

RULES APPLICABLE TO MANAGING COMPANIES

THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA ACT, NO. 19 OF 2021

RULES made by the Securities and Exchange Commission of Sri Lanka, in terms of Section 183 of the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021.

VIRAJ DAYARATNE PC

Chairman

Securities and Exchange Commission of Sri Lanka.

Colombo,
15th March, 2022.

Rules

These Rules may be cited as the Rules applicable to Managing Companies.

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| General interpretation | <p>1. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021 shall unless the context requires otherwise have the same meaning assigned to them in the said Act:</p> <p>“Collective Investment Scheme (CIS)” shall have the same meaning as defined in Section 188 of the SEC Act;</p> <p>For the avoidance of doubt Unit Trusts established and in operation in terms of the SEC Act, No. 36 of 1987 as amended shall come under this definition;</p> <p>“Collective Investment Scheme Code (CIS Code)” shall mean the CIS Code issued by the Commission and published in the <i>Gazette</i> and applicable to all Collective Investment Schemes established in terms of the SEC Act;</p> <p>“Commission” means the Securities and Exchange Commission of Sri Lanka established in terms of the SEC Act;</p> <p>“Custodian” shall mean a person referred to as a ‘Professional Participant’ in the CIS Code and acting as a Custodian of a CIS;</p> <p>“Key Investor Information Document (KIID)” means a written statement that discloses the terms of the offering of a CIS;</p> <p>“Key Management Person” means directors (executive or otherwise) and shall include alternate directors, a chief executive officer, a compliance officer and persons having authority and responsibility for planning, directing and controlling the activities of a company/entity either directly or indirectly;</p> <p>“Managing Company” shall have the same meaning as defined in Section 188 of the SEC Act;</p> |
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| | <p>“Related Person” means in relation to a Trustee or the Managing Company of a Collective Investment Scheme:</p> <ul style="list-style-type: none"> (a) a person owning twenty per centum (20%) or more of the ordinary share capital of the Trustee or the Managing Company directly or indirectly; (b) a person exercising twenty per centum (20%) or more of the total votes of the Trustee or the Managing Company voting rights directly or indirectly; (c) a corporate entity where twenty per centum (20%) or more of the ordinary share capital of the corporate entity is held by the Trustee or the Managing Company directly or indirectly; (d) a corporate entity where twenty per centum (20%) or more of voting rights of the total votes exercised by the Trustee or the Managing Company directly or indirectly; (e) a corporate entity where twenty per centum (20%) or more of the ordinary share capital of the corporate entity is held together by the Trustee and the Managing Company directly or indirectly; (f) a corporate entity where twenty per centum (20%) or more of voting rights of the total votes are exercised together by the Trustee and the Managing Company directly or indirectly; (g) a Key Management Person of the Trustee or the Managing Company of a CIS. <p>“SEC Act” means the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;</p> <p>“Shareholders’ Funds” means the amount of equity of the entity, which belongs to the shareholders of the entity;</p> <p>“Trustee” shall mean a person referred to as a ‘Professional Participant’ in the CIS Code and acting as a Trustee of a CIS;</p> <p>“Unit Holder” shall have the same meaning as defined in the Collective Investment Scheme Code.</p> |
| <p>Applicability</p> | <p>2. The Rules set out herein shall apply to a Managing Company licensed under the SEC Act.</p> <p>3. Every Managing Company shall comply with:</p> <ul style="list-style-type: none"> (a) the Rules set out herein, the provisions of the CIS Code and any amendments made thereto; (b) provisions of the SEC Act; (c) directives issued from time to time by the Commission; and (d) Rules issued by the Commission relating to Fitness and Propriety of a Key Management Person of a Market Intermediary as spelt out in Schedule II of these Rules. |
| <p>Requirement for a licence</p> | <p>4. No entity shall engage in the function of a Managing Company of a CIS without having first obtained a licence from the Commission.</p> <p>5. The period of validity of a licence granted to a Managing Company shall be twelve (12) months.</p> |

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| <p>Procedure to obtain a licence</p> | <p>6. The grant of a licence to a Managing Company shall be a two (2) stage process. An applicant may in the first instance apply for in-principle approval upon satisfying the requirements as set out in (a) hereof and after having obtained in-principle approval may thereafter apply for final approval upon satisfying the requirements as set out in (b) hereof:</p> <p>(a) In order to obtain in-principle approval an applicant shall submit to the Commission:</p> <ol style="list-style-type: none">i. a duly completed application form according to the specimen provided on the website of the Commission along with the supporting documents mentioned therein;ii. the certificate of incorporation of the Managing Company;iii. the shareholding structure;iv. names of directors;v. the organizational chart and the group structure including details of Related Persons;vi. documents outlining the business model to carry on the functions of a Managing Company;vii. licence/registration status of any other regulated activities;viii. audited financial statements and if such statements are not available, the audited interim financial statements;ix. names of the Key Management Persons if they have been identified;x. a declaration by the applicant as per the specimen in Schedule I of these Rules;xi. a copy of the internal compliance manual as set out in Schedule IV of these Rules;xii. documentation in support of measures taken to acquire an information processing system as stated in Rule 26 of these Rules;xiii. documentation in support of steps taken to recruit adequate human resources to effectively discharge the obligations in keeping with the identified organizational structure of the applicant; andxiv. the fee payable for processing the application for in-principle approval specified by way of regulations made by the Minister from time to time. <p>(b) No later than six (6) months from the date of obtaining in-principle approval, the applicant shall fulfill the following requirements and submit the following documents as proof thereof in order to obtain the licence:</p> <ol style="list-style-type: none">i. confirmation from the auditor that the applicant has met the requirements as spelt out in Rule 22 (a) of these Rules; |
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| | <ul style="list-style-type: none"> ii. declarations by Key Management Persons and persons making investment decisions on behalf of Unit Holders relating to their fitness and propriety to hold such office in terms of the Fitness and Propriety of a Key Management Person of a Market Intermediary as contained in Schedule II of these Rules. Such declaration shall be in the form of an affidavit prepared in accordance with the specimen provided in Schedule III of these Rules; iii. a confirmation from the chief executive officer and a director of the Managing Company confirming the implementation of an information processing system as stated in Rule 26 of these Rules; iv. a confirmation from the chief executive officer and a director of the Managing Company confirming the recruitment of adequate human resources along with their names and designations; v. a copy of the application form to be used for the subscription of units by prospective Unit Holders of the CIS to be established; vi. names of members of the investment committee; vii. a copy of the draft trust deed in respect of the CIS proposed to be established; viii. details of the Custodian and its consent to function as a Custodian of the CIS proposed to be established; ix. a copy of the proposed KIID of the CIS to be established; x. name of the intended Trustee and its consent to function as a Trustee of the CIS to be established; and xi. the licence fee specified by way of regulations made by the Minister from time to time. <p>7. It shall be the duty of the Managing Company to notify the Commission and obtain its prior consent of any change in particulars contained in an application to be licensed as a Managing Company.</p> <p>8. The Commission may refuse an application made to be licensed as a Managing Company on any of the grounds morefully set out in Section 95 of the SEC Act.</p> |
| <p>Obtaining approval of the Commission to establish a CIS</p> | <p>9. In order to establish, manage, operate and market a CIS, a Managing Company shall obtain the prior written approval of the Commission. An application for such approval shall be in accordance with the specimen provided on the website of the Commission.</p> |

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| | <p>10. In establishing, managing, operating and marketing a CIS, a Managing Company shall comply with the provisions contained in the CIS Code.</p> <p>11. In establishing, managing, operating and marketing a CIS, a Managing Company shall ensure that:</p> <ul style="list-style-type: none">(a) the Trustee and the Managing Company are separate persons;(b) the Custodian and the Managing Company are separate persons;(c) the Trustee is not a Related Person of the Managing Company;(d) the KIID (and any amendments thereto) has been approved by the Commission;(e) the Trustee has been approved by the Commission;(f) approval of the Trustee has been obtained for the KIID; and(g) the trust deed between the Managing Company and the Trustee has been approved by the Commission. <p>12. In the event a Managing Company licensed by a regulatory authority of a country other than Sri Lanka intends to market a CIS in Sri Lanka, it shall provide the following documents to obtain approval to market such CIS:</p> <ul style="list-style-type: none">(a) a duly completed application form according to the specimen provided on the website of the Commission along with the supporting documents set out therein;(b) a copy of the licence granted by the foreign regulatory authority along with copies of documents submitted to obtain such licence;(c) copies of any approvals obtained from the Central Bank of Sri Lanka under the Foreign Exchange Act, No.12 of 2017; and(d) any other information that the Commission may deem necessary. <p>13. The fee payable in respect of obtaining approval for a CIS shall be specified by way of regulations made by the Minister from time to time.</p> <p>* For the avoidance of doubt, any Unit Trust which has been licensed by the Commission in terms of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 and which licence is valid at the time of the introduction of these Rules shall not be required to obtain the approval of the Commission in terms of Rule 9 herein. The licence so granted shall be construed as the approval referred to herein.</p> |
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| <p>Renewal of a licence</p> | <p>14. A Managing Company shall submit an application for renewal of its licence three (3) months prior to the expiry of the licence along with the renewal fee.</p> <p>15. An application for renewal shall be in the format provided by the Commission on its website along with the supporting documents mentioned therein.</p> <p>16. A Managing Company who fails to submit an application for renewal within the aforesaid time period shall be charged a late fee as prescribed by way of regulations made by the Minister from time to time.</p> <p>17. In the event the licence of a Managing Company expires as a result of a Managing Company failing to take steps to renew it, the provisions contained in Clause 16 (3) (e) of the CIS Code shall apply.</p> <p>18. A Managing Company which has neither taken steps to voluntarily terminate its appointment in the manner provided under the CIS Code nor taken steps to renew its licence in terms of these Rules shall not be entitled to the grant of a new licence as a Managing Company.</p> <p>This disqualification shall also apply to a company whose board of directors comprises of any individual(s) who functioned as a director(s) of the company which has failed to have its licence renewed as aforesaid.</p> <p>19. It shall be the duty of the Managing Company to notify the Commission and obtain its prior consent of any change in particulars specified in an application for the renewal of licence as a Managing Company.</p> <p>20. The Commission may refuse an application made for the renewal of a licence as a Managing Company on any of the grounds morefully set out in Section 95 of the SEC Act.</p> |
| <p>Licensing fee</p> | <p>21. A Managing Company shall pay such licensing fee as prescribed by way of regulations made by the Minister from time to time.</p> |
| <p>Minimum financial requirements and submission of reports</p> | <p>22. A Managing Company shall:</p> <ul style="list-style-type: none"> (a) at all times maintain minimum Shareholders' Funds as determined by the Commission from time to time; (b) inform the Commission immediately if Shareholders' Funds fall below the requirement as stipulated in Rule 22 (a) above; (c) not carry on its activities as a Managing Company if the minimum financial requirements as determined by the Commission are not met, unless the prior written approval of the Commission is obtained. <p>23. A Managing Company shall provide the following information as set out below to the Commission:</p> <ul style="list-style-type: none"> (a) financial statements prepared monthly in conformity with the Sri Lanka Accounting Standards signed by a director and the chief executive officer before the twentieth (20th) day of the following month; |

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| | <p>(b) a copy of the statement of audited accounts prepared annually in accordance with the Sri Lanka Accounting Standards and audited in accordance with the Sri Lanka Auditing Standards within a period of four (4) months from the close of each financial year.</p> <p>24. A Managing Company shall, within three (3) months from the date of the auditor's report or any additional period of time permitted by the Commission, take steps to rectify the deficiencies if any, made out in the auditor's report, in so far as they relate to the activity of managing investments.</p> |
| <p>Change in shareholding of a Managing Company</p> | <p>25. A change in the shareholding of twenty per centum (20%) or more of the total shareholding of a Managing Company shall be made only with prior consent of the Commission.</p> |
| <p>Infrastructure and related requirements</p> | <p>26. A Managing Company shall at all times:</p> <p>(a) maintain proper systems including information technology processes and human resources suitable and adequate to support the proper conduct of its business as a Managing Company;</p> <p>(b) ensure that an effective system of functional barriers is in place to prevent the flow of information that may be confidential and/or price sensitive to persons not entitled to receive such information; and</p> <p>(c) have appropriate information recording and retrieval systems and maintain such information for inspection by the Commission.</p> |
| <p>Qualifications and experience of A person making investment decisions on behalf of Unit Holders</p> | <p>27. Any person who on behalf of a Managing Company is involved making decisions for a CIS shall possess the qualifications set out in sub section (a) and the experience set out in subsection (b) or possess the experience set out in subsection (c):</p> <p>(a)</p> <p>(i) a degree from a recognized university in the fields of Finance, Accountancy, Business Administration, Commerce and Economics;</p> <p>(ii) Member/Associate of a professional body of Accountants recognized by the International Federation of Accountants;</p> <p>(iii) Chartered Financial Analyst;</p> <p>(iv) Associate of the Chartered Institute of Bankers;</p> <p>(v) Associate of the Institute of Bankers of Sri Lanka;</p> <p>(vi) Associate of the Chartered Institute for Securities and Investments;</p> <p>(vii) any other professional and/or academic qualification acceptable to the Commission;</p> <p style="text-align: center;"><i>and</i></p> <p>(b) experience in the financial/securities market for a minimum period of two (2) years. The Commission shall consider the relevance, nature, the scope and experience in determining such adequacy;</p> <p style="text-align: center;"><i>or</i></p> <p>(c) experience in the financial/securities market for a minimum period of seven (7) years. The Commission shall consider relevance, nature, scope and experience gained in determining its adequacy.</p> |

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| <p>Requirement for a minimum number of persons on behalf of Unit Holders making investment decisions</p> | <p>28. A Managing Company shall ensure that a minimum of two (2) persons possessing qualifications and/or experience as set out in these Rules are employed by the Managing Company to make investment decisions in accordance with the investment objective and policy set out in the KIID and the trust deed of the CIS and to deal with Unit Holders.</p> <p>29. Any person who on behalf of a Managing Company is involved in making investment decisions for a CIS shall not make investment decisions of any other licensed/approved business activity of the entity unless prior written approval of the Commission is obtained.</p> <p>30. Any person who on behalf of a Managing Company is involved in making investment decision for a CIS and any person engaged in the process of marketing a CIS shall follow Continuous Professional Development (CPD) programmes conducted by the Commission on an annual basis.</p> <p>31. The Commission may direct the Managing Company to vary the number of such qualified personnel on account of the volume of business proposed to be undertaken or currently undertaken by such Managing Company.</p> |
| <p>Managing Company dealing with Unit Holders</p> | <p>32. A Managing Company and all individuals who deal with Unit Holders of the CIS shall:</p> <p>(a) ensure that transactions carried out on behalf of the CIS are in accordance with the objectives, investment strategy, investment parameters, risk profile and other provisions contained in the KIID, the SEC Act, these Rules and the CIS Code; and</p> <p>(b) refrain from intentionally carrying out transactions (cross trades) between its own accounts, personal accounts of its employees, private portfolio accounts and the CIS.</p> |
| <p>Functions, duties and general business obligations of a Managing Company</p> | <p>33. A Managing Company of a CIS shall in addition to these Rules comply with the functions, duties and general business obligations assigned to it under the CIS Code.</p> |
| <p>Commission approval to engage in other business</p> | <p>34. A Managing Company shall disclose to the Commission all other business activities it is engaged in at the time of applying for its licence and inform the Commission in writing prior to engaging in any other business activity after obtaining a licence from the Commission.</p> <p>35. A Managing Company shall not engage in any other business, which in the view of the Commission creates a conflict of interest unless prior written approval of the Commission is obtained.</p> <p>36. In the conduct of any other business activity, the Managing Company shall ensure that proper processes are in place to have a clear demarcation of the different functions pertaining to such businesses.</p> |
| <p>Restrictions on the Managing Company to buy/sell or deal in securities for its own behalf</p> | <p>37. Unless approved by the Commission a Managing Company shall be prohibited from buying or selling any securities in its own name or having equity interest in any entity wholly or partly, directly or indirectly engaged in the business of dealing in securities.</p> |

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| <p>Transactions with Related Persons</p> | <p>38. A Managing Company shall not invest the assets of the CIS in the securities issued by a related company of the Managing Company without the prior written consent of the Trustee. All such transactions shall be disclosed in the annual report of the CIS.</p> <p>39. The following transactions shall only be made with the prior written consent of the Trustee and shall be disclosed in the annual report of the CIS:</p> <p>(a) all transactions between the CIS and the Managing Company, a Key Management Person/employee of the Managing Company or any immediate family member of such Key Management Person/employee;</p> <p>(b) all transactions between the CIS and an associate, joint venture, subsidiary or holding company of the Managing Company.</p> <p>For the purposes of this Rule an associate means an enterprise in which the Managing Company has significant influence and which is neither a subsidiary nor a joint venture of the Managing Company.</p> |
| <p>Amendments to the KIID</p> | <p>40. A Managing Company may amend its KIID either by the substitution of a completely new memorandum or by the addition or deletion of any information contained therein with the prior approval of the Trustee:</p> <p>(a) upon the occurrence of any material change in the information stated therein; or</p> <p>(b) any significant development takes place which requires it to be included therein.</p> |
| <p>Disclosures required for changes in fees</p> | <p>41. The Managing Company shall give the Unit Holders, not less than one (1) month prior written communication of any increase in the Managing Company's annual charges, up to the maximum permitted level specified in the trust deed.</p> |
| <p>Situations where investments of one CIS are made in another CIS under the management of the same Managing Company</p> | <p>42. Where the CIS invests in units of any other CIS, there shall be no increase in the front-end fee, annual fee or any other costs or charges borne by Unit Holders or out of the funds of the CIS if both CIS are managed by the same Managing Company or by a Related Person of the Managing Company.</p> |
| <p>Maintenance of records</p> | <p>43. A Managing Company shall maintain the following records pertaining to Unit Holders:</p> <p>(a) the register of Unit Holders disclosing the name and address of Unit Holders, their nominees and beneficial owners;</p> <p>(b) the number of units including the fraction of a unit held by each Unit Holder;</p> <p>(c) the date on which the Unit Holder was registered or a CDS account was opened on behalf of the Unit Holder in respect of the units standing in the Unit Holder's name; and</p> <p>(d) the number of units including fractions of units for the time being in issue.</p> |

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| | <p>44. All of the above records shall be retained by the Managing Company for a period of six (6) years.</p> <p>45. All of above records pertaining to Unit Holders whose units have been redeemed shall be retained by the Managing Company for a period of six (6) years from the date of such redemption.</p> <p>46. The Managing Company shall ensure that a Unit Holder's information is updated regularly and in any event on an annual basis.</p> <p>47. A Managing Company shall ensure confidentiality of all information relating to Unit Holders including such Unit Holder's identity, their beneficial owner and transactions carried out for such Unit Holder, unless and to the extent such disclosure is required by law.</p> |
| <p>Keeping of books and furnishing of returns</p> | <p>48. A Managing Company shall:</p> <p>(a) maintain or cause to be maintained, such accounting records and other books as will truly reflect the transactions and financial position of its business and enable the preparation of a true and fair Income Statement and a Statement of Financial Position in keeping with the Sri Lanka Accounting Standards adopted by the Institute of Chartered Accountants of Sri Lanka;</p> <p>(b) maintain or cause to be maintained such accounting records and other books in such manner as will enable them to be accurately audited; and</p> <p>(c) retain such accounting records and other books for a period of not less than six (6) years.</p> |
| <p>Duty to furnish information and co-operate with auditors appointed by the Commission</p> | <p>49. Where the Commission having considered that it is in the interests of the Managing Company or of the Unit Holders, appoints an independent auditor or such other person or a body of persons to examine, audit and report either generally or in relation to any particular matter pertaining to the Managing Company or any CIS under its management, it shall be the duty of such Managing Company:</p> <p>(a) to produce any books, accounts and records of any assets held by the Managing Company relating to its business;</p> <p>(b) to produce any records of any systems, processes or procedures adopted by the Managing Company relating to its business;</p> <p>(c) to provide all information within its knowledge or which it is capable of obtaining; and</p> <p>(d) to ensure that all the information which is furnished to the auditor or independent auditor as the case may be is not false or misleading in any particulars.</p> <p>50. A Managing Company shall not destroy, conceal or alter any records, property or books relating to the business of the Managing Company which are in its possession or under its control with the intention of defeating, preventing, delaying or obstructing the carrying out of any examination.</p> |

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| <p>Submission of information to the Commission</p> | <p>51. A Managing Company shall furnish such returns and provide such information relating to its business as the Commission may require from time to time.</p> <p>52. The Commission may determine that any information required herein shall be submitted within such period at such intervals in such manner or in such form as the Commission may specify and the Managing Company shall comply with such requirements.</p> |
| <p>Compliance manual</p> | <p>53. A Managing Company shall have an internal compliance manual applicable to its directors and employees which shall include amongst others adequate compliance procedures and practices as set out in Schedule IV of these Rules.</p> |
| <p>Regulatory compliance and internal controls</p> | <p>54. A Managing Company shall have a compliance officer on a full-time basis who shall:</p> <ul style="list-style-type: none"> (a) be an Attorney-at-Law having a minimum period of five (5) years of experience in matters relating to compliance or possesses any other qualification/experience as specified in Rule 27 of these Rules; (b) report directly to the board of directors/board sub-committee dealing with risk of the Managing Company; and (c) not perform any other duties that may compromise or be in conflict with the responsibilities of the compliance officer. <p>55. The Managing Company shall inform the Commission on the appointment of such compliance officer no later than one (1) week prior to the effective date of appointment. In the event of a cessation of employment of a compliance officer, the Managing Company shall give notice to the Commission no later than two (2) weeks from its effective date.</p> <p>56. The compliance officer on behalf of the Managing Company shall make a quarterly compliance report which shall include amongst others the contents specified in Schedule V of these Rules approved by the board of directors and signed by a director and the chief executive officer confirming compliance with the provisions of the SEC Act, the criteria set out herein, any other rules or directives issued by the Commission from time to time and the Financial Transactions Reporting Act, No. 06 of 2006 where applicable and forward same to the Commission, before the twentieth (20th) day of the following month.</p> <p>However, in the event any non-compliance or breach is detected, the compliance officer shall immediately report such matter to the board of directors for rectification and inform the Commission within a period of twenty-eight (28) days from the date on which the board of directors were informed as to the steps that have been taken by the board of directors to rectify such non-compliance.</p> <p>57. A Managing Company shall adhere to the Know Your Client (KYC) and due diligence procedures specified by the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka where applicable from time to time.</p> |

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| <p>Notification on the happening of certain events</p> | <p>58. Without prejudice to the generality of the duties imposed under the SEC Act, the CIS Code, these Rules or directives, the Managing Company shall forthwith provide written notice to the Commission if:</p> <ul style="list-style-type: none"> (a) the Managing Company is in the course of being wound up or otherwise dissolved whether within or outside Sri Lanka or where a receiver, liquidator or an equivalent person has been appointed in respect of any property of the Managing Company; (b) the Managing Company ceases to carry on the business to which the licence relates; (c) the Managing Company has failed to comply with the provisions of the SEC Act, the CIS Code, Rules relating to Fitness and Propriety of a Key Management Person of a Market Intermediary or the Rules specified herein or any other directive issued by the Commission from time to time; (d) it becomes aware that any information or document furnished to the Commission is false or misleading or there is any change in any information or document furnished to the Commission; (e) any execution against the Managing Company in respect of a judgment debt has been returned unsatisfied in whole or in part; (f) the Managing Company whether within or outside Sri Lanka has entered into a compromise or scheme of arrangement with its creditors being a compromise or scheme of arrangement that is still in operation; (g) any director, or the chief executive officer has been convicted of any offence involving fraud or dishonesty or a violation of securities law within or outside of Sri Lanka; or (h) any director or the chief executive officer of the Managing Company becomes an undischarged bankrupt. |
| <p>Advertisements</p> | <p>59. All advertisements and promotional material in respect of a CIS shall be prepared in accordance with the guidelines contained in Appendix 2 of the CIS Code.</p> <p>60. No advertisement or promotional material shall be issued or published by the Managing Company on behalf of a CIS, without the prior written approval of the Trustee.</p> <p>61. A Managing Company shall submit a copy of the proposed advertisement and/or promotional material for the perusal of the Commission one (1) week prior to its publication along with a copy of the approval of the Trustee.</p> |
| <p>Termination and replacement of a Managing Company</p> | <p>62. The manner of termination and replacement of a Managing Company of a CIS shall be made in terms of the provisions contained in the CIS Code.</p> |
| <p>Cancellation or suspension of a licence</p> | <p>63. The cancellation or suspension of a licence granted to a Managing Company shall be governed by the provisions contained in Section 105 of the SEC Act.</p> |
| <p>Commencement of operations</p> | <p>64. If the Managing Company fails to commence its business operations no later than six (6) months after the issue of the licence, the licence shall cease to be valid.</p> |

SCHEDULE I

Declaration by the Applicant

To: Chairman
Securities and Exchange Commission of Sri Lanka
Level 28 & 29, East Tower
World Trade Centre
Echelon Square, Colombo 01, Sri Lanka.

In consideration of being licensed to operate as (category of the market intermediary), we (name of the applicant entity) being duly incorporated and having our registered office/ principal place of business at(address)..... hereby undertake and agree:

1. to be licensed at the sole discretion of the Commission and for such period as may be determined by the Commission; and
2. to be bound by the applicable laws, rules, regulations and directives of the Commission as amended or replaced from time to time.

We further declare that no finding has been made against the applicant entity by a court of law in Sri Lanka or abroad for the commission of any criminal offence/ capital market offence or any other act which involves fraud, deceit, dishonesty, misrepresentation, breach of contract or breach of fiduciary duty and that the statements made and information provided along with the application for the grant/renewal of a licence are true and accurate to the best of our knowledge.

Given under the common seal of the entity on this day of in the presence of

.....

(Name)

Director

.....

(Name)

Director/Secretary

or,

Signed by the duly authorized signatories of the entity on this day of

.....

(Name)

Authorized Signatory

Note: Please attach a certified true copy of the board resolution/Power of Attorney in proof of such authority.

SCHEDULE II

Fitness and Propriety of a Key Management Person of a Market Intermediary

General interpretation

1. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021 shall unless the context so requires have the same meaning assigned to them in the said Act.

“Commission” means the Securities and Exchange Commission of Sri Lanka established in terms of the SEC Act;

“Key Management Person” means directors (executive or otherwise) and shall include alternate directors, a chief executive officer, a compliance officer and persons having authority and responsibility for planning, directing and controlling the activities of a company/entity either directly or indirectly;

“Market Intermediary” shall have the same meaning as defined in Section 188 of the SEC Act;

“SEC Act” means the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021.

Submission of an affidavit to the Commission

2. No individual shall be appointed, elected, nominated or continue to serve as a Key Management Person of a Market Intermediary unless that individual is a fit and proper person to hold such office in such entity as morefully described in these Rules.

3. An individual proposed to be appointed, elected or nominated or who intends to continue to serve in the capacity of a Key Management Person and persons making investment decisions on behalf of Unit Holders, shall submit an affidavit to the Commission affirming that such person is not subject to any of the infirmities morefully described in these Rules prior to such individual being appointed and at the time the Market Intermediary seeks a licence or a renewal of licence.

4. The information contained in the affidavit shall not be misleading or vague and shall contain a statement that the contents are true and accurate.

5. Adherence to these Rules shall be a continuous requirement and the compliance officer of a Market Intermediary shall immediately inform the board of directors of any matter that may disqualify the appointment or the continuation in office of a Key Management Person and the board of directors shall immediately notify the Commission the decision made in respect of such matter.

Honesty, integrity and reputation

6. The Key Management Person and persons making investment decisions on behalf of Unit Holders shall not:

- (a) be a person who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence;

- (b) be a person who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of a capital market offence or against whom an offence has been compounded in terms of the SEC Act during a period of three (3) years immediately preceding the date of the application;

- (c) have been a Key Management Person of a body corporate who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence or capital market offence having proved to have been committed with the knowledge or involvement or negligence attributable to such person;
- (d) be a person who has been subject to an administrative sanction by the Commission during a period of three (3) years immediately preceding the date of the application;
- (e) be a Key Management Person of a company, partnership or other organization whose licence has been suspended or cancelled by the Commission for violating any provision of the SEC Act or any rules or regulations made thereunder;
- (f) be a person who has been censured, disciplined, suspended or refused membership or registration by the Commission and any other regulatory authority in Sri Lanka or elsewhere during a period of three (3) years immediately preceding the date of the application;
- (g) be a person against whom a finding has been made by the Commission or any other regulatory/supervisory authority/professional body in Sri Lanka or abroad that such individual has committed any act which involves fraud, deceit or dishonesty;
- (h) be a person who has been disqualified from acting as a director of a company, or has been dismissed or requested to resign from any position or office due to mismanagement of funds or the commission of financial fraud by the Commission, any other regulatory body or professional body;
- (i) be a person against whom an inquiry and/or investigation by the Commission and/or an Exchange or any other regulatory/professional body in Sri Lanka or elsewhere is presently pending for the commission of suspected capital market offences or any matter that involves fraud, deceit or dishonesty; and/or
- (j) be a person who has contravened any written law enacted for the protection of the members of the public against financial loss due to dishonesty or malpractice of such person.

Financial soundness

7. The Key Management Person and persons making investment decisions on behalf of Unit Holders shall not:
- (a) have proceedings instituted to be declared bankrupt or have been declared bankrupt and/or had assets sequestered;
 - (b) have been subject to any judgment debt or award in Sri Lanka or abroad that remains unpaid in whole or in part; and/or
 - (c) have been a person of a company in a position that exercises significant influence in a company that:

- i. has been subject to any judgment debt or award in Sri Lanka or abroad that remains unpaid in whole or in part; or
- ii. has in Sri Lanka or abroad, made any arrangements in composition with its creditors, filed for bankruptcy, been declared bankrupt, had assets sequestered, involved in winding-up proceedings ordered by a court of law or been involved in proceedings relating to any of the foregoing.

Competence and capability

8. The Key Management Person and persons making investment decisions on behalf of Unit Holders shall:
 - (a) not have been declared by a court of competent jurisdiction in Sri Lanka or abroad to be of unsound mind;
 - (b) possess the qualifications required to provide the services for which a licence has been sought/obtained from the Commission;
 - (c) have satisfied the relevant training and competence requirements in relation to the regulated function the person performs or intends to perform;
 - (d) possess adequate time to perform the regulated function and meet the responsibilities associated with that function; and/or
 - (e) have not contravened any written law enacted for the protection of the members of the public against financial loss due to incompetence of such person.

SCHEDULE III

Specimen of an Affidavit for Fitness and Propriety of a Key Management Person of a Market Intermediary

I, _____ [Full name] holder of NIC No./Passport No. (In the case of a foreign national) _____ of _____ [Address], being a [Buddhist/Hindu/Muslim do hereby solemnly, sincerely and truly declare and affirm] / [Christian/Catholic make oath and swear as follows]:

1. I am the [affirmant/deponent] above named.
2. I affirm/state that I am a _____ [Designation] of _____ [Name of the applicant entity].
3. I affirm/state that I possess the following academic and/ or professional qualification/s:
.....
.....
.....
4. I affirm/state that I have not been found guilty / held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence / capital market offence.
5. I affirm/state that I have not been a Key Management Person of a body corporate which has been found guilty / held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence/ capital market offence, proved to have been committed with the knowledge or involvement or negligence attributable to me.
6. I affirm/state that I am not a person against whom an offence has been compounded in terms of the Securities and Exchange Commission of Sri Lanka Act, No.19 of 2021 ('SEC Act') nor an administrative sanction has been imposed by the Commission during a period of three (3) years immediately preceding the date of this affidavit.
7. I affirm/state that I have not been a Key Management Person of a company, partnership or other organization whose licence has been suspended or cancelled by the Commission for violating any provision of the SEC Act, any rules or regulations made thereunder.
8. I affirm/state that I have not been a person who has been censured, disciplined, suspended or refused membership or registration by the Commission, an Exchange or any other regulatory authority in Sri Lanka or abroad during a period of three (3) years immediately preceding the date of this affidavit.
9. I affirm/state that I have not been a person who has been disqualified by the Commission, an Exchange or any other regulatory body or professional body from serving as a director of a company or has been dismissed or requested to resign from any position or office due to mismanagement of funds or the commission of a financial fraud.
10. I affirm/state that I am not a person against whom an inquiry and/or investigation by the Commission/an Exchange or any other regulatory/ supervisory authority/ professional body in Sri Lanka or abroad is presently pending, for the commission of suspected capital market offences or any act which involves fraud, deceit or dishonesty or that a finding has been made by the Commission/an Exchange or any other regulatory/ supervisory authority/ professional body in Sri Lanka or abroad that I have committed any act which involves fraud, deceit or dishonesty.

- 11. I affirm / state that I have not contravened any written law enacted for the protection of the members of the public against financial loss by dishonesty, incompetence or malpractice.
- 12. I affirm / state that no proceedings have been instituted in a court of law in Sri Lanka or abroad requesting that I be declared bankrupt or that I have not been declared bankrupt and that my assets have not been sequestered.
- 13. I affirm/state that I have not been subject to any judgment debt or award in Sri Lanka or abroad that remains unpaid in whole or in part.
- 14. I affirm/state that I am not a person/ director of a company or a shareholder in a position that exercises significant influence in a company that:
 - (a) has been subject to any judgment debt or award in Sri Lanka or abroad, that remains unpaid in whole or in part; or
 - (b) has in Sri Lanka or abroad made any arrangements in composition with its creditors, filed for bankruptcy, been declared bankrupt, had assets sequestered, involved in winding-up proceedings ordered by a court of law or been involved in proceedings relating to any of the foregoing.
- 15. I affirm/state that I have not been declared as a person of unsound mind by a court of competent jurisdiction in Sri Lanka or abroad.
- 16. I affirm/state that I have the relevant training, competence and expertise in the nature of the business being conducted by the entity.
- 17. I affirm/state that I have adequate time to perform the regulated functions and meet the responsibilities associated with such function of the entity.
- 18. I affirm/state that I have the technical knowledge and ability to perform the prescribed duties which I am engaged in, especially recognised professional qualifications and membership of relevant professional institutions.
- 19. I affirm/state that I have not contravened any written law enacted for the protection of the members of the public against financial loss due to my incompetence.
- 20. I affirm/state that all of the above are true and accurate to the best of my knowledge.

The averments contained herein were read over to the [affirmant/deponent] who having understood the contents hereof and having accepted same as true, [affirmed/ swore] to and placed his/her signature at on this dayof.....



Affix stamps as applicable

Before me

JUSTICE OF THE PEACE/
COMMISSIONER FOR OATHS

SCHEDULE IV

Minimum Contents of a Compliance Manual

1. Conflicts of Interest:

- (a) an effective internal control framework to prevent abuse or detect inappropriate investment practices or conflicts of interest between proprietary transactions, employees' transactions and transactions of the CIS;

Provided that, in the event such conflict cannot be avoided there shall be full disclosure thereof to its Unit Holders and the Managing Company shall obtain consent of the Trustee in writing prior to carrying out the material transaction.

- (b) procedures to prevent or control the exchange of information between persons engaged in activities that give rise to a risk of a conflict of interest;
- (c) procedures to ensure that key duties and functions of the front office and back office are clearly segregated to avoid any conflicts of interest;
- (d) procedures for the prevention or limitation of any person from exercising inappropriate influence over the manner in which a relevant person carries out services or activities;
- (e) a mechanism to monitor and identify non-compliance with the conflicts of interest policy and steps to address such non-compliance in an appropriate and in a timely manner; and
- (f) procedures to minimize and manage any conflicts of interest that may arise in carrying out a combination of regulated activities.

* The above procedures, frameworks and mechanisms shall be in accordance with the guidelines contained in Appendix 6 of the CIS code.

2. Corporate Governance:

- (a) good business practices and just and fair principles in the conduct of its business; and
- (b) compliance requirements contained in any Code or Best Practices introduced by the Commission in respect of Managing Companies;
- (c) an effective complaint handling process in accordance with the guidelines contained in Appendix 7 of the CIS code.

3. Risk Management:

- (a) sound risk management policies and processes; and
- (b) explanations on the risks applicable to securities investments.

SCHEDULE V

Minimum Matters to be Disclosed in a Compliance Report

1. Confirmation that the business has been conducted in conformity with the:
 - (a) Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021;
 - (b) Rules issued by the Commission including the Collective Investment Schemes Code;
 - (c) Rules of an Exchange (as applicable); and
 - (d) Rules and Regulations of the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka including Rules and Regulations pertaining to Anti Money Laundering.
2. If not:
 - (a) give information as to the nature of the non-compliance or breach;
 - (b) action taken to prevent or mitigate the non-compliance or breach; and
 - (c) the outcome.
3. Whether any Suspicious Transaction Reports (STRs) have been generated.
If so:
 - (a) the number generated and submitted to the FIU; and
 - (b) outcomes if any.