



# **Reserve Bank of Fiji**

## **Capital Markets Supervision Policy Statement No. 8**

### **Trustee Requirements for Managed Investment Schemes**

**NOTICE TO CAPITAL MARKETS INTERMEDIARIES LICENSED  
UNDER THE CAPITAL MARKETS DECREE 2009**

## **1.0 Introduction**

- 1.1 This Policy is issued pursuant to section 5 of Capital Markets Decree 2009 as part of the Reserve Bank of Fiji standards governing the Managed Investment Schemes industry.
- 1.2 This Policy applies to all existing Trustees and to any company applying to act as a Trustee of any Managed Investment Scheme (MIS) operating in Fiji.
- 1.3 This Policy replaces the Capital Markets Development Authority (CMDA) Policy Statement 5/99 on “Trustee for a Unit Trust”.

## **2.0 Objectives of this Policy**

- 2.1 To set out the minimum requirements for all companies seeking approval of the Reserve Bank of Fiji to act as a Trustee for a MIS operating in Fiji.
- 2.2 To ensure that those seeking approval are provided with clear guidelines.

## **3.0 Minimum Requirements for the Trustee**

### **3.1 Approved Trustee**

- 3.1.1 Only companies that have been approved under the Trustee Corporations Act and by the Reserve Bank of Fiji can become a Trustee of a MIS.
- 3.1.2 The approval of the Trustee may be revoked, by reason of a breach of a term or condition subject to which, the approval was granted or a breach of the Capital Markets Decree 2009 or the Unit Trusts Act 1978.

### **3.2 Eligibility of the Trustee**

- 3.2.1 Pursuant to section 6 of the Unit Trusts Act, the Trustee must be:

- (a) A trustee corporation within the meaning of the Trustee Act (Cap 65); or
- (b) A company or bank approved for unit trust purposes by the Minister of Finance.

- 3.2.2 An individual cannot therefore be the trustee of a unit trust.

- 3.2.3 A Trustee seeking approval under this Policy shall comply with the requirements of other relevant legislation to become a Trustee and:

- (a) Must be approved by the Reserve Bank of Fiji to act as a Trustee for an approved MIS;
- (b) Shall not be a shareholder who beneficially holds shares in the Manager;
- (c) Shall not be beneficially entitled to moneys owed by the Manager; and
- (d) Shall not be a related corporation to the Manager or of any shareholder under sub-clauses 3.2.3(b) or any persons beneficially entitled to moneys owed under 3.2.3(c).

### **3.3 Independence of the Trustee**

- 3.3.1 The Trustee must be independent of the MIS. This means that the Trustee must be free of any relationship with the Manager, or the controlling or significant shareholder(s) of the Manager, that would otherwise interfere with the Trustee's exercise of independent judgement.
- 3.3.2 The Trustee must not, on its own behalf, hold units or other interests in the MIS.
- 3.3.3 The Trustee must have adequate resources, including financial and human resources, to carry on business as a Trustee. In this regard, the Trustee:
  - (a) Must have adequate human resources with the necessary qualification, expertise and/or experience particularly in fields such as accounting or finance, legal and compliance; and
  - (b) Must have adequate and appropriate systems, procedures and internal controls to carry out its duties and responsibilities in a proper and efficient manner.
- 3.3.4 The Reserve Bank of Fiji shall have the discretion to approve alternative arrangements under this subsection.

### **3.4 Appointment of Directors of the Trustee**

- 3.4.1 The directors of any company seeking approval to act as a director for a Trustee must satisfy the RBF Capital Markets Supervision Policy Guideline No. 6 on Fit & Proper Requirements for Licensed Intermediaries and Issuers. This includes an assessment of a person's character, competence, capability and financial soundness.
- 3.4.2 The directors must be approved by the Reserve Bank of Fiji before any appointment will take effect.
- 3.4.3 A director that holds any units in their name or on behalf of another person in any MIS or listed entity prior to and during their appointment must sign a disclosure declaration and submit a copy to the Reserve Bank of Fiji.

### **3.5 Retirement of Directors of the Trustee**

- 3.5.1 No director can retire as a director of a Trustee until another director has been identified by the Manager and approved by the Reserve Bank of Fiji to take over as a director.
- 3.5.2 A retiring director must ensure that a suitable transition programme for the new director is in place and implemented prior to the taking of office by the new director.
- 3.5.3 A retiring director must remain available for at least 3 months post retirement to answer any queries or clarifications on any activities undertaken during their term as a director.
- 3.5.4 Where a retiring director is satisfied that the transition under 3.5.2 has been successfully completed, the retiring director must submit a signed declaration to the Reserve Bank of Fiji declaring the same.

### **3.6 Roles, Powers and Duties of the Trustee**

#### **General**

- 3.6.1 The role of Trustee is to act as custodian of the assets of the MIS and the Trustee should actively monitor the administration of the MIS by the Manager to safeguard the interests of unit holders.
- 3.6.2 The Trustee must act with due care, skill, diligence and vigilance and act in accordance with the Deed of the MIS, the Capital Markets Decree 2009, this Policy, any other policies issued by the Reserve Bank and acceptable and ethical business practices within the capital markets industry in carrying out its duties and responsibilities.
- 3.6.3 The Trustee must take into its custody or under its control (in the event of any delegation of custodial functions), the assets of the MIS and hold the assets in trust for unit holders.
- 3.6.4 The Trustee must, at all times, through proper and adequate supervision ensure that the MIS is managed and administered by the Manager in a prudent manner.
- 3.6.5 To safeguard the interests of unit holders, the Trustee should conduct independent reviews on all approvals and proposals and must not depend solely on the submission of information by the Manager.
- 3.6.6 The Trustee should exercise reasonable diligence in monitoring the functions of the Manager and do everything in its power to ensure that the Manager remedies any breach known to the Trustee of the provisions or covenants of the Deed unless the Trustee is satisfied that the breach will not materially prejudice the unit holders' interests.
- 3.6.7 Where an MIS is expressed to be managed and administered in accordance with specific principles, the Trustee must ensure that the investment portfolio of the MIS is managed in accordance with those principles.
- 3.6.8 The Trustee must ensure that it has approved the investment policies of the MIS and of any changes made thereafter. If representations made by the Manager are not in the interest of the unit holders, the Trustee must instruct the Manager to take appropriate actions as the Trustee deems fit and/or summon a unit holders' meeting for the purpose of giving such instructions to the Trustee as the meetings thinks proper.
- 3.6.9 The Trustee must not approve any investments outside of the approved investment policy of the MIS.
- 3.6.10 The Trustee shall not delegate any of its functions, roles and/or responsibilities to the Manager or any other persons without the prior approval of the Reserve Bank of Fiji.
- 3.6.11 The Trustee must immediately notify the Reserve Bank of Fiji of any irregularity or breach of the provisions of the Deed, this Policy or the Capital Markets Decree 2009 and any other matter properly regarded by Trustee as not being in the interests of the unit holders.

## **Dealing in Units**

- 3.6.12 The Trustee should ensure that the systems, procedures and processes employed by the Manager to value and/or price the units of the MIS are adequate and that such valuation/pricing is carried out in accordance with the Deed, this Policy and the Capital Markets Decree 2009.
- 3.6.13 The Trustee should ensure that the sale, repurchase, creation and cancellation of units of the MIS are carried out in accordance with the Deed, this Policy and the Capital Markets Decree 2009.

## **Dealings in Investments of the MIS**

- 3.6.14 The Trustee must take all steps to effect any instructions properly given by the Manager as to the acquisition or disposal of, or exercise of the rights attaching to the assets of the MIS.

## **3.7 Provision for Information**

- 3.7.1 The Trustee must submit or make available any statements, documents, books, records and other information relating to the MIS and the business of the Trustee or such periodical returns as may be required by the Reserve Bank of Fiji from time to time.

## **3.8 Maintenance of Records**

- 3.8.1 The Trustee must ensure that the Manager maintains proper accounting and other records as are necessary to enable a complete and accurate view of the MIS.

## **4.0 Assessment Requirements**

- 4.1 While assessing any application for approval to act as a Trustee for a MIS, the Reserve Bank of Fiji will consider the following information/documents, where applicable:
- (a) Authorisation from the Minister of Finance to act as a Trustee;
  - (b) Certificate of Incorporation, Articles and Memorandum of Association of the applicant and details of authorised and paid up capital of the applicant;
  - (c) A bank guarantee or evidence of Bond payment to Government to ensure the proper discharge of its obligations;
  - (d) Copy of the signed and registered Trust Deed;
  - (e) Names and addresses of the shareholders of the Trustee;
  - (f) Names and addresses of the directors of the Trustee;
  - (g) Fit & proper assessment of each director of the Trustee;
  - (h) Statutory declarations from directors attesting to their good fame and character;
  - (i) Curriculum vitae detailing qualification and experience of the directors and any of the key staff; and

(j) Organisational structure and adequate resources.

4.2 The Reserve Bank of Fiji reserves the right to request any other information it deems necessary for the assessment of applications under this section.

## **5.0 Removal of the Trustee**

5.1 The Reserve Bank of Fiji should be notified immediately if the Trustee or any of its directors is removed or terminated.

## **6.0 Reserve Bank Oversight**

6.1 The Reserve Bank of Fiji must approve the Trustee and its directors subject to terms and conditions as it deems necessary. In cases where the Reserve Bank of Fiji places conditions on the approval, the Trustee must comply with the conditions strictly.

6.2 The Reserve Bank of Fiji will not approve a Trustee unless all relevant documents are properly completed and lodged.

6.3 **The Reserve Bank of Fiji may exempt, or grant waivers from compliance with any requirement of this Policy.**

6.4 The Reserve Bank of Fiji may revoke or revise an approval, or impose further terms and conditions on the approval.

6.5 The Reserve Bank of Fiji reserves the right to request for further information that may contribute to the assessment of a proposal.

## **7.0 Implementation**

7.1 The requirements set out in this Policy represent the minimum requirements for all companies seeking approval of the Reserve Bank of Fiji to act as a Trustee for a MIS operating in Fiji.

7.2 This Policy comes into effect from 1 January, 2012.

**Reserve Bank of Fiji**  
**October 2011**

## **SCHEDULE**

### **Interpretation –**

1. Any term or expression used in this Notice that is not defined in this Notice:
  - (a) which is defined in the Act shall, unless the context otherwise requires, have the meaning given to it by the Act;
  - (b) which is not defined in the Act and which is defined in any of the RBF's Policy Statements shall, unless the context otherwise requires, have the meaning given to it by those policy statements; and
  - (c) which is not defined in the Act or in any of the RBF's Policy Statements shall, unless the context otherwise requires, be interpreted in accordance with generally accepted accounting principles.
2. In this Policy, unless the context otherwise requires:

**'Bank'** refers to a bank within the meaning of the Banking Act.

**'Managed Investment Scheme'** means:

- (a) a scheme that has the following features:
  - (i) people contribute money or money's worth as consideration to acquire rights (interests) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);
  - (ii) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for members who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders);
  - (iii) the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions); or
- (b) but does not include the following:
  - (i) interests in any credit union registered under the Credit Unions Act; or
  - (ii) interests in any friendly society registered under the Friendly Societies Act; or
  - (iii) a scheme in which all the members are bodies corporate that are related to each other and to the body corporate that promotes the scheme; or
  - (iv) a franchise; or
  - (v) a scheme operated by a bank licensed to operate in Fiji in the ordinary course of its banking business; or
  - (vi) the issue of debentures or convertible notes by a body corporate; or
  - (vii) a barter scheme under which each participant may obtain goods or services from another participant for consideration that is wholly or substantially in kind rather than in cash.

**'Manager'** means the company which is vested with the powers and functions of administration of a MIS and includes the Management and its Board.

**'Trust'** means a trust within the meaning of the Trustee Act (Cap 65).

**‘Trust Deed’** sets out the trusts governing the MIS and includes every instrument that varies those trusts, or affects the powers, duties or functions of the Trustee or Manager of the MIS.

**‘Trustee’** means company approved as a Trustee of a MIS in accordance with the Trustee Act [Cap 65] and approved by the Reserve Bank.