered under the arrangement are, under that arrangement, transferable by the participants at a price related to the value of the property to which they relate.
- (4) The characteristics referred to in subsection (3)(b) are —
 - (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled either in a single pool or in two or more pools however segregated; and
 - (b) that the property in question is managed as a whole by or on behalf of the manager of the fund.

Bearer shares.

5. (1) Subject to subsection (3), neither a mutual fund licence nor a mutual fund permission shall be issued or given as regards any arrangement which issues or offers, or has at any time issued or offered, bearer shares.

(2) In this Order, "bearer share" means any share, bond or other security the title to which is vested in a particular person by reason only of his being in possession of or the bearer of a particular certificate or other document relating to the security.

(3) The Minister may in any particular case and on such terms and conditions as he thinks fit exempt a mutual fund, in whole or in part, from the application of this section.

PART II

REGULATION OF OPERATION OF MUTUAL FUNDS

Operation of mutual funds restricted.

6. (1) No mutual fund shall at any time be established, domiciled, offered to the public, trade, listed, managed or administered in or from within Brunei Darussalam, unless at that time —

- (a) a mutual fund licence or a mutual fund permission is in force with respect to the mutual fund;
- (b) the persons who are, or are to be, respectively the manager and the administrator of the mutual fund are the persons specified as such in that licence or permission;
- (c) every person by whom the mutual fund is established, promoted or sponsored and every person who is, or is to be, a manager or administrator of the mutual fund is the holder of an operator's authorisation applicable to that fund; and
- (d) the conditions of the mutual fund licence or permission and of each of the operator's authorisations referred to in paragraph (b) are complied with.

(2) In subsection (1), "operator's authorisation", in relation to a mutual fund, means

- (a) an operator's licence in respect of that fund or mutual funds generally;
- (b) an operator's permission in respect of that fund or mutual funds generally;
- (c) in the case of an administrator who does not have a licence or permission falling within paragraph (a) or (b), an appropriate licence granted under section 9 of the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000) respect of that fund or mutual funds generally; or
- (d) a bank appropriately licensed under any written law.

(3) If at any time there is a contravention of subsection (1), then, subject to subsection (4), any person who at the time of the such contravention was a manager, administrator or custodian of the mutual fund or was otherwise involved in the promotion or sponsorship of the mutual fund shall be guilty of an offence and liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both.

(4) In any proceedings for an offence under subsection (3), it shall be a defence to prove —

- (a) that the defendant could not reasonably have known of the circumstances giving rise to the contravention; or
- (b) that any act or omission by him which formed part of or gave rise to the contravention was either wholly or essentially administrative in nature or was done in the course of providing a service which at the time of the contravention was prescribed for the purposes of this section.

Applications for mutual fund licence or permission.

7. (1) An application for a mutual fund licence or a mutual fund permission shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed fee, a copy of the mutual fund's memorandum and articles of association, partnership agreement, trust deed or other instrument under which it is incorporated, established or otherwise constituted, and any other document relevant to the application or required by the Authority, and shall comply with the following provisions of this section.

(2) The application shall specify the names and principal address of each of the persons described in paragraph (a) to (c) —

- (a) the person who as regards the mutual fund is or, where appropriate, is to be the manager;
- (b) the person who as regards the mutual fund is or, where appropriate, is to be the administrator;
- (c) the person who as regards the mutual fund is or, where appropriate, is to be the trustee or custodian,

and as regards each of those persons the application shall also state whether or not that person is a body corporate and, in the case of any person who is a body corporate, shall state the name of each of the directors thereof:

Provided that any person whose name is specified pursuant to paragraph (c) shall not be specified pursuant to paragraph (a).

(3) Except where the mutual fund to which the application relates is, or when constituted or established will be, a professional fund or a private fund, in either of which cases a statement by the Manager containing such particulars of the fund as may be prescribed shall accompany the application, the application shall be accompanied by a copy of the prospectus issued in relation to that fund or, in case such a prospectus is to be so issued, a copy of the prospectus or a draft thereof.

(4) Where the application relates to a mutual fund under which the currency by which its fund interests are, or are intended to be, designated is a currency other than that of Brunei Darussalam, the mutual fund or a person acting on its behalf shall, after the application is received by the Authority, nominate a day, being either the day of the nomination or a later day, which is proposed as the designated day for the purposes of the fund.

Criteria for considering applications.

8. (1) Subject to the following provisions of this section, where an application is made under section 7, the Authority shall not issue or give a mutual fund licence or permission unless —

- (a) the application complies with each of the applicable requirements of that section;

- (b) each of the persons whose name is specified pursuant to the requirements of section 7(2) is the holder of an operator's authorisation, as defined in section 6(2); and
- (c) the Authority is satisfied —
 - (i) that the company, unit trust, partnership or other arrangement to which the application relates is, or when incorporated, established or otherwise constituted will be, a mutual fund;
 - (ii) that the memorandum of association, articles of association, limited or other partnership agreement, trust or other deed or other instrument under which such arrangement is, or is proposed to be, incorporated, established or otherwise constituted provides adequate protection to the interests of participants in the arrangement, be they actual or prospective;
 - (iii) that at least one of the persons whose name is specified pursuant to the requirements of section 7(2) is for the time being ordinarily resident in Brunei Darussalam; and
 - (iv) that the mutual fund, subject to the provisions of section 5(3), does not issue or offer, and has not any outstanding bearer shares; and
 - (v) in the case of an Islamic fund, that provision is made for the appointment of an appropriate Shari'ah Council.

(2) If, in considering an application under section 7, the Authority is not satisfied with regard to any instrument or document required under subsection (1) of that section —

- (a) the Authority shall either refuse the application or adjourn it for the purpose of enabling that instrument or document to be amended or otherwise revised; and
- (b) either at the time at which the application is refused or adjourned or as soon thereafter as is practicable, the Authority shall give the applicant written reasons for the decision.

(3) Where section 7(3) applies to the application, the Authority shall not issue a mutual fund licence or permission unless satisfied that the relevant prospectus or statement by the manager, in addition to containing the particulars specified in section 7(2), also contains —

- (a) such information (if any) as the Authority considers sufficient to inform a prospective participant of the nature and activities of the arrangement concerned; and

- (b) information regarding the relevant fund interests, and any other interest which the Authority considers relevant in the particular case, being, in either case, information which the Authority is satisfied would enable a prospective participant in the arrangement to make an informed decision as to whether to subscribe for, purchase or otherwise acquire such interests.

(4) Where an application for a mutual fund licence or permission is refused, the Authority shall give to the person who made the application notice in writing of the refusal and the notice shall state that an appeal may be made to the Tribunal against the refusal and shall specify the period within which any such appeal shall made be taken.

Provisional mutual fund licences and permissions.

9. (1) Where an application is made under section 7 and any of the requirements of that section are not fully complied with, the Authority, having had regard to the particular circumstances of the case may, in the Authority's absolute discretion, provisionally issue or give the licence or permission sought.

(2) Where a mutual fund licence or mutual fund permission is issued or given provisionally and during the period specified in subsection (6) no application under that subsection is made as regards the arrangement to which licence or permission applies, then immediately after the expiration of that period the licence or permission shall cease to be in force.

(3) Where the Authority exercises the power conferred by subsection (1), the Authority shall at the same time specify the requirements which are to be complied with if an application under subsection (6) as regards the provisionally issued licence or permission is to be successful.

(4) Where a mutual fund licence or a mutual fund permission is issued or given provisionally, then, until an application under subsection (6) as regards the arrangement to which it applies is allowed, the operation of the licence or permission shall be limited to authorising the promotion, including promotion by circular or any other advertising method, of the mutual fund or proposed mutual fund.

(5) The reference to promotion in subsection (4) shall not be construed as including a reference to any of the following —

- (a) the issue of any fund interest relating to a mutual fund whose promotion is authorised by a licence or permission issued or given provisionally pursuant to that subsection;
- (b) the execution of any proposed contract or other agreement as regards any such interest;
- (c) the acceptance of any subscription or other payment as regards any such interest.

(6) Where a mutual fund licence or a mutual fund permission is issued or given provisionally, then, at any time within the period of 6 months beginning on the day on which the licence or permission was issued or given, an application under this subsection may be made to the Authority to remove the limitation imposed by subsection (2) as regards the arrangement to which the provisional licence or permission applies.

(7) Where an application is made under subsection (6), the Authority shall remove the limitation imposed by subsection (2) as regards the provisional licence or permission if, the Authority is satisfied that each of the requirements previously specified under subsection (3) as regards the application has been satisfied.

Issue of mutual fund licences or permissions.

10. (1) Where an application under section 7 is allowed —

- (a) the licence or permission issued or given shall specify as being the manager, administrator and trustee or custodian of the arrangement to which the licence or permission relates the persons who were respectively named as such in the application;
- (b) such licence or permission shall be subject to a condition that at all times at least one of the persons specified mentioned in paragraph (a) shall be ordinarily resident in Brunei Darussalam;
- (c) where as regards the application a person whose name was specified pursuant to any requirement of section 7(2) is a body corporate, the Authority may so attach a condition that at all times at least one of the body corporate's directors or, where appropriate, its officers whose office is similar or analogous to that of a company director, shall be an individual who is ordinarily resident in Brunei Darussalam;
- (d) where the application relates to a mutual fund falling within section 7(4), the licence or permission issued or given shall specify a day to be used as the designated day as regards that fund, being either the day nominated pursuant to that subsection or, if the Authority considers that in the particular circumstances that day is inappropriate, such other day as the Authority shall determine.

(2) Subject to section 5(3), it shall be a condition of every mutual fund licence and every mutual fund permission that the mutual fund to which the licence or permission relates shall neither issue nor offer bearer shares.

(3) If the mutual fund to which an application relates —

- (a) is or will be a private fund or a professional fund, or

(b) issues or otherwise offers, or will issue or otherwise offer, fund interests which are quoted on a stock exchange, acceptable to the Authority, then, notwithstanding that the application may not otherwise comply with the requirements of section 7 or 8, the Authority may issue a mutual fund licence or a mutual fund permission as regards the arrangement.

(4) Subject to subsection (5), the following provisions shall apply as regards a mutual fund licence or a mutual fund permission —

- (a) subject to paragraphs (c), (d), and (e), the person who is to manage the relevant fund ("the fund's manager"), the person who is to administer that fund ("the fund's administrator") and the person who is to be either that fund's trustee ("the trustee") or that fund's custodian ("the custodian") shall each be specified in the licence or permission;
- (b) the same person shall not be so specified as the fund's manager and as its trustee or custodian;
- (c) if the fund to which the licence or permission relates is a unit trust to which this Order applies, the manager of the unit trust shall be specified by name in the licence or permission as the manager of the fund;
- (d) if the fund to which the licence or permission relates is or will be promoted, sponsored or established by a limited partnership, then —
 - (i) if the limited partnership has only one general partner, the holder for the time being of the office of general partner shall be specified by name in the licence or permission as being the person who is to be the manager of the fund; and
 - (ii) if the limited partnership has more than one general partner, at least two person each of whom holds for the time being the office of general partner shall be so specified in the licence or permission as being the persons who are to be the manager of the fund;
- (e) if the fund to which the licence or permission relates is an investment company, the person or persons whom the Authority believes have the day to day control of the fund's assets shall be specified by name in the licence or permission as being the person or persons who is or, where appropriate, are to be the manager of the fund.

(5) Where a mutual fund licence or a mutual fund permission is issued or given provisionally, then, for so long, as the limitation imposed as regards the licence or permission by section 9(4) is in force, compliance with such (if any) of the requirements of subsection (4) of this section as the Authority specifies when issuing or giving the licence or permission shall not be necessary.

(6) If, at a time when this section was in force, the condition described in subsection (2) is contravened, then, subject to the First Schedule, the Authority may revoke the mutual fund licence or mutual fund permission.

Operators' licences and permissions.

11. (1) An application for a licence or permission to act as manager or administrator of a mutual fund shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed fee and such information as the Authority may prescribe or otherwise may reasonably require.

(2) Subject to subsection (3), where an application is made under subsection (1), the Authority may issue or give the licence or permission sought if, having regard to the information received and to any other matters which the Authority regards as being relevant in the particular circumstances, the Authority considers that the person by or on whose behalf the application is made —

- (a) is a fit and proper person; and
 - (i) has, or has available to him, to an adequate extent, the expertise, experience, services, resources or facilities each of which is of a kind which is generally conducive to the sponsorship, promotion and proper management or administration of mutual funds; or
 - (ii) is the holder of a current recognised authorisation construed in accordance with section 35.

(3) Where —

- (a) an operator's licence or an operator's permission is issued or given to an individual person; and
- (b) that licence or permission states that a direction for the purposes of this subsection has been given as regards it by the Authority,

the licence or permission shall operate to enable that person to promote, sponsor, establish, manage or administer a single mutual fund which is a private fund and which does not make provision for the establishment of sub-funds.

(4) A direction for the purposes of subsection (3) may only be given as regards an operator's licence or permission if the Authority, having had regard to the nature and extent of the property to which the mutual fund relates, is satisfied that it is reasonable to do so.

(5) Where an application under subsection (1) is refused, the Authority shall give to the person by whom the application was made notice in writing of the refusal.

Effect of operators' licences and permissions.

12. (1) Where the Authority allows an application for an operator's licence or an operator's permission, then, subject to section 11(3), the licence or permission shall for so long as it remains in force enable the holder of the licence or the person to whom permission is given to promote, sponsor, establish, manage or administer any mutual fund subject —

- (a) as regards any particular mutual fund, to compliance with the conditions of the licence or permission and with all of the requirements of section 6 which apply to him in relation to it; and
- (b) to ensuring as best he can compliance with the conditions attached to, or any other provision of, the mutual fund licence or permission.

(2) It shall be a condition of an operator's licence or permission that, if it is proposed to charge, transfer, alienate or otherwise dispose of all or any of the property to which the mutual fund relates, the manager of the mutual fund shall comply with any prescribed conditions.

Trustee or custodian.

13. (1) A person shall not act as a trustee or custodian of a mutual fund unless —

- (a) he is —
 - (i) the holder of a licence (a "custodial licence") issued for the purposes of this section by the Authority;
 - (ii) a person including any bank licensed under any written law to whom the Authority has given permission (a "custodial permission") for those purposes which has not been revoked;
 - (iii) the holder of a licence granted under section 9 of the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000), unless it is a condition or term of such licence that no power is thereby conferred to act as a trustee or custodian of a mutual fund; or
 - (iv) the holder of an appropriate banking licence issued under any written law;
- (b) he so acts in accordance with any condition attached to a mutual fund licence or permission; and
- (c) as regards any particular mutual fund, he is specified as the fund's trustee or the fund's custodian in the fund's mutual fund licence or its mutual fund permission.

(2) Where an application is made for a custodial licence or for a custodial permission, the application shall not be approved, unless, having regard to the information received either

with the application or in response to a requirement made under section 27, or to any other matters which the Authority regards as being relevant in the particular circumstances, the Authority considers that the person by or on whose behalf the application is made —

- (a) is a fit and proper person; and
- (b) has, or has available to him, to an adequate extent, the expertise, experience, services, resources and facilities each of which is of a kind which is generally conducive to the proper management or administration of mutual funds or, where appropriate, the performance of the functions which, if the application is allowed, he will be authorised to undertake.

(3) Where an application for a custodial licence or a custodial permission is refused, the Authority shall give to the person who made the application notice in writing of the refusal and the notice shall state that an appeal may be made to the High Court against the refusal and shall specify the period within which any such appeal may be made.

(4) Notwithstanding the provisions of this Order, the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000) and the International Trusts Order, 2000 (S 55/2000), the trustee of an Islamic Fund is not required to be licensed under the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000) but shall be approved in writing by the Minister, and, in the case of an Islamic Fund which is a unit trust, shall be deemed to be an international trust for the purposes of the International Trusts Order, 2000 (S 55/2000).

(5) Any person who knowingly contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

Licences and permissions generally.

14. (1) No application for a licence or permission under any provision of this Part shall be regarded as properly made unless —

- (a) it is accompanied by the prescribed fee; and
- (b) it specifies an address to which communications from the Authority may be sent.

(2) Without prejudice to the generality of any power to require the provision of information or any other matters, the Authority may give directions as to the information or matters which are to accompany any such application as is referred to in subsection (1).

(3) The provisions of the First Schedule shall apply as regards the revocation of any licence or permission issued or given under this Order.

Conditions.

15. (1) Without prejudice to any condition attached by virtue of any of the preceding provisions of this Part, the Authority may attach conditions to any licence or permission issued, given or granted under this Order and may vary, suspend for a specified period or further suspend, or revoke such conditions (other than conditions attached pursuant to section 10(1)).

(2) Where —

- (a) a licence or permission has been issued or given under this Order; and
- (b) the Authority proposes to —
 - (i) attach one or more conditions or, as the case may be, one or more further conditions to the licence or permission; or
 - (ii) vary, suspend or further suspend or revoke any condition already attached to the licence or permission,

then, subject to subsection (6), each of the requirements specified in subsection (3) shall be complied with.

(3) The following are the requirements referred to in subsection (2) —

- (a) the Authority shall give the appropriate person notice in writing of the proposal;
- (b) the notice shall state that representations may be made to the Authority as regards the proposal by or on behalf of the appropriate person within the period specified in the notice (which period shall not be less than 30 days beginning from the date of the notice) or such longer period (if any) as the Authority may allow in the particular case; and
- (c) the Authority shall neither implement the proposal nor implement it in a modified form until consideration has been given to any representations so made or before the expiry of the period for making such representations.

(4) Having considered any representations made as mentioned in subsection (3), the Authority may —

- (a) implement the proposal to which the representations relate;
- (b) implement that proposal in a modified form; or
- (c) withdraw that proposal.

(5) Subject to subsection (6), where the Authority exercises a power under subsection (1), the Authority shall give to the appropriate person notice in writing of the exercise of that

power stating that an appeal may be made to the High Court against that exercise and specify the period within which such any appeal may be made.

- (6) Subsections (2) and (5) do not apply as regards —
- (a) any condition attached, varied, suspended or revoked by the Authority allowing an application in that behalf; or
 - (b) any condition so attached, varied or revoked by the Authority pursuant to section 30(5)(d) or paragraph 4(1)(e) of the Second Schedule,

and subsections (4) and (5) do not apply as regards any condition attached, varied or revoked by the Authority pursuant to section 30(5)(d) or paragraph 4(1)(e) of the Second Schedule.

- (7) In this section "the appropriate person" means —
- (a) in case the licence or permission in question is a mutual fund licence or a mutual fund permission, the manager of the registered fund to which the licence relates or the person as regards whom the permission was given; and
 - (b) in case the licence or permission in question is not a licence or permission referred to in paragraph (a), the holder of the licence or the person as regards whom the permission was given.

PART III

CONTROL AND SUPERVISION

Chapter 1

Appeals and Register

Appeals to the High Court.

16. (1) If the Authority —
- (a) refuses an application for an operator's licence or permission;
 - (b) revokes any licence or permission issued or given under this Order; or
 - (c) attaches a condition to such a licence or permission, not being a condition referred in section 15(6),

then, subject to subsection (2), an appeal may be made to the High Court by or on behalf of the person concerned against the Authority's decision.

(2) An appeal under this section shall be made within the period of 21 days from the date of the decision to which the appeal relates.

Powers of High Court.

17. In determining an appeal under section 16, the Court may —

- (a) in a case where the appeal is against the refusal by the Authority to issue or grant a licence or permission under this Order, either confirm the refusal or issue or grant the licence or permission sought as if it were the Authority;
- (b) in any other case, subject to the provisions of this Order, confirm or modify the decision to which the appeal relates or set aside that decision and in lieu thereof substitute another as if it were the Authority; and
- (c) in any case, make such other order as it thinks fit.

The Register.

18. (1) The Authority shall —

- (a) establish and maintain a Register for the purposes of this Order; and
- (b) ensure that the requirements of subsection (3) are complied with.

(2) The Register shall be in such form as the Authority determines.

(3) Where a licence or any permission is issued or given under this Order, the following particulars shall be entered in the Register as regards the licence or permission —

- (a) the provision of this Order pursuant to which it was issued or given;
- (b) the name of the person to whom, and the date on which, it was so issued or given;
- (c) the address specified pursuant to the requirements of section 14(1)(b) in the relevant application;
- (d) if the licence or permission was issued or given provisionally, a note to that effect together with a note of when any application under section 9(6) as regards the licence or permission was allowed or, if appropriate, when the licence or permission ceased to be in force by virtue of section 9(2);
- (e) if the licence or permission is a mutual fund licence or a mutual fund permission which relates to a public fund, particulars of the conditions

subject to which the licence or permission was issued or given or any condition attached to the licence or permission pursuant to section 30(5)(d) or paragraph 4(1)(e) of the Second Schedule;

- (f) if the licence or permission is a mutual fund licence or a mutual fund permission, the currency in which the fund is or is intended to be denominated, together with the fund's designated day (if any); and
- (g) such other particulars as the Authority may determine.

(4) Where —

- (a) a licence or permission is revoked by the Authority;
- (b) the Authority varies, suspends for a specified period or further suspends, or revokes one or more conditions attached to a licence or permission;
- (c) the Authority gives or withdraws a direction; or
- (d) the Authority exercises a power conferred by section 30 or by paragraph 4 of the Second Schedule,

particulars thereof, together with particulars of the decision of the High Court on any appeal in relation thereto, shall be noted in the relevant entry in the Register.

(5) An application may be made to the Authority by or on behalf of a person whose name appears in the Register either to amend the address specified therein as regards that person or to substitute a new address therefor and where such an application is made, accompanied by the prescribed fee (if any) the Authority may —

- (a) amend the Register in the manner sought by the applicant;
- (b) amend the Register in such other manner as he considers appropriate in the particular circumstances; or
- (c) refuse the application.

(6) Any member of the public may during the normal office hours of the Authority on payment of the prescribed fee prescribed therefor —

- (a) inspect the Register;
- (b) obtain either a copy of an entry therein or an extract from the Register; or

(7) A document purporting —

- (a) to be a copy of an entry in or an extract from the Register; and

- (b) to be signed by or on behalf of the Authority and certified as being a true copy of the entry or extract,

shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and in the absence of evidence to the contrary, the court shall presume —

- (i) that the signature and certification is that of or on behalf of the Authority; and
- (ii) that the document is a true and correct copy of the entry, extract or document,

and the document shall be *prima facie* evidence of all the matters contained therein.

Chapter 2

Accounts and Administration

Accounts, audits and reports.

19. (1) The manager of a registered fund shall ensure that, as regards the fund, proper accounts and records of its transactions are kept and shall within 3 months after the expiry of every financial year, or such longer period as the Authority may allow, cause a statement of accounts as regards the fund to be prepared; and every such statement shall include a balance sheet as on the last day of the financial year to which the statement relates.

(2) A statement of accounts referred to in subsection (1) shall give a true and fair view of the state of affairs of the registered fund to which it relates as at the end of the financial year to which the statement relates.

(3) A statement of accounts referred to in subsection (1) or (6) shall be audited by an approved auditor who shall make a written report thereon to the manager of the fund.

(4) The approved auditor by whom an audit under subsection (3) is to be carried out shall be appointed by the manager of the relevant registered fund.

(5) The manager of a registered fund shall within the period of 60 days beginning on the day of the receipt by him of the approved auditor's report in respect of the fund's accounts for a financial year, or such longer period as the Authority may allow, furnish to the Authority —

- (a) a report on the affairs of the fund for that year;

- (b) a copy of its audited statement of accounts for that year; and
- (c) a copy of the approved auditor's report for that year.

(6) The Authority may at any time require the manager of a registered fund, within a period specified in the requirement or such longer period as the Authority may allow —

- (a) to cause to be prepared as regards the fund a statement of accounts of the kind specified in the requirement; and
- (b) when it is audited pursuant to subsection (3), to furnish to the Authority a copy of that statement together with a copy of the approved auditor's report thereon.

(7) Where the requirements of subsection (3) are not complied with as regards a particular registered fund or the manager thereof fails to comply with a requirement imposed on him by subsection (4) or (5) or with a requirement under subsection (6), then, subject to the First Schedule, the Authority may —

- (a) impose a financial penalty on the manager not exceeding \$100,000; or
- (b) revoke the manager's operator's licence or, as the case may be, his operator's permission,

and where a penalty is imposed under this Order, an amount equal to that of the penalty shall be recoverable by the Government as a civil debt due to it from the person on whom the penalty was imposed.

(8) As regards any particular registered fund, any reference in this section to a financial year shall each be construed as a reference to that fund's financial year.

Mutual fund's name.

20. (1) Where an application is made under section 7 and the name of the mutual fund to which the application relates ("the relevant fund") is —

- (a) the same as, or in the Authority's opinion is likely to be confused with, that of a registered fund; or
- (b) in the Authority's opinion, misleading in any other respect,

the Authority may give a direction as regards the relevant fund and any such direction shall be complied with before a mutual fund licence or mutual fund permission is issued or given as regards that fund.

(2) Where a registered fund is for the time being using as its name a name with a characteristic described in subsection (1)(a) or (b), the Authority may give a direction requiring —

- (a) that use of the name of the fund be discontinued; and
- (b) that there shall be used instead either a version of the name altered in a manner specified in the direction or a completely different name so specified.

(3) A direction under subsection (1) or (2) shall be in writing and shall be given either to the manager or to the trustee or custodian of the registered fund.

(4) Where the Authority gives a direction under subsection (2) and the direction is not complied with, then, subject to the First Schedule, the Authority may, revoke the operator's licence or permission issued or given to the manager of the mutual fund to which the direction relates.

Amendment of registered fund's memorandum etc.

21. (1) Where as regards a registered fund it is proposed —

- (a) to amend in any manner the memorandum of association, articles of association, partnership agreement, trust or other deed or other instrument under which the fund is incorporated, established or otherwise constituted;
- (b) to amend the fund's prospectus; or
- (c) to issue a new prospectus,

the manager of the fund shall furnish to the Authority particulars of the proposal in writing.

(2) As regards any proposal described in subsection (1), the requirement of that subsection shall be complied with as soon as practicable by the manager of the mutual fund, and in any event within the period of 30 days beginning on the day on which the proposal is circulated or otherwise published to the participants in the relevant registered fund.

(3) Where the manager of the mutual fund fails to comply with the requirements of subsection (1), then, subject to the First Schedule, the Authority may revoke his operator's licence or permission.

(4) Where particulars of a proposed amendment are furnished pursuant to subsection (1) and the Authority is of opinion that, were the proposal to be implemented, the interests of the participants or potential participants in the registered fund in question would be either no longer protected or no longer adequately protected, he may, within the period of 30 days beginning on the day on which he receives the particulars, by a notice in writing require the manager of the fund to do each of the following —

- (a) to take such steps as are requisite to ensure that the articles of association, partnership agreement, trust or other deed or other instrument under which the registered fund is incorporated, established or otherwise constituted or, as the case may be, the proposed new prospectus amended in a manner specified in the notice; and
 - (b) within a period specified in the notice, being not less than 30 and not more than 90 days from the date of the notice, to furnish the Authority with a copy of the instrument or prospectus as so amended.
- (5) Where —
 - (a) pursuant to subsection (1) particulars of a proposed amendment or of a new prospectus proposed to be issued are furnished to the Authority;
 - (b) the period specified in subsection (4) expires; and
 - (c) during that period no notice under subsection (4) is received by the person by whom the particulars were so furnished,

then on the expiry of that period the proposed amendment or, where appropriate, the proposed new prospectus to which the particulars relate shall be deemed to have been approved by the Authority.

Change of manager etc.

22. (1) Where as regards any registered fund a person ceases to be its manager, administrator or trustee or custodian, then —

- (a) in the case where the cessation is that of the fund's manager, then its trustee or, where appropriate, its custodian;
- (b) in the case where the cessation is that of the fund's administrator or its trustee or custodian, then the fund's manager,

shall, within the period of 3 months beginning on the day of such cessation, notify the Authority in writing both of the cessation and of the name of the person who, has succeeded as its manager, administrator, trustee or custodian, as the case may be.

- (2) Where —
 - (a) a cessation described in subsection (1) occurs and the requirements of that subsection are not complied with; or
 - (b) the Authority is notified pursuant to subsection (1) and is not satisfied that the person specified in the notice as having succeeded as the fund's manager

has qualifications, expertise and experience which are appropriate for its proper management and administration,

the Authority may, subject to the First Schedule revoke the fund's mutual fund licence or, where appropriate, mutual fund permission.

(3) Where the Authority is notified pursuant to subsection (1), the Authority shall suitably amend the mutual fund licence or, permission.

(4) Where the person specified in a notice to the Authority under this section is a body corporate, the Authority may attach to the mutual fund licence or permission a condition that at all times at least one of that body's directors or, where appropriate, the body's officers whose office is similar or analogous to that of a company director, shall be an individual who is ordinarily resident in Brunei Darussalam.

(5) In a case where two or more persons are specified in a mutual fund licence or permission as the manager of the fund, any reference in this section to a person ceasing to be the manager shall be construed as a reference to any one of those persons ceasing to hold that office or to have the status by virtue of which he was specified as one of the managers, and any reference to a person succeeding as the manager shall be construed accordingly.

Duty of manager etc. to inform Authority of certain matters.

23. (1) Where, in the course of managing, administering or otherwise acting as regards a registered fund, a person to whom this section applies —

- (a) becomes aware of or has reason to believe that —
 - (i) any person has or may have committed a defalcation or a breach of trust in relation to the fund's affairs, business or property;
 - (ii) a fraudulent activity is or may be being carried on as regards such affairs, business or property; or
 - (iii) there is or may be an attempt or a conspiracy by one or more persons to carry on such a fraudulent activity; or
- (b) is of opinion that a matter exists which either adversely affects the financial position of the fund to a significant extent or is otherwise detrimental to the interests of the fund's participants or the interests of its creditors,

he shall, as soon as practicable, inform the Authority of his knowledge, belief or opinion giving his reasons therefor and as regards any such defalcation, breach of trust, fraudulent activity, attempt or conspiracy, to the extent (if at all) that he is aware of them, the names of the person or persons involved or otherwise concerned.

(2) Where, in performing the duty imposed on him by subsection (1), a person to whom this section applies acts in good faith, no duty to which he is subject as regards a

registered fund shall be regarded as having been contravened by reason only of his having so acted.

(3) Where a person fails or refuses to act as required in subsection (1), he shall be guilty of an offence and liable on conviction to a fine not exceeding \$250,000, imprisonment for a term not exceeding 2 years or both.

(4) This section applies to any person who is the holder of a licence referred to in section 6(2).

Duty of auditors to inform Authority.

24. (1) Where, in the course of carrying out an audit of the accounts of a registered fund or those of the holder of a mutual fund licence, an approved auditor —

- (a) becomes aware of or has reason to believe that —
 - (i) a registered fund is unable, or is unlikely to continue to be able, to meet its obligations as they fall due;
 - (ii) a registered fund is carrying on or attempting to carry on business or is winding-up its business voluntarily in a manner that is detrimental to the interests of its participants or to those of its creditors;
 - (iii) a registered fund is carrying on or attempting to carry on business without keeping any accounting records or accounting records which are sufficient to enable its accounts to be properly audited;
 - (iv) any person has or may have committed a defalcation or a breach of trust in relation to the fund's affairs, business or property;
 - (v) a fraudulent activity is or may be being carried on as regards any such affairs, business or property; or
 - (vi) there is or may be an attempt or a conspiracy by one or more persons to carry on such a fraudulent activity; or
- (b) is of opinion that a matter exists which either adversely affects the financial position of the fund to a significant extent or is otherwise detrimental to the interests of the fund's participants or the interests of its creditors,

he shall, as soon as practicable, inform the Authority of his knowledge, belief or opinion giving his reasons therefor and, as regards any such defalcation, breach of trust, fraudulent activity, attempt or conspiracy, to the extent (if at all) that he is aware of them, the names of the person or persons involved or otherwise concerned.

(2) Where, in performing the duty imposed on him by subsection (1), an approved auditor acts in good faith, no duty to which he is subject as regards a registered fund shall be regarded as having been contravened by reason only of his having so acted.

(3) Where an approved auditor fails or refuses to act as required in subsection (1), he shall be guilty of an offence and liable on conviction to a fine not exceeding \$250,000, imprisonment for a term not exceeding 2 years or both.

Further information.

25. (1) Where a report, copy statement or copy report is furnished to the Authority pursuant to section 19(5), the Authority may require the manager who furnished the report or copy to supply such further information as the Authority considers relevant in the circumstances.

(2) In addition to the power conferred by subsection (1), the Authority may by notice in writing require the manager, administrator, trustee or custodian of a registered fund to furnish such information regarding the fund or its property, management or administration as is reasonably necessary for the purposes of this Order and as is specified in the notice.

(3) If a person fails to comply with any requirements of a notice under subsection (2), then, subject to the First Schedule, the Authority may —

- (a) impose a financial penalty on the manager or administrator, trustee or custodian (as the case may be) not exceeding \$100,000; or
- (b) revoke that person's operator's licence or permission or, as the case may be, custodial licence or permission and, where a penalty is imposed under this section, an amount equal to that of the penalty shall be recoverable by the Government as a civil debt due to it from the person on whom the penalty was imposed.

(4) A reference in this section to information are each to be construed as including a reference to documents.

Explanations.

26. (1) Where a person fails —

- (a) to comply with a direction given or a requirement made under the preceding provisions of this Order;

- (b) to afford, in accordance with section 27(1), to the Authority or any person acting on behalf of the Authority, the access specified in that section; or
- (c) to produce to the Authority or any person acting on behalf of the Authority anything duly specified under that section,

then, without prejudice to the generality of section 25(2), the Authority may require the person concerned to furnish a written statement explaining the failure.

(2) Where a requirement is made under subsection (1) and the Authority is not satisfied with the explanation, or with any further explanation which the Authority may require, then, subject to the First Schedule, the Authority may —

- (a) impose a financial penalty on the manager, administrator, trustee or custodian (as the case may be) not exceeding \$100,000;
- (b) revoke that person's operator's licence or permission or, as the case may be, custodial licence or permission and, where a penalty is imposed under this Order, an amount equal to that of the penalty shall be recoverable by the Government as a civil debt due to it from the person on whom the penalty was imposed; or
- (c) revoke the licence or permission under this Order of the person of whom the requirement was made.

Access to documents etc.

27. (1) Subject to subsection (2), if requested to do so, the manager, administrator, trustee or custodian of a registered fund shall —

- (a) afford the Authority and any person acting on behalf of the Authority reasonable access to all of the fund's records, books, accounts, certificates and other documents which are in his possession or custody or otherwise under his control; and
- (b) without prejudice to the generality of paragraph (a), produce to the Authority or any person acting on behalf of the Authority such of the fund's records, books, accounts, certificates or other documents as are in the possession or custody, or under the control of, the manager, administrator, trustee or custodian or such of those records, books, accounts, certificates and other documents as are of a class or description,

which the Authority or, as the case may be, the person acting on behalf of the Authority may reasonably specify.

(2) Any record, book, account, certificate or other document shall not be required to be produced under subsection (1) in a manner or at a time or place which would interfere with the proper conduct of the normal daily business of the registered fund.

(3) Where any record, book, account, certificate or other document is produced pursuant to a request under subsection (1), the person who made the request shall be entitled to inspect the document and make a copy or prepare an abstract of all or part of it.

(4) Where any record, account or other document referred to in subsection (1)(a) is recorded otherwise than in a legible form, then the manager, administrator, trustee or custodian concerned shall make available to the person who wishes to inspect it pursuant to this section, a reproduction thereof which is in a legible form.

(5) Where a requirement is made under subsection (1) and the Authority is not satisfied with the explanation, or with any further explanation which the Authority may require, then, subject to the First Schedule, the Authority may —

- (a) impose a financial penalty on the manager, administrator, trustee or custodian (as the case may be) not exceeding \$100,000; or
- (b) revoke that person's operator's licence or permission or custodial licence or permission and, where a penalty is imposed under this section, an amount equal to that of the penalty shall be recoverable by the Government as a civil debt due to it from the person on whom the penalty was imposed.

Chapter 3

Investigations etc.

Investigations.

28. (1) If, whether because of information received pursuant to the requirements of sections 21, 23(1), 24(1) or otherwise, it appears to the Authority that it is in the interests of the participants in a registered fund or in the public interest to do so, the Authority may institute an investigation under this section into such of the following matters as the Authority considers appropriate —

- (a) the state or conduct of all or any of the affairs, business or property of the fund; and
- (b) the state or conduct of such of the affairs, business or property of a manager, administrator, trustee or custodian of the fund as are relevant to the fund.

(2) For the purposes of an investigation under this section, the Authority shall appoint as an inspector a person whom the Authority considers to be suitably qualified to investigate and report to him on the state and conduct of the affairs, business and property

specified by the Authority and, according as may be so specified, either as a whole or, as the case may be, in any particular respect.

(3) The Authority may, at any time after making an appointment under subsection (2), and before the inspector so appointed reports to him, direct that inspector to inquire into any further aspect of the affairs, business or property of the registered fund or former such fund, or, as the case may be, the person named in the direction.

(4) An inspector who is not a public officer shall be paid such remuneration and allowances and be appointed on such other terms and conditions as the Minister shall determine.

(5) On receipt of the report of an inspector, the Authority may do such one or more of the following —

- (a) if he is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be published in such manner as he determines:

Provided that nothing in a report published under this paragraph shall —

- (i) enable any particular participant in a registered fund or former such fund to which the report relates to be identified; and
- (ii) reveal details of the affairs of any such participant without his consent;
- (b) require the inspector to report further on any matter arising from the report;
- (c) where the report relates to a registered fund and the High Court has jurisdiction to wind-up the fund, present a petition for that purpose to the court; and
- (d) if it appears from the report that an offence may have been committed by any person, refer the report to the Attorney General,

and for the avoidance of doubt it is hereby declared that any such report to the Authority shall enjoy qualified privilege.

(6) Any reference in the preceding provisions of this section to a registered fund includes a reference to a former registered fund, but the Authority shall not make an appointment under subsection (2) as regards a former registered fund if that fund ceased to be a registered fund before the commencement of the period of 12 months beginning on the date of the institution of the investigation under subsection (1).

(7) Where —

- (a) a report under this section is made as regards a registered fund or a former registered fund;
- (b) proceedings in the High Court are instituted by one or more of the participants in the fund;
- (c) the proceedings are issued against a manager, administrator, trustee or custodian of the fund; and
- (d) having had regard to the report or any other evidence, it appears to the court that there was on the part of the defendant or, in case there are more than one, on the part of all or any of the defendants, an act or omission which —
 - (i) related to the fund's affairs;
 - (ii) was such as was likely to cause all or any of the participants in the fund financial loss; and
 - (iii) in fact caused the plaintiff, or, in case there are more than one, all or any of the plaintiffs financial loss,

the court may award such damages against, or afford such other relief to, such of the parties to the proceedings as it may consider appropriate.

- (8) Any person who —
 - (a) with intent to defeat the purposes of this section or to delay or obstruct the carrying out of an investigation under this section —
 - (i) conceals, destroys, mutilates or alters any record, book, account, certificate or any other document relating to a matter which is the subject of the investigation; or
 - (ii) sends, or causes to be sent, or conspires with another person to send, out of Brunei Darussalam any document or other thing mentioned in sub-paragraph (i); or
 - (b) knowingly furnishes to an inspector any information which is false or misleading in a material particular,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both.

(9) In this section, "conduct" includes management or administration and, in relation to property, also includes mortgaging or otherwise charging the property and the creation of any other estate or interest in it.

(10) Any reference in the preceding provisions of this section to a manager, administrator trustee or custodian of, or to a participant in, a registered fund or former

registered fund includes a reference to any person who has been but no longer is such a manager, administrator, trustee, custodian or participant.

(11) Part 1 of the Second Schedule shall apply to investigations held pursuant to this section.

Registered fund's insolvency.

29. (1) Where the manager, administrator, trustee or custodian of a registered fund has reason to believe —

- (a) that the fund is likely to become unable to meet its obligations as they fall due; or
- (b) that the fund is insolvent,

he shall notify the Authority in writing of his belief.

(2) Where —

- (a) the Authority receives a notification under subsection (1);
- (b) a registered fund becomes unable to meet its obligations as they fall due; or
- (c) the Authority is of opinion that —
 - (i) a registered fund is carrying on, is attempting to carry on or is voluntarily winding-up, its business in a manner prejudicial to the interests of its participants or its creditors;
 - (ii) that a registered fund is, or is likely to become, unable to meet its obligations as they fall due; or
 - (iii) as regards a mutual fund licence or a mutual fund permission, there has been a failure to comply with, or a contravention of, a condition attached to the licence or permission,

then, subject to section 31, the Authority shall give a direction under this section as regards that registered fund.

(3) A direction under this section shall remain in force until it is withdrawn by the Authority.

(4) Where a direction under this section is in force, an application may be made to the Authority to withdraw but the Authority shall not withdraw the direction unless the Authority is satisfied that as regards the registered fund to which it applies —

- (a) the circumstances which caused the direction to be given no longer exist; and
- (b) no other circumstances exist which would require the Authority to give such a direction as regards the fund.

(5) Where the Authority gives a direction under this section, the Authority shall give the manager, administrator, trustee or custodian of the fund notice in writing of the direction and the notice may require the person to whom it is addressed to circulate or otherwise distribute to the participants in that fund a written statement stating that the direction has been given and that representations may be made on behalf of such participants as regards the exercise by the Authority of any of the powers conferred on the Authority by Part 2 of the Second Schedule in relation to that fund and containing such other particulars (if any) as the Authority specifies.

(6) If any person fails to comply with any requirement of a notice given to him under subsection (5), then, subject to the First Schedule, the Authority may revoke the current licence or permission issued to or given as regards that person under this Order.

(7) Where a direction given under this section is in force, the provisions of Part 2 of the Second Schedule shall apply as regards that direction.

Insolvency of manager etc.

30. (1) Where the manager, administrator, trustee or custodian of a registered fund (in this section referred to as a "relevant person") has reason to believe —

- (a) that he is or is likely to become unable to meet his obligations, as they fall due; or
- (b) that he is otherwise insolvent,

he shall notify the Authority in writing of his belief.

(2) Where —

- (a) the Authority receives a notification under subsection (1);
- (b) a relevant person becomes unable to meet his obligations as they fall due; or
- (c) the Authority is of opinion that —
 - (i) a relevant person is carrying on, is attempting to carry on or is voluntarily winding-up, his business in a manner prejudicial to the interests of his creditors or the participants in a registered fund or the fund's creditors;

- (ii) that a relevant person is, or is likely to become, unable to meet his obligations as they fall due; or
- (iii) as regards a relevant person's licence or permission under this Order, there has been a failure to comply with, or a contravention of, a condition attached to the licence or permission,

the Authority shall give a direction under this section as regards that person.

(3) A direction given under this section shall remain in force until it is withdrawn by the Authority.

(4) Where a direction under this section is in force, an application may be made to the Authority to withdraw a direction but the Authority may not withdraw the direction unless the Authority is satisfied that, as regards the person to whom the direction applies —

- (a) the circumstances which caused the direction to be given no longer exist; and
- (b) no other circumstances exist which would require the Authority to give such a direction as regards that person.

(5) If a direction given under this section is in force, then, subject to subsection (6), the Authority may, as regards the person to whom the direction relates, exercise such one or more of the following powers as may appear to him to be necessary —

- (a) by notice in writing require that, until the notice is withdrawn, in so far as that person takes any action or does any act or thing in relation to the management or administration of the affairs, business or property of any registered fund, he shall do so only after the advice of an adviser appointed for the purposes of this paragraph by the Authority and named in the notice has been sought and obtained;
- (b) by notice in writing require that, until the notice is withdrawn, in so far as that person takes any action or does any act or thing referred to in paragraph (a), he shall do so only under the supervision of a supervisor appointed for the purposes of this paragraph by the Authority and named in the notice;
- (c) by notice in writing remove forthwith that person from his office as manager, administrator, trustee or custodian of the registered fund and appoint another person to that office instead;
- (d) attach conditions, or where appropriate, additional conditions to that person's licence or permission under this Order or revoke or vary conditions already so attached;
- (e) subject to the First Schedule, revoke that licence or permission,

and the person appointed under paragraph (a) or (b) may be an individual, a partnership or a body corporate.

(6) A notice shall not be given under subsection (5)(a) or (b) as regards a person in respect of whom the High Court has made a winding-up order; and where a notice given under either of those paragraphs relates to a registered fund which is incorporated or otherwise established outside Brunei Darussalam the notice shall only apply to —

- (a) actions, acts or other things which relate to the affairs and business of the fund which are carried on, managed or administered in or from Brunei Darussalam; and
- (b) so much of the fund's property as is —
 - (i) located in, managed or administered from Brunei Darussalam; or
 - (ii) an asset of the fund's principal or other place of business in Brunei Darussalam.

(7) The remuneration and reasonable expenses of a person appointed pursuant to subsection (4)(a) or (b) shall be paid by the registered fund to which the notice concerned relates.

(8) References in this Order to a manager or to an administrator include, except where the context otherwise requires, references to a person appointed pursuant to subsection (5)(a).

(9) Any person who fails to comply with a notice or direction under this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both.

(10) Nothing in any deed, agreement, articles or memorandum of association or other document shall operate to prevent the Authority exercising any power under subsection (2).

Winding-up order etc.

31. Where —

- (a) circumstances exist as regards a registered fund which would require the Authority to give a direction under section 29 as regards the fund;
- (b) the High Court has jurisdiction to wind up or dissolve the fund under any provisions of the written law; and

- (c) after consultation with the Minister, it appears to the Authority that it is in the interest of the participants in the fund, the public interest or in both such interests that the fund should be wound up or dissolved by the High Court,

the Authority, in lieu of giving a direction under section 29 as regards that fund, may, on the ground that it is just and equitable that it be so wound up, petition the High Court to wind it up under the appropriate provisions of that written law.

PART IV

CODES OF PRACTICE, CONFIDENTIALITY, PERMITTED DISCLOSURE AND RECOGNISED JURISDICTIONS

Codes of Practice.

32. (1) The Authority may prepare and issue codes of practice regarding all or any of the following, the promotion, sponsorship, establishment, management and administration of mutual funds.

(2) The Authority may amend or revoke a code of practice issued under subsection (1).

(3) The Authority shall make arrangements to ensure that copies of any code of practice (and any amendments thereto) prepared and issued under subsection (1) are publicly available at such price as the Authority considers reasonable.

Confidentiality.

33. (1) Except as may be necessary for the implementation or administration of this Order, a person to whom this subsection applies —

(a) shall preserve and assist in preserving confidentiality with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of any function assigned by or carried out under this Order;

(b) shall not communicate any such matter to any person other than —

(i) the person to whom the matter relates;

(ii) the Minister;

(iii) the Authority or an officer of the Authority; and

- (iv) a person (whether he is a public officer or not) who was assigned, appointed or employed to advise or otherwise assist the Minister or the Authority; and
 - (c) shall not suffer or permit another person, not being also a person to whom this subsection applies, to have access to any records which are in his possession or custody, or under his control or in the possession or under the control of any other person to whom this subsection applies, being in either case records created in the performance of a function assigned by this Order.
- (2) Subsection (1) applies to any person who is or has been —
- (a) the Minister, the Authority or a member of the Authority, or a public officer; or
 - (b) a person (whether he is a public officer or not) who was assigned, appointed or employed to advise or otherwise assist the Minister or the Authority.
- (3) Subject to subsection (4)(b), if a court is satisfied that the public interest so requires, the court may require a person who receives any information, report, statement of account or other document pursuant to a provision of this Order —
- (a) to produce or otherwise disclose the information or document;
 - (b) to divulge or communicate any other matter or thing coming to his notice in, or in connection with, the performance of a function assigned by this Order,
- and nothing in this section shall entitle any person to refuse to comply with such a requirement.
- (4) Subsection (1) does not prohibit —
- (a) the disclosure of information in the form of a summary which is framed so as to prevent the identity of, or any particulars relating to, the holder of a licence under this Order or any person to whom any permission under this Order relates being ascertained from the summary;
 - (b) the disclosure of any document, information or other matter or thing with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or not, or in connection with any legal proceedings arising by reason of this Order;
 - (c) the disclosure of information which is for any reason already available to the public;
 - (d) disclosure to a person appointed to investigate the affairs of a company; and

- (e) the disclosure of information in bankruptcy or insolvency proceedings in Brunei Darussalam.

(5) Nothing in this section shall be construed as prohibiting any person from waiving the protection it accords to his affairs, whether generally or in a particular respect or for a particular purpose; but no other person may rely on such a waiver unless it is in writing and signed by the person concerned.

(6) Any person who discloses information contrary to the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding \$200,000, imprisonment for a term not exceeding 5 years or both.

Disclosure to other supervisory authorities.

34. (1) Notwithstanding section 33 but subject to subsection (4) of this section, the Authority may disclose information on the operation of a mutual fund to a designated supervisory authority for the purpose of its material supervisory functions.

(2) In subsection (1), the reference to a designated supervisory authority is a reference to that authority which, in a country or territory designated by the Minister for the purposes of this Order, exercises in that country or territory functions corresponding to those of the Authority under this Order and, in relation to such an authority, "material supervisory functions" means functions which so correspond.

(3) The Minister shall not designate any country or territory for the purposes of this Order unless he is satisfied that the supervisory authority there is subject to equivalent or analogous provisions as to reciprocity in cases where information is required by the Authority from the designated supervisory authority and to provisions as to confidentiality which are at least equivalent to those which apply to the Authority, whether under this Order or otherwise.

(4) In no circumstances shall the Authority provide any information under this section relating to the affairs of —

- (a) any particular holder or former holder of a licence under this Order; or
- (b) any person to whom a permission has been given under this Order, whether that permission is current or not.

Recognised authorisations.

35. If the Authority is satisfied —

- (a) that there are in force in a particular country or territory outside Brunei Darussalam laws whose purposes and effect are either similar or generally similar or analogous to those of this Order;
- (b) that under those laws, licences, permissions, authorisations or other permissions may be issued or given by an authority or other body established or recognised by those laws; and
- (c) that those laws contain provisions whose purposes and effect are either similar, or are similar or analogous to a sufficient degree, to the provisions of this Order relating to the matters specified in paragraph (b),

the Authority may determine specified licences or, as may be appropriate, permissions, authorisations or other permissions so issued or given shall be recognised authorisations.

PART V

MISCELLANEOUS

Immunity etc.

36. (1) No liability shall be incurred by any person in respect of anything done, or omitted to be done by him in good faith in the performance or proposed performance of any function under this Order.

(2) A person who —

- (a) performs a duty imposed on him by this Order; or
- (b) complies with a requirement of, or made under, this Order or regulations under this Order,

shall not incur any legal liability by reason only of that performance or compliance.

(3) Nothing in this Order shall be construed as enabling the Authority to require the disclosure by an advocate and solicitor or by any legal practitioner in professional practice in a jurisdiction outside Brunei Darussalam of any privileged communication, whether oral or written, made to or by him in his professional capacity.

(4) For the purpose of determining whether a communication made to or by a legal practitioner in professional practice in a jurisdiction outside Brunei Darussalam is protected by subsection (3), the communication shall be treated as having been made to or by an advocate and solicitor practising in Brunei Darussalam.

Offences and penalties.

37. (1) A person who aids, counsels or procures the commission of an offence under this Order or who solicits or incites any other person to commit such an offence shall be guilty of an offence under this subsection and be liable on conviction to be punished therefor in the same manner as a person committing the offence to which the aiding, counselling, procurement, soliciting or incitement related.

(2) Any person who, whether by act or omission, contravenes or fails to comply with any provision of any regulations made under this Order shall be guilty of an offence.

(3) A person who —

(a) as regards an application for a licence or permission under this Order;

(b) in purported compliance with any obligation to give information to which he is subject by virtue of this Order,

gives any information or produces or supplies a document which he knows to be false in a material particular or recklessly gives any information or supplies or produces a document which is so false shall be guilty of an offence.

(4) Any person who contravenes a condition attached to a licence or permission issued or given under this Order shall be guilty of an offence.

(5) Any person who, for the purpose of obtaining, whether for himself or another, the issue or grant of a licence or permission under this Order —

(a) makes any statement or gives any information which he knows to be false in a material particular or recklessly gives any information which is so false; or

(b) produces or otherwise makes use of any book, record or other document which to his knowledge contains any statement or information which he knows to be false in a material particular,

shall be guilty of an offence.

(6) A person who interferes with or otherwise hinders the exercise by an inspector of a power conferred on him by Part 1 of the Second Schedule shall be guilty of an offence.

(7) A person guilty of an offence under any provision of this section, other than subsection (1), shall be liable on conviction to a fine not exceeding \$200,000 and to imprisonment for a term not exceeding 3 years.

Onus of proof, presumption.

38. (1) In any proceedings for an offence under this Order, it shall not be necessary to negate by evidence the existence of any licence or permission issued or given under this

Order, and the onus of proving the existence of such licence or permission shall be on the person seeking to avail himself of it.

- (2) Where in proceedings for an offence under this Order —
- (a) the court is satisfied that the defendant caused a prospectus to be issued; and
 - (b) having regard to the prospectus or other evidence, it appears to the court to be probable that the prospectus relates or, where appropriate, related to a mutual fund,

then, unless the court is satisfied to the contrary, it shall presume that the prospectus relates or, where appropriate, related to a mutual fund.

Offences by bodies corporate.

39. (1) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of that body, or of any person who was purporting to act in any such capacity, he, as well as the body corporate, shall also be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs, business or property of a body corporate or person are managed by its members, subsection (1) applies in relation to the acts and omissions of a member of the body in the course of managing its affairs, business or property as if, were the body to have those offices, he were a director or other officer described in subsection (1) of the body corporate.

Giving of notice.

40. (1) Where notice is required by this Order, or any regulation made under this Order, to be served, given or sent to a person, it shall be addressed to him and shall be served, given or sent to him —

- (a) by delivering it to him;
- (b) by leaving it either at the address which appears for the time being in relation to him in the Register or at the address in Brunei Darussalam at which he ordinarily resides; or
- (c) by sending it by post in a prepaid registered envelope addressed to him either at the address which so appears in the Register or at the address at which he ordinarily resides.

(2) Where a notice is sent by post in accordance with the requirements of subsection (1) and is returned undelivered, the notice may then be served, given or sent in such other manner as may be prescribed.

Annual and other fees.

41. (1) An annual fee of the prescribed amount shall be payable in respect of every licence or permission issued or given for the purposes of this Order.

(2) Annual fees of different amounts may be prescribed as regards licences or permissions of different classes or descriptions.

(3) Every prescribed annual fee shall be payable on the date the licence or permission is issued or given, and thereafter on the anniversary of the issue of the licence or the giving of the permission.

(4) Where an annual fee is not paid as required by subsection (3) and remains unpaid 60 days after its due date then, subject to the First Schedule, unless the Authority is satisfied that there are special circumstances that would render it unfair or inappropriate to do so, the Authority may —

- (a) impose a financial penalty on the manager, administrator, trustee or custodian, not exceeding \$100,000;
- (b) revoke the person's operator's licence or permission or, custodial licence or permission; or
- (c) revoke the licence or permission as regards which the annual fee is payable,

and where a penalty is imposed under this section, an amount equal to that of the penalty shall be recoverable by the Government as a civil debt due to it from the person on whom the penalty was imposed.

(5) Where an annual fee remains unpaid as described in subsection (4), the Authority may by notice in writing require either the manager, trustee or custodian the registered fund to state in writing within a period specified in the notice the reason why the fee was not paid.

Tax and filing exemptions.

42. (1) No income tax, tax on capital gains or other tax shall be levied, withheld or collected in respect of any mutual fund, the holder of an operator's licence or the holder of a licence or permission under section 13, in respect of such a fund on or in respect of any dividends or earnings attributable to any unit share, partnership interest, debt or securities; or in the case of such a licensee on any fees or other earnings received in that capacity.

(2) No estate, inheritance, succession or similar tax shall be levied in respect of any mutual fund or fund interest or in respect of the transfer of any fund interest.

(3) Notwithstanding anything in the Stamp Act (Chapter 34), duty shall not be chargeable on any of the following —

- (a) instruments relating to transfers of any property to or by a mutual fund;
- (b) instruments relating to transactions in respect of any fund interest;
- (c) instruments relating in any way to the assets or activities of a mutual fund.

(4) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34).

(5) No filing, return or financial information shall be required from a mutual fund in relation to any taxation, duty or other levy in respect of which relief is granted under this section.

Exemption from Order.

43. Notwithstanding anything contained in this Order or in any other written law relating to mutual funds, the Minister after consultation with the Authority may, in any case and on such terms and conditions as he thinks fit, exempt a mutual fund, in whole or in part, from any provision of this Order or of any such written law.

Transitional provision.

44. Where on the date of commencement of this Order a mutual fund had been established, domiciled, offered, traded, listed, managed or administered in or from within Brunei Darussalam, that fund may, notwithstanding the provisions of this Order, continue to do so for such period as the Minister, after consultation with the Authority, may determine in any particular case.

FIRST SCHEDULE

Section 14(3)

Revocation of Licences and Permissions

1. Subject to paragraph 2, the Authority shall not revoke a licence or permission issued or given under this Order without first affording to —

- (a) in case the licence or permission is a mutual fund licence or a mutual fund permission, the manager, trustee or custodian of the registered fund; and
- (b) in any other case, the holder of the licence or the person to whom the permission was given,

or to someone acting on his behalf, an opportunity of stating why the licence or permission should not be revoked.

2. Subject to paragraphs 3 and 4, where the Authority is of opinion that, having regard to the interests of the participants or potential participants in one or more registered funds or to the public interest or to both of those interests, the revocation of a licence or permission issued or given under this Order should be treated as a matter of urgency, he may revoke the licence or permission without affording the opportunity required by paragraph 1.

3. Where the Authority revokes a licence or permission in exercise of the power conferred by paragraph 2, the revocation shall have immediate effect.

4. Where the Authority revokes a licence or permission given or issued under this Order, it shall give to the person to whom the licence was issued or to whom the permission was given, notice in writing of the revocation and the notice shall —

- (a) state that an appeal may be brought to the High Court against the revocation and specify the period within which such appeal may be taken;
- (b) state the reason for the revocation; and
- (c) in case the power conferred by paragraph 3 is exercised in relation to the revocation, also state that such power has been exercised and specify the reason for such exercise.

5. (1) Where a licence or permission issued or given under this Order is revoked by the Authority, the holder of the licence or the person to whom the permission was given may, within the period of 21 days beginning on the date of the notice under paragraph 4 appeal to the High Court against the revocation.

(2) Where an appeal is made to the High Court under this paragraph, it may confirm, modify or set aside the decision of the Authority to which the appeal relates.

6. Where the Authority revokes a licence or permission issued or given under this Order, subject to paragraph 3 the revocation shall have effect —

- (a) in case no appeal is made under this paragraph as regards it, on the expiration of the period during such an appeal may be made;
- (b) in case such an appeal is taken and is disallowed, on the determination of the appeal; or
- (c) in case such an appeal is made but is withdrawn, on the withdrawal.

SECOND SCHEDULE

(Sections 28 and 29)

Investigations etc.

Part 1

Investigations under section 28 — Supplementary provisions

1. (1) Subject to sub-paragraph (4), an inspector may determine the manner in which an investigation held by him pursuant to section 28 is conducted.

(2) Subject to sub-paragraphs (4) and (5), where such an investigation is being conducted, it shall be the duty —

(a) of any person to whom this paragraph applies to attend before the inspector concerned when required by him to do so and to answer truthfully and to the best of his ability any questions which may be put to him by the inspector and which are relevant to the investigation; and

(b) of every person who has in his possession or under his control any record, book, account, certificate or other document of title or any other document relating to a matter which is the subject of the investigation to produce to the inspector concerned such of those documents as the inspector may specify (whether by name or by reference to a particular class of description).

(3) Sub-paragraph (2) applies to —

(a) every manager, administrator, trustee, custodian, director, employee, or agent of a registered fund or former registered fund whose affairs, business or property is or are being investigated by virtue of section 28(1)(a);

(b) any other person whose affairs, business or property is or are being investigated by virtue of section 28(1)(b); and

(c) every employee or agent of a person referred to in paragraph (b) and, where such a person is a body corporate, every director of that body.

(4) An inspector may not require the disclosure by an advocate and solicitor or by any legal practitioner in professional practice in a jurisdiction outside Brunei Darussalam of any privileged communication, whether oral or written, made to or by him in his professional capacity.

(5) For the purpose of determining whether a communication made to or by a legal practitioner in professional practice in a jurisdiction outside Brunei Darussalam is protected by sub-paragraph (4), the communication shall be treated as having been made to or by an advocate and solicitor practising in Brunei Darussalam.

(6) Anything said by any person in answer to a question put by an inspector pursuant to sub-paragraph (2) shall be inadmissible in any legal proceedings other than criminal proceedings brought under this Order.

2. Any person who —

(1) without reasonable excuse fails to produce anything which it is his duty to produce under paragraph 1;

(2) without reasonable excuse fails to attend before an inspector when required to do so under that paragraph; or

(3) fails to answer to the best of his ability any question which is duly put to him by an inspector pursuant to that paragraph,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and to imprisonment for a term not exceeding 3 years.

3. (1) The reference in paragraph 1(3) to a manager, administrator, trustee, custodian, director, employee or agent of a registered fund or former registered fund includes a reference to a person who was but no longer is such a manager, administrator, trustee, custodian, director, employee or agent.

(2) In this Part, "agent", in relation to a registered fund or former registered fund whose affairs, business or property is or are investigated pursuant to section 28, includes any person who either is for the time being, or was at any material time, its banker, auditor, advocate and solicitor or other professional adviser.

(3) Any reference in paragraph 1(3)(c) to a body corporate includes a reference to a body corporate incorporated, established or otherwise constituted outside Brunei Darussalam.

Part 2

Direction under section 29 — Authority's consequential powers

4. (1) Where a direction under section 29 is for the time being in force, the Authority may, as regards the registered fund to which the direction relates, exercise such one or more of the following powers as may appear to the Authority to be necessary —

(a) by notice in writing require the manager of the fund forthwith to take any action or to do any act or thing whatsoever in relation to the fund's affairs, business or property (including a requirement imposing specified restrictions on conducting the business of the fund) as the Authority considers necessary in the circumstances and specifies in the notice;

(b) by notice in writing require that, until the notice is withdrawn, the manager, trustee or custodian of the fund shall seek advice on the conduct and management of its affairs, business and property from an adviser appointed by the Authority ("an appointed adviser") and named in the notice;

(c) by notice in writing require that, until the notice is withdrawn, the conduct and management of all or such of the affairs, business and property of the fund as

are specified in the notice shall be supervised by a person appointed for the purposes of this paragraph by the Authority ("an appointed supervisor") and named in the notice;

- (d) by notice in writing remove forthwith from office the manager of the fund and require the fund's trustee or custodian to nominate in writing, within a period specified in the notice, a person for appointment by the Authority to be the fund's manager instead (which appointment the Authority is hereby authorised to make);
- (e) attach additional conditions to the fund's mutual fund licence or permission or revoke or vary any conditions already so attached;
- (f) subject to the First Schedule, revoke the licence or permission mentioned in sub-paragraph (e),

and for the avoidance of doubt, if the Authority may appoint, as an appointed adviser or an appointed supervisor, a company, a partnership or two or more individuals.

(2) The Authority shall not give notice under sub-paragraph (1)(b) or (c) in respect of a registered fund in relation to which the High Court has made a winding-up order.

(3) The Authority may vary a notice given under sub-paragraph (1)(c) as regards the affairs, business or property specified in the notice, but the variation of such a notice shall not affect the validity of anything done before the variation.

(4) Where a notice given under sub-paragraph (1)(c) (whether varied or not) relates to a registered fund which is incorporated or otherwise established outside Brunei Darussalam, the notice shall only apply to —

- (a) so much of the affairs and business of the fund as are carried on, or managed or administered, in or from Brunei Darussalam; and
- (b) so much of the fund's property as is located in, or managed from, Brunei Darussalam; or is an asset of the fund's principal or other place of business in Brunei Darussalam.

(5) If a trustee or custodian fails to comply with the requirements of a notice under sub-paragraph (1)(d), the Authority may appoint a person to fill the office in question without regard to the trustee or custodian.

(6) The remuneration and reasonable expenses of an appointed adviser or an appointed supervisor shall be paid out of moneys at the disposal of the registered fund.

(7) A person who fails to comply with a notice under sub-paragraph (1)(a) or (b) shall be guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and to imprisonment for a term not exceeding one year.

Made this 5th. day of Syawal, 1421 Hijriah corresponding to the 1st. day of January, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 19

MUTUAL FUNDS ORDER, 2001

NOTIFICATION UNDER SECTION 1(1)

In exercise of the power conferred by section 1(1), the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby appoints the 1st. January, 2001 as the date on which the Mutual Funds Order, 2001 shall commence.

Dated this 24th. day of Syawal, 1421 Hijriah corresponding to the 20th. day of January, 2001.

DATO PADUKA HAJI YAKUB BIN ABU BAKAR
Permanent Secretary,
Ministry of Finance,

Brunei Darussalam.

