



## COLLECTIVE INVESTMENT SCHEMES LAW EXPLANATORY NOTE

### 1. INTRODUCTION

- 1.1 The draft Collective Investment Schemes Act (the "**Act**") is intended to introduce into Maldives law provisions relating to the establishment, operation, promotion and sale of collective investment schemes. The Act further provides for the regulation of all persons who act as manager or depositary of collective investment schemes which are licensed under the Act. The draft Collective Investment Schemes Regulations (the "**Regulations**"), to be passed by the CMDA pursuant to powers granted under the Act, introduce provisions relating to the operation of collective investment schemes established in the Maldives.
- 1.2 The Act will prohibit the establishment or operation of, or advertisement or provision of advice in respect of, collective investment schemes, however constituted, and whether open or close-ended, in the Maldives, unless the requisite licences are obtained under the Act (subject to certain limited exemptions).
- 1.3 The Act contemplates licensed collective investment schemes constituted as either:
- (a) unit trusts;
  - (b) open-ended investment companies; or
  - (c) close-ended investment companies.

### 2. STRUCTURE OF THE ACT AND POWERS OF CMDA

- 2.1 The Act empowers the Capital Market Development Authority of the Maldives (the "**CMDA**") to grant licences:
- (a) to collective investment schemes constituted as set out in paragraph 1.3 above ("**licensed schemes**"); and
  - (b) to persons wishing to act as manager or depositary of such schemes ("**CIS licensed persons**").
- 2.2 Establishing or operating an unlicensed collective investment scheme, or advertising or advising a person in the Maldives in respect of such an unlicensed collective investment scheme, would be an offence. Providing the services of manager or depositary to a scheme (licensed or unlicensed) without a licence would also be an offence.
- 2.3 The Act sets out the framework for the establishment and operation of collective investment schemes in the Maldives. It also empowers the CMDA to pass the Regulations and to develop further rules and regulations governing licensed schemes and CIS licensed persons.

### 3. DEFINITION OF COLLECTIVE INVESTMENT SCHEME

- 3.1 Section 3 of the Act defines a collective investment scheme as being "any arrangement with respect of property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement (the "participants"), whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income."
- 3.2 In order for arrangements to be a collective investment scheme, it is also necessary that:
- (a) the investors do not have day to day control over the management of the property in question;
  - (b) the arrangements involve either (or both) (i) the pooling of contributions and/or profits and/or income; and/or (ii) the management of the scheme property as a whole by or on behalf of the operator of the scheme; and
  - (c) the property belongs beneficially to, and is managed by or on behalf of, an investment company or trustee of a unit trust or other entity or arrangement having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that investment company or unit trust, entity or arrangement.
- 3.3 This definition is derived from the English law definition currently contained in the Financial Services and Markets Act 2000 ("FSMA")<sup>1</sup>. This definition has also been used or adapted for use in a number of other jurisdictions.
- 3.4 The definition in FSMA does not include the requirement set out in paragraph 3.2(c) above. Without this requirement, the definition is extremely broad, and would include many ordinary trading companies which should not in reality be subject to the law relating to collective investment schemes. Under FSMA, these companies are excluded from the broad definition by an exemption (which provides that any entity constituted as a close-ended company is not a collective investment scheme). Because the intention is to regulate close-ended investment companies in the Maldives, this exemption has not been used. Therefore the provision set out in paragraph 3.2(c) above is required instead in order to exclude ordinary trading companies from the definition. The wording in paragraph 3.2(c) is taken from section 236 of FSMA (the "property condition" applicable to open-ended investment companies in the UK).
- 3.5 The draft law caters for collective investment schemes whatever their underlying investments. The Act does not distinguish between collective investment schemes based on the types of assets in which they invest. The Regulations (described in section 7 of this note) provide that licensed schemes may only invest in certain types of property.

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<sup>1</sup> Section 235.

- 3.6 The definition of collective investment scheme excludes certain arrangements which have the characteristics of a collective investment scheme but which one would not expect to be dealt with by rules designed for the protection of investors. Again, the list of expressly excluded arrangements (set out in section 3(6) of the Act) is derived largely from a corresponding list developed for the UK<sup>2</sup> (although not all of the exemptions available in the UK have been used). In addition, we have specifically included an exemption (in paragraph (j)) which will allow the Maldives to be used as a jurisdiction for holding companies<sup>3</sup>. Consideration will need to be given as to whether there are other types of arrangements prevalent in the Maldives which could fall within the definition of collective investment schemes but which might properly be excluded from the requirements of the Act, and of the Act gives the CMDA flexibility to provide for further exclusions in the future.
- 3.7 Consideration will also need to be given to the treatment of collective investment schemes which are already in existence when the Act comes into force. The Act (section 7(4)) currently envisages that such schemes will have a period of time in which to apply for a licence (in the event that they failed to do so, they would be in breach of the Act).

#### 4. CIS STRUCTURES

- 4.1 The term CIS is a general term used to describe a number of different ways in which investors can pool contributions and invest collectively in certain investments.
- 4.2 The UK distinguishes between "regulated CIS", which can be established in the UK, are regulated by the Financial Services Authority ("FSA"), and can be sold to the public in the UK; and "unregulated CIS", which are not regulated by the FSA and therefore cannot be sold to the public in the UK. A regulated CIS in the UK takes one of two alternative forms:
- (a) the company form ("**investment companies**"); or
  - (b) the trust form ("**unit trusts**").
- 4.3 Other forms of CIS are available in the UK and certain other countries. For example, contractually based schemes are widely used in European jurisdictions such as Luxembourg, and limited partnership structures are widely used both in the UK and the US.
- 4.4 The Act caters for CISs formed as investment companies and unit trusts. It was determined that this would provide sufficient flexibility, and that the introduction of alternative structures such as a contractually based scheme or a limited partnership structure was not necessary at this time.
- 4.5 The Act will permit the establishment in the Maldives of investment companies that are either "open-ended" or "closed-ended", and unit trusts that are "open-ended".

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<sup>2</sup> Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001.

<sup>3</sup> For example, if the Maldives were to develop a double tax treaty with another jurisdiction which would mean that a fund investing in that second jurisdiction would benefit from doing so through a holding structure established in the Maldives, this would not require such holding structure to be licensed as a CIS.

- 4.6 An "open-ended" vehicle is one in which the investors are entitled to have their interests redeemed or repurchased at certain frequencies at a price related to the net value of the scheme property. All regulated CISs in the UK are required to be open-ended.
- 4.7 A "close-ended" vehicle is one which does not entitle its investors to have their interests redeemed or repurchased at a price related to the net value of the scheme property, or does not do so with the frequency required to make it "open-ended".
- 4.8 To our knowledge there is not much market for close-ended unit trusts. There is no precedent in the UK for such vehicles. Therefore we have determined at present to just provide for open-ended unit trusts. However, it was thought that failing to regulate close-ended companies would leave a gap in the regulatory regime in the Maldives. Therefore such companies fall to be regulated under the Act. Because such vehicles do not provide their investors with the ability to realise their investment at periodic intervals, we have provided instead that they must either list its shares on the Maldives stock exchange or any other stock exchange recognised for this purpose by the CMDA or provide for its winding up and distribution of proceeds within a set period of time<sup>4</sup>. We note that, although there are certain parallels in the UK, for example "investment trusts" which are investment companies listed in the UK which benefit from certain tax breaks, there is not any regulatory regime which is really comparable to that which we have put in place for close-ended investment companies in the Maldives. The main reason for this is that the tax regime in the UK, which would tax a close-ended company generally at the corporation tax rate (currently 30%) means there is no real market in the UK for such entities. Although we could have followed the regime for UK investment trusts, which are regulated largely by virtue of rules applicable to their required listing on the London Stock Exchange, we thought it more appropriate to establish the regime for close-ended investment companies in line with that for open-ended investment companies and unit trusts (provided that the detailed requirements regarding dealing in open-ended vehicles would not apply).

## **5. DIFFERENCES BETWEEN INVESTMENT COMPANIES AND UNIT TRUSTS**

- 5.1 Although the way in which investment companies and unit trusts will operate under the Act and Regulations is virtually the same, the legal form of these two forms of CIS are quite different.
- 5.2 In the case of an investment company, the investor buys shares in the investment company and the company in turn invests in assets. These assets are owned legally and beneficially by the investment company. The investment company will appoint a depositary to hold the assets on the company's behalf, and a manager who will have the responsibility of administering the investment company's funds and their investment in underlying assets.

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<sup>4</sup> UK law defines an open-ended company slightly differently than this. This is because UK law seeks to distinguish between close-ended and open-ended investment companies for the purposes of whether they fall within the CIS regulatory regime at all, and therefore requires a wider definition of an open-ended investment company. In the current case, where both are regulated, there is no requirement for such a distinction. Rather, the requirement is that the scheme either offers frequent redemptions as set out in the Regulations or, if it doesn't, that it provides liquidity by either listing or being of a defined life.

- 5.3 In the case of a unit trust, the investor contributes to a pool of funds which is held on trust for the investors by a trustee and is governed by the terms of a trust deed. The trustee will then invest in the underlying investments. The trust deed will also appoint a manager (usually a management company) who will have the responsibility of administering the collection of the funds and their investment in underlying assets. The investors have a proportionate beneficial interest in the investments of the scheme, those interests usually being called “units”.
- 5.4 Unit trusts and investment companies differ in important respects:
- (a) A unit trust is not a separate corporate entity. An investment company is a distinct legal entity that is separate from its members and those who manage the company.
  - (b) In a unit trust, the scheme property is held by a trustee on trust for unitholders. The unitholders are regarded as equitable owners of the property which the unit trust invests in, in shares proportional to the number of units held. An investment company has legal title to the scheme’s property; members are not regarded as having any legal or equitable interest in the property itself.
  - (c) A trust, unlike a company, cannot sue or be sued as a separate entity.
  - (d) Members of a company have limited liability. Investors in a unit trust scheme will have limited liability only if the trust deed constituting the unit trust so provides. However, it will be a requirement of any licensed unit trust in the Maldives that it does so.

## 6. **CURRENT POSITION IN THE MALDIVES**

- 6.1 As the law stands at the present time, we understand that there is nothing to prevent any persons from setting up a close-ended investment company in the Maldives under the Companies Act and that Investment Partners have established such a company to acquire units in an investment fund comprised of Leasing Company shares held by Investment Partners. It is important that legislation be introduced to clarify the status of such a fund. We have taken the view that such companies (i.e. close-ended investment companies) should be incorporated under the CIS Act, rather than the Companies Act. This will mean that all types of CIS are incorporated/established and governed by the CIS laws, rather than a combination of the Companies Act and the CIS laws (which may be more confusing).
- 6.2 Open-ended investment companies cannot be organised under the Companies Act. This is because the existing Maldives Companies Act, owing to its prohibition on the reduction of capital, does not provide a framework for the operation of open-ended investment companies. The Maldives shares this limitation with the law in most Commonwealth jurisdictions which also have the rule that in general a company may not purchase its own shares. It is this rule which inhibited the development in Commonwealth jurisdictions of the type of investment company referred to in the United States of America as open-ended investment trust companies or mutual funds. Instead, the mechanism of the unit trust had to be resorted to in these jurisdictions in order to arrive at the same result. To provide a legal foundation for the establishment of open-ended investment companies in the Maldives, therefore, the Act enables an

open-ended CIS to be registered as a company under the Act with the power to purchase or redeem its own shares without infringing the prohibition on the reduction of capital.

- 6.3 We understand that there is no law currently permitting the establishment of unit trusts in the Maldives, and so the Act also provides a legal foundation for the establishment of unit trusts.
- 6.4 The intention has been to make the provisions relating to the establishment and operation of a unit trust and an investment company, in so far as they relate to e.g. investor protections, depositary/manager responsibilities etc, as similar as possible. The result of this may be that, absent any distinction in terms of tax and investor perception, the investment company becomes the favoured vehicle (mainly because a company is a more familiar structure to most investors/sponsors)<sup>5</sup>.
- 6.5 The Act also defines the concept of an umbrella scheme: these are schemes which maintain a series of segregated investment portfolios with different investors participating in different portfolios but all under the "umbrella" of one common trust arrangement or investment company. It should be noted that these investment portfolios are not legally segregated, so absent any agreement with counterparties/creditors to the contrary, to the extent that one sub-fund has insufficient assets to meet its liabilities, the assets of the other sub-funds could be used to meet those liabilities. This is in common with the UK law at present. Certain jurisdictions (notably Luxembourg and Ireland) have recently amended their laws to provide for legal segregation of sub-funds. Other jurisdictions (notably Jersey and the Cayman Islands) have recently enacted law providing for segregated portfolio companies, where companies established pursuant to a certain specific regime will have segregated cells. In due course this may be considered suitable for the Maldives. However, it would be sensible to wait to see if there is appetite for this, rather than introduce an additional complexity at this stage. In any case, unless funds make heavy use of derivatives, leverage or short selling (which are currently restricted), there will be little risk of one sub-fund's assets being insufficient to meet its liabilities.

## 7. **PRINCIPAL PARTIES AND THEIR ROLES**

- 7.1 Under the Act, a unit trust must comprise a separate licensed trustee and licensed manager (both of whom will be appointed by the trust deed constituting the unit trust). The trustee will hold the property of the scheme on trust for the beneficiaries (although, in practice, the trustee may delegate this task in whole or in part to a custodian or nominee). The manager will manage the affairs of the scheme and the assets of the scheme. A manager may (but is not obliged to) appoint a separate investment adviser or investment manager to assist in the management of the scheme's investment portfolio.
- 7.2 Under the Act an investment company must appoint a licensed depositary and a separate licensed corporate director (to act as its manager). The depositary shall hold

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<sup>5</sup> Whilst the unit trust is still popular in the UK, this is mainly for historic reasons (due to the relatively recent introduction of laws permitting the establishment of open-ended investment companies, compared to a long-developed trusts law).

the property of the scheme on behalf of the investment company (its role is similar to that of a trustee of a unit trust but in the case of an investment company, the depository holds the property for the company, whereas in the case of a unit trust the trustee holds the property directly for the benefit of unitholders). Again, in practice, a depository may delegate to a custodian the job of actually holding the scheme property. The corporate director (or "ACD") of an investment company has broadly the same role as the "manager" of a unit trust; it would have the principal authority to manage the scheme assets although, as with a manager, it may have the power to appoint investment advisers or investment managers to assist.

- 7.3 In the UK authorised investment companies may have other directors, in addition to the ACD. However, in practice the only director is usually the ACD (and if any individuals want to take on a role as effectively directing the investment company, they become directors of the ACD, rather than of the company itself). It was therefore determined, for simplicity's sake, to provide for all investment companies in the Maldives to have just one director, the ACD.
- 7.4 In the Act, the trustee of a unit trust and the depository of an investment company are both referred to as the "depository", and the manager of a unit trust and the ACD of an investment company are both referred to as the "manager".
- 7.5 The depository must always be a Maldives licensed bank.

## 8. **SUMMARY OF SUBSTANTIVE PROVISIONS OF THE ACT**

### 8.1 **Part II: the basic prohibition**

- (a) Part II of the Act contains the basic prohibitions on:
- (i) establishing or operating a collective investment scheme in the Maldives or acting as a depository or manager of a collective investment scheme in the Maldives unless that person is a CIS licensed person and the scheme is a licensed scheme;
  - (ii) advertising a scheme in the Maldives, unless it is a licensed scheme and the person issuing the advertisement is a CIS licensed person; and
  - (iii) advising any person in the Maldives to invest in a collective investment scheme unless that person is a CIS licensed person or an investment adviser authorised under the Securities Act and the scheme is a licensed scheme or a recognised scheme.
- (b) Contravention of the basic prohibitions is an offence (liable to a fine or imprisonment) and any arrangements entered into in contravention of the basic prohibition can be set aside. Furthermore a court can issue such injunctions and restriction orders as may be appropriate in respect of unlicensed persons.
- (c) The Act gives the CMDA the ability to pass regulations to the effect that the basic prohibition does not apply to certain categories of scheme, allowing it flexibility in the future to, e.g., establish a separate regime for schemes aimed solely at sophisticated institutional investors. In addition, where a scheme is to

be marketed solely to investors outside the Maldives, the CMDA has the flexibility to permit it to be established without requiring a licence.

## 8.2 **Part III: CIS licensed persons**

- (a) Part III of the Act deals with the licensing of persons who wish to act as the depository or manager of a licensed scheme. Only body corporates incorporated in the Maldives may obtain licences.
- (b) The CMDA is responsible for issuing these licences. The CMDA shall only grant a licence if it considers that the directors, controllers and other principal persons of the applicant are fit and proper persons to carry on the activities specified in the application.
- (c) The CMDA has six months in which to determine whether to grant or refuse a licence.
- (d) If it is intended to refuse an application for (or attach any conditions to) a licence, the CMDA must inform the applicant of its intention on which the applicant may, generally, withdraw his application or may make further representations to the CMDA or, to which the CMDA must pay due regard before making a final determination.

## 8.3 **Part IV: licensed schemes**

- (a) Part IV of the Act deals with the licensing of collective investment schemes established in the Maldives. The CMDA is responsible for issuing these licences. The CMDA will only issue a licence in respect of a collective investment scheme if it fulfils the criteria specified in the Act. These criteria include:
  - (i) that the manager and depository of the scheme are independent of each other;
  - (ii) that the manager and depository are each CIS licensed persons established in the Maldives;
  - (iii) that the scheme complies with the requirements specified in the Regulations;
  - (iv) that the name of the scheme is not undesirable or misleading;
  - (v) that the aims of the scheme are reasonably capable of being achieved;
  - (vi) in the case of a unit trust, that the investors are entitled to have their units redeemed in accordance with the constitutive of documents at a price related to the net asset value of the scheme;
  - (vii) in the case of an investment company, that either (A) the investors are entitled to have their units redeemed in accordance with the constitutive of documents at a price related to the net asset value of the scheme; or (B) its units are listed on a recognised stock exchange or it

is incorporated for a set period of time after which the scheme will be wound up and the proceeds distributed to the participants.

- (b) Again, where the CMDA proposes to refuse an application or attach any conditions to it, it shall provide the applicant with written notice of its intention to do so, thereby enabling the applicants to make written or oral representations.
- (c) The CMDA has six months in which to determine whether to grant or refuse a license.

#### 8.4 **Part V: Establishment of investment companies and unit trusts**

- (a) Part V of the law deals with specific procedural matters relating to the incorporation and registration with the Companies Registrar of investment companies, and the establishment of unit trusts.
- (b) Pursuant to this part, an investment company will come into existence on the granting of a licence by the CMDA, and the CMDA will be responsible for providing details relating to the scheme to the Registrar of Companies, so that details of the company can be included in the register.
- (c) The provisions of the Companies Act will not apply to investment companies, except as specifically set out in section 20(6).

#### 8.5 **Part VI: Recognition of foreign schemes**

- (a) Part VI allows the CMDA to recognise certain collective investment schemes established outside the Maldives, so that they can be advertised or promoted to investors in the Maldives without breaching the basic prohibition set out in Part II. This would have to be dealt with by way of separate CIS regulation (not provided in the current draft Regulations).

#### 8.6 **Part VII: Fees**

- (a) Part VII empowers the CMDA to levy both application and on-going annual fees on licensed CIS persons and licensed schemes. The specific fees would need to be set out by the CMDA in separate regulations (not provided in the current draft Regulations).

#### 8.7 **Part VIII: General controls**

- (a) Part VII of the Act empowers the CMDA to make regulations as to:
  - (i) the constitution and management of licensed schemes and the contents of constitutive documents of licensed schemes;
  - (ii) the publication and contents of the prospectus of licensed schemes;
  - (iii) the powers, obligations and duties of CIS licensed persons, including regulations relating to the conduct of business and the financial resources to be maintained;

- (iv) the rights and obligations of the unitholders in any licensed scheme;
  - (v) the nature of records to be maintained pursuant to this Act;
  - (vi) the winding up of a licensed scheme; and
  - (vii) any other matter that this Act contemplates may be provided for by CIS regulations passed by the CMDA.
- (b) This part also empowers the CMDA to issue statements of principal and codes of practice to which persons involved in licensed activities should adhere to.
- (c) The draft Regulations should be brought into force at the outset, in order to provide clarity and the required protections regarding the operation of CISs in the Maldives. We have tried to keep these Regulations simple (in so far as that is possible without removing any required protections). It may be appropriate to adopt additional regulations, or amend/update these regulations in the future.

## 8.8 **Part IX: Powers of Intervention**

- (a) Part IX of the Act provides various powers of intervention to the CMDA. In particular it is authorised to withdraw or suspend (or attach conditions to) licences in certain circumstances - notably where the person has contravened any provision of the Act or the CMDA regards the holder of the licence as no longer being a fit and proper person. There is a right of appeal against any revocation or suspension of a licence.
- (b) The Act also enables the CMDA to specify certain persons as not being fit or proper persons to be employed by a licensed CIS person.
- (c) The CMDA may prohibit licensed persons from engaging in certain types of transaction or business, or soliciting business from certain specified countries.
- (d) This section also enables the CMDA to apply to court for an injunction or restriction order in the event that the CMDA considers a contravention of the Act is likely or where it otherwise considers it appropriate.
- (e) The CMDA may also revoke a licence in respect of a licensed scheme or direct that any recognised scheme should no longer be recognised.
- (f) Where appropriate the CMDA is also given the ability to give directions e.g. to the effect that a licensed scheme should cease to issue or redeem units; or that any licensed scheme should be wound up; or, in the case of an umbrella scheme, that one or more of its constitutive sub-funds should be wound up.
- (g) Breach of the Act is actionable at the suit of a person who suffers loss as a result of the contravention.
- (h) A duty is imposed on the CMDA to assist foreign regulators in the performance of their responsibilities and duties.

## 8.9 **Part X: Winding up**

- (a) Part X of the Act deals with the winding up of collective investment schemes. In essence, either the CMDA or the depository, manager or Investors of a scheme may petition a court to wind up the scheme.
- (b) Additional provisions relating to solvent winding up are set out in the Regulations.
- (c) It has not been within the scope of this project for us to review the insolvency regime in the Maldives in general, and we have assumed that this would deal with the insolvent liquidation of such schemes.

## 8.10 **Part XI: Investigations**

- (a) Part XI of the Act provides for the CMDA to appoint an investigator to investigate the affairs of any CIS licensed person or licensed scheme in the event that it thinks it would be in the public interest to do so. Such an investigator would have certain powers to require disclosure to it of certain information and documentations.

## 8.11 **Part XII: Information**

- (a) Part XII of the Act deals with the maintenance of books and records; in particular the CMDA will maintain a CIS register containing details of CIS licensed persons and licensed schemes, and that register will be open to public inspection.

## 8.12 **Part XIII: Restrictions on disclosure**

- (a) Part XIII of the Act provides CIS licensed persons and applicants with certain protections from disclosure of confidential information supplied by such persons to the CMDA or its representatives in connection with any application, etc. However disclosures can be made in connection with various matters and, in particular, can be made to foreign regulators.

### 8.13 **Part XIV: Miscellaneous and supplementary**

- (a) Part XIV of the Act deals with certain miscellaneous and supplementary matters.

## 9. **SUMMARY OF SUBSTANTIVE PROVISIONS OF THE CIS REGULATIONS**

9.1 The draft Regulations are intended to provide further operational detail relating to matters dealt with in the Act, and the text has principally been drafted as a simplified version of the UK Financial Services Authority's Collective Investment Schemes Sourcebook ("**COLL**").

9.2 The Regulations contain a number of separate Schedules; the intention being that the CMDA can bring each of these Schedules into force together, or separately, as it sees fit. However, we would advise that all of the initial Schedules set out in the draft Regulations are brought into effect at the same time as the Act.

9.3 A summary of each of the schedules is set out below.

### 9.4 **Schedule 1: Constitutive document**

- (a) Schedule 1 provides that the constitutive documents of a licensed scheme may not contain any provision which is in conflict with the Act or the Regulations, or which is unfairly prejudicial to the interests of unitholders generally, or to the unitholders of any class of units.
- (b) Schedule 1 also sets out a list of information which must be included in a licensed scheme's constitutive document.
- (c) The requirements of Schedule 1 have been taken from the UK Open-ended Investment Company Regulations 2001 and Chapter 3 of COLL.

### 9.5 **Schedule 2: Fit and proper persons**

- (a) Schedule 2 sets out certain considerations which the CMDA will apply in considering whether the directors, shareholders and other principal persons of an applicant for a CIS licence is fit and proper to carry out that function

### 9.6 **Schedule 3: Prospectus requirements and other promotional documents**

- (a) Schedule 3 sets out the requirement for each licensed scheme to publish a document containing information about the scheme and complying with the requirements of Schedule 3. Schedule 3 includes a list of information which must be contained in this document.
- (b) Schedule 3 also includes some general provisions relating to past performance information and the requirement for the prospectus and any other communication by the manager and the depositary to be clear, fair and not misleading.

- (c) The requirements of Schedule 3 have been taken from Chapter 4 of COLL and Chapter 4 of the FSA's Conduct of Business Sourcebook ("COBS").

#### 9.7 **Schedule 4: Units**

- (a) Schedule 4 sets out certain requirements relating to licensed schemes which have more than one class of units in issue.
- (b) The provisions of Schedule 4 have been taken from Chapter 4 of COLL. The provisions of COLL providing for bearer shares have not been copied (to simplify the rules).

#### 9.8 **Schedule 5: Meetings**

- (a) Schedule 5 sets out certain requirements regarding the holding of meetings by licensed schemes and the ability of unitholders to requisition meetings, plus the procedures to be followed at such meetings.
- (b) The provisions of Schedule 5 have been taken from Chapter 4.4 of COLL.

#### 9.9 **Schedule 6: Reports and accounts**

- (a) Schedule 6 sets out certain requirements regarding the preparation and distribution of reports and accounts by the manager of a licensed scheme. It includes the required minimum contents of reports.
- (b) The provisions of Schedule 6 have been taken from Chapter 4.5 of COLL.

#### 9.10 **Schedule 7: Investment and borrowing powers**

- (a) Schedule 7 sets out certain restrictions on the investment and borrowing powers of licensed schemes.
- (b) This Schedule does not provide for different category of schemes, rather it sets out some general requirements. The CDMA has the power under section 5 of the Regulations to disapply these rules in respect of certain schemes.
- (c) The categories of investment in which schemes may invest, any concentration limits, and the ability of schemes to use derivatives, remain to be discussed.

#### 9.11 **Schedule 8: Operating duties and responsibilities**

- (a) Schedule 8 contains provisions dealing with:
  - (i) Dealing (from Chapter 6.2 of COLL): including procedures for the issue and cancellation of units; including a requirement for daily liquidity, unless the scheme is adopting "limited redemption" or "deferred redemption" arrangements. The provisions of COLL providing for in specie redemptions have not been copied (to simplify the rules);

- (ii) Valuation and pricing (from Chapter 6.3 of COLL): providing for all licensed schemes to be valued at least twice a month (unless it is operating limited redemption arrangements) and to be priced on a single-priced, forward basis (including provisions for the imposition of a dilution levy or dilution adjustment as provided for in the prospectus);
- (iii) Title and registers (from Chapter 6.4 of COLL): requiring either the manager or the depositary to maintain a register of unitholders; provisions for the transfer of units; and the conversion of units from one class to another;
- (iv) Appointment and replacement of manager and depositary (from Chapter 6.5 of COLL): procedures for the appointment of the ACD of an investment company (the manager of a unit trust being appointed in the trust deed itself); retirement/termination of appointment of a manager or depositary;
- (v) Rights and duties of manager and depositary (from Chapter 6.6 of COLL, with the duties of the depositary in relation to the safekeeping of the scheme property have been taken from the FSA's Client Assets Sourcebook): including the functions of the manager and the depositary; the maintenance of records; the requirement to appoint an auditor; the obligations of the manager and depositary in respect of the investment powers of the scheme; delegation of functions; conflicts of interest; charges on the sale and redemption of units and payments out of scheme property; and the duties of the depositary in relation to the safekeeping of the scheme's property;

#### 9.12 **Schedule 9: Suspension of dealings and winding up of a solvent scheme**

- (a) The provisions of Schedule 9 have been taken from Chapter 7 of COLL.
- (b) The provisions of COLL provide slightly different regimes for winding up unit trusts and investment companies. For simplicity, we have provided a single regime for both.

### 10. **CMDA REGULATION MAKING POWERS**

The following substantive issues may be considered by the CMDA following introduction of the Act in connection with their Regulation Making Powers:

#### (a) **Private and Professional Schemes**

- (i) The Act empowers the CMDA to provide regulations which would disapply the Act for schemes that have been set up only for "professional" or large investors and/or where the number of investors in a scheme is limited to a specified number. In addition it provides that the CMDA may attach conditions to any license granted to a CIS. Thus the CMDA could licence certain schemes just for sale to certain numbers or categories of investor. The Regulations provide that the

CMDA may disapply certain regulations to certain schemes, and this could be done on an ad hoc basis or by reference to schemes of a certain sort.

- (ii) Many jurisdictions include provisions for professional only funds which are subject to much lighter regulation but which can only be sold to certain categories of investor - notably expert investors and professional investors. Thus, recently, the UK introduced the concept of a qualifying investor scheme (or "QIS"). This scheme is subject to much less regulation in terms of its investment policy and restrictions but can only be sold to certain categories of investor. Likewise, jurisdictions such as Luxembourg, the Channel Islands, Ireland, Bermuda and other well known CIS jurisdictions have a special regime for so-called professional or expert funds.

(b) **Scope of Collective Investment Scheme definition**

Consideration should be given as to whether the proposed exclusions from the definition of collective investment scheme are appropriate, and as to whether there are any other prevalent arrangements in the Maldives which should be properly carved out of the definition.

(c) **Criteria for acting as depositary or manager**

Consideration may be given to minimum qualification criteria for persons to become CIS licensed persons under the Act. To what extent should this be purely discretionary in the hands of the CMDA, and to what extent should objective criteria be specified? Schedule 2 of the Regulations set out certain factors to be considered in determining the criteria for fit and proper persons, but the CMDA may want to determine greater details as to capital requirements, professional qualifications, etc.

**Osborne Clarke**  
**6 June 2008**