

SCHEDULE "C"
PROPOSED COLLECTIVE INVESTMENT SCHEME BY-LAW

SECURITIES INDUSTRY ACT, 1995
COLLECTIVE INVESTMENT SCHEME BY-LAW

PART I
PRELIMINARY

- Citation **1.** This By-Law may be cited as the Collective Investment Scheme By-Law.
- Definitions **1.1** In this By-Law -
- “Act” means the *Securities Industry Act 1995*, as amended from time to time;
- “custodian” means the person appointed by a collective investment scheme to keep safe the assets of the collective investment scheme;
- “fundamental investment objectives” means the fundamental characteristics of a collective investment scheme that distinguish it from other collective investment schemes;
- “management expense ratio” means the ratio, expressed as a percentage, of the expenses of a collective investment scheme to its average net asset value;
- “manager” means a person that is responsible for the business, operations and affairs of a collective investment scheme; and
- “sales communication” means any oral or written communication relating to a collective investment scheme that is made by the manager, investment adviser or any other person providing services to the collective investment scheme, to a holder of securities of the collective investment scheme, or to a prospective investor with the intent of inducing such investor to purchase securities of the collective investment scheme.
- Application **2.** (1) This By-Law applies to all collective investment schemes that are reporting issuers other than collective investment schemes that are -
- (a) contracts of insurance;
- (b) pension schemes;
- (c) commodity pools; or
- (d) approved foreign issuers.
- 3.** (1) The requirements set out in this By-Law apply in addition to any other requirements contained in the Act or any by-law, including, without limitation, the Prospectus By-Law.
- Forms (2) The forms herein referred to are those contained in Schedule 1, and such forms shall be used in all cases to which they are applicable, and may be modified as directed by the Commission to meet other cases.

PART II
DISTRIBUTION OF SECURITIES

- Disclosure documents **4.** (1) A prospectus filed for a distribution of securities of a collective investment scheme shall be prepared in accordance with the prospectus disclosure

requirements for collective investment schemes set out in Form No. 1 to this By-Law.

(2) A collective investment scheme shall file with a prospectus the following documents -

(a) a copy of all the organizational documents of the collective investment scheme as more particularly described in Form No. 1 to this By-Law;

(b) in the case of a collective investment scheme that is a reporting issuer:

(i) a copy of the latest annual comparative financial statements of the collective investment scheme filed with the Commission; and

(ii) a copy of the latest interim financial statements of the collective investment scheme filed with the Commission, if any; and

(c) in the case of a collective investment scheme that is not a reporting issuer, an audited statement of net assets of the collective investment scheme as at the date of formation of the collective investment scheme.

PART III

NEW COLLECTIVE INVESTMENT SCHEME

Initial investment

5. (1) No collective investment scheme shall file a prospectus for a newly established collective investment scheme unless an investment of at least five million dollars in securities of the collective investment scheme has been made, and those securities are beneficially owned, before the time of filing by:

(a) the promoter or manager of, or portfolio adviser to, the collective investment scheme;

(b) the partners, directors, officers or holders of securities of the promoter or manager of, or portfolio adviser to, the collective investment scheme; or

(c) a combination of the persons referred to in subparagraphs (a) and (b).

PART IV

NAME

Name

6. (1) No collective investment scheme shall have a name that is misleading or conflicts with the type of collective investment scheme as to which it is best characterized.

“Money Market”

(2) A collective investment scheme shall not include as part of its name the words “money market” or be otherwise referred to as a “money market fund” unless the collective investment scheme has and intends to continue to have not less than ninety-five percent of its assets invested in any or all of the following-

(a) cash; and

(b) evidences of indebtedness that have a remaining term to maturity of not more than 365 days, that are issued, or fully and unconditionally guaranteed as to principal and interest by a financial institution regulated in Trinidad and Tobago or a government entity.

“Bond”

(3) A collective investment scheme shall not include as part of its name the word “bond” or be otherwise referred to as a “bond fund” unless the collective investment scheme has and intends to continue to have not less than seventy percent of its assets invested in bonds, debentures, notes or similar instruments representing indebtedness, that have a remaining term to maturity of more than three years and that are issued, secured or unsecured, by a financial institution regulated in Trinidad and Tobago or a government entity.

PART V MANAGER

Qualification

- 7.** (1) The manager of a collective investment scheme shall not act as the trustee or the custodian of the collective investment scheme.
- (2) Nothing contained in this Part prohibits an affiliate of the manager from acting as the trustee or the custodian of the collective investment scheme.

Approval

- 8.** (1) Subject to subsection (2), no person shall act as the manager of a collective investment scheme unless such person is approved by the Commission. The Commission may, in granting its approval to the manager of the collective investment scheme, impose such terms and conditions as it considers appropriate.
- (2) The approval requirement in subsection (1) does not apply to a financial institution or a market actor registered with the Commission.

Standard of care

- 9.** (1) An agreement or declaration of trust by which a person acts as manager shall provide that the manager is responsible for losses arising out of the failure of the manager, or any person retained by the manager or the collective investment scheme to discharge any of the manager’s responsibilities to the collective investment scheme -
- (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the collective investment scheme; and
- (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(2) A collective investment scheme shall not relieve the manager from liability for losses arising out of the failure of the manager, or of any person retained by the manager or the collective investment scheme, to discharge any of the manager’s responsibilities to the collective investment scheme as set out in this Part.

Supervision

- 10.** (1) The activities of the manager of a collective investment scheme are subject to the supervision of the following person:
- (a) in the case of a collective investment scheme that is organized as a trust, the trustee of the collective investment scheme;

(b) in the case of a collective investment scheme that is organized as a corporation, the board of directors of the collective investment scheme; and

(c) in the case of a collective investment scheme that is organized other than as a trust or a corporation, the responsible entity pursuant to the constating documents of the collective investment scheme.

PART VI CUSTODIAN

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| Assets to be held by
custodian | 11. The assets of a collective investment scheme shall be held under the custodianship of a custodian that satisfies the requirements of this Part. |
| Qualification | 12. (1) The custodian shall be one of the following -

(a) a company that is licensed under the <i>Financial Institutions Act</i> , as amended from time to time; or

(b) a person that is regulated as a banking institution or trust company under the laws of a designated foreign jurisdiction. |
| Standard of care | 13. (1) All custodian agreements of a collective investment scheme shall provide for the standard of care and responsibility for loss as set out in this Part.

(2) The custodian, in carrying out its duties concerning the safekeeping of, and dealing with, the portfolio assets of the collective investment scheme, shall exercise -

(a) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; and

(b) at least the same degree of care as it exercises with respect to its own property of a similar kind, if this is a higher degree of care than the degree of care referred to in paragraph (a).

(3) A collective investment scheme shall not relieve the custodian from liability to the collective investment scheme, or to a holder of securities of the collective investment scheme, for losses arising out of the failure of the custodian to exercise the standard of care imposed by this Part. |

PART VII INVESTMENTS

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| Concentration restriction | 14. (1) A collective investment scheme shall not purchase a security of an issuer if, immediately after the purchase, more than ten percent of the net assets of the collective investment scheme, taken at market value at the time of the purchase, would be invested in securities of the issuer.

(2) Subsection (1) does not apply to a purchase of -

(a) evidences of indebtedness that have a remaining term to maturity of not more than 365 days that are issued, or fully and unconditionally guaranteed as to principal and interest by, a financial institution regulated in Trinidad and Tobago or a government entity; or |
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(b) bonds, debentures, notes or similar instruments representing indebtedness, that have a remaining term to maturity of more than three years that are issued, secured or unsecured, by a financial institution regulated in Trinidad and Tobago or a government entity.

Control restriction

15. A collective investment scheme shall not -

(a) purchase a security of an issuer if, immediately after the purchase, the collective investment scheme would hold securities representing more than ten percent of the votes attaching to the outstanding voting securities of that issuer, or the outstanding equity securities of that issuer; or

(b) purchase a security for the purpose of exercising control or direction over, or management of, the issuer of the security.

Restriction concerning illiquid securities

16. A collective investment scheme shall not purchase equity securities that cannot be readily disposed of through market facilities on which public quotations in common use are widely available, if immediately after the purchase, more than 10% of the net assets of the collective investment scheme, taken at market value at the time of the purchase, would be invested in such equity securities.

PART VIII BORROWING POWERS

Limitations

17. A collective investment scheme shall not borrow cash or provide a security interest over any of its portfolio assets unless the transaction is temporary and is for the purpose of accommodating requests for the redemption of securities of the collective investment scheme, while the collective investment scheme effects an orderly liquidation of portfolio assets, or to permit the collective investment scheme to settle portfolio transactions and, after giving effect to all transactions undertaken under this Part, the outstanding amount of all borrowings of the collective investment scheme does not exceed five percent of the net assets of the collective investment scheme taken at market value at the time of the borrowing. For purposes of this Part, a transaction shall be deemed to be temporary if the borrowing is repaid within 6 months from the date of borrowing.

PART IX CALCULATION OF NET ASSET VALUE PER SECURITY

Frequency and methodology

18. The net asset value per security of a collective investment scheme shall be calculated every business day and must be calculated in accordance with the methodology set forth in the prospectus of the collective investment scheme.

PART X CALCULATION OF MANAGEMENT EXPENSE RATIO

Methodology

19. The management expense ratio of a collective investment scheme shall be calculated in accordance with the methodology set forth in the prospectus of the collective investment scheme.

**PART XI
FEES AND EXPENSES**

Limitations

- 20.** (1) Subject to subsection (2), fees and expenses charged directly or indirectly to a collective investment scheme must be for amounts reasonably incurred in connection with the administration of the collective investment scheme.
- (2) None of the fees and expenses of the formation or initial organization of a collective investment scheme, or of the preparation and filing of the initial prospectus of the collective investment scheme, shall be charged directly or indirectly to that collective investment scheme or holders of securities in that collective investment scheme.

**PART XII
FUNDAMENTAL CHANGES**

Matters requiring prior approval of holders of securities

- 21.** (1) The prior approval of the registered holders of securities of the collective investment scheme, given as provided in subsection (2), is required before any of the following changes takes effect:
- (a) a change to the fundamental investment objectives of the collective investment scheme;
 - (b) a change to the auditor of the collective investment scheme;
 - (c) a change to the manager, unless the successor manager is an affiliate of the existing manager;
 - (d) a change to the methodology used to calculate the net asset value per security of the collective investment scheme; and
 - (e) an increase in fees or expenses charged to the collective investment scheme including, but not limited to, an increase in management fees.
- (2) Unless a greater majority is required by the constating documents of the collective investment scheme, the laws applicable to the collective investment scheme or any applicable agreement, the approval of the registered holders of the securities of the collective investment scheme to a matter referred to in subsection (1) shall be given by a resolution passed by at least a majority of the votes cast, in person or by proxy, at a meeting of the registered holders of the securities of the collective investment scheme duly called and held to consider the matter.

**PART XIII
COMMINGLING OF CASH**

Principal distributors

- 22.** (1) Cash received by a principal distributor of a collective investment scheme, or by a person providing services to the collective investment scheme or the principal distributor, for investment in, or on the redemption of, securities of the collective investment scheme, or on the distribution of the assets of the collective investment scheme -
- (a) shall be accounted for separately and be deposited in a trust account or trust accounts established and maintained in accordance with the requirements of this Part; and

(b) may be commingled only with cash received by the principal distributor or service provider for the sale, or on the redemption of, securities of other collective investment schemes.

(2) The principal distributor or a person providing services to a collective investment scheme or principal distributor may only withdraw cash from a trust account referred to in this Part for the purpose of-

(a) remitting to the collective investment scheme the net amount to be invested in securities of the collective investment scheme;

(b) remitting to the relevant person redemption or distribution proceeds being paid on behalf of the collective investment scheme; or

(c) paying fees and expenses that are payable by a holder of securities of a collective investment scheme in connection with the purchase, conversion, holding, transfer or redemption of securities of the collective investment scheme.

PART XIV FINANCIAL STATEMENTS

Annual comparative financial statements

23. The annual comparative financial statements of a collective investment scheme shall include -

(a) an income statement prepared in accordance with Part V of the Act and any by-law;

(b) a balance sheet prepared in accordance with Part V of the Act and any by-law;

(c) a statement of investment portfolio prepared in accordance with this By-Law;

(d) a statement of portfolio transactions prepared in accordance with this By-Law; and

(e) a statement of changes in net assets prepared in accordance with this By-Law;

prepared for or as at the end of the period as applicable.

Interim financial statements

24. The interim financial statements of the collective investment scheme shall include -

(a) an income statement prepared in accordance with Part V of the Act and any by-law;

(b) a statement of investment portfolio prepared in accordance with this By-Law;

(c) a statement of portfolio transactions prepared in accordance with his By-Law; and

(d) a statement of changes in net assets prepared in accordance with his By-Law;

each prepared for or as at the end of the period as applicable.

- Statement of investment portfolio
- 25.** A statement of investment portfolio of a collective investment scheme shall present fairly the following information as at the date to which it is made up -
- (a) the name of each issuer of securities held;
 - (b) the class or designation of each security held;
 - (c) the number or aggregate face value of each class or designation of securities held;
 - (d) the market value of each class or designation of securities held; and
 - (e) the cost of each class or designation of securities held and, where the basis of computing cost is other than average cost, a statement of the basis of computing the cost.
- Statement of portfolio transactions
- 26.** A statement of portfolio transactions of a collective investment scheme shall present fairly the following information -
- (a) the name of each issuer of every security purchased or sold during the period reported upon;
 - (b) the class or designation of every security purchased or sold during the period reported upon;
 - (c) the number or aggregate face value, by issuer, of securities of each class or designation purchased during the period reported upon and the total cost of purchasing securities of each such class or designation; and
 - (d) the number or aggregate face value, by issuer, of securities of each class or designation sold during the period reported upon and the consideration for selling securities of each such class or designation.
- Statement of changes in net assets
- 27.** A statement of changes in net assets of a collective investment scheme shall present fairly the information shown therein for the period covered by the statement and show separately at least -
- (a) net assets at the beginning of the period;
 - (b) net investment income or loss;
 - (c) aggregate proceeds on sale of portfolio securities;
 - (d) aggregate cost of portfolio securities owned at the beginning of the period;
 - (e) aggregate cost of purchase of portfolio securities;
 - (f) aggregate cost of portfolio securities owned at the end of the period;
 - (g) aggregate cost of portfolio securities sold;
 - (h) realized profit or loss on portfolio securities sold;
 - (i) distributions, showing separately the amount of net investment income and out of realized profits on portfolio securities sold;
 - (j) proceeds from securities issued;
 - (k) the redemption price of securities redeemed;

- (l) net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
- (m) net assets at the end of the period;
- (n) net asset value per security at the end of the period and at the end of each of the four immediately preceding periods;
- (o) distribution per security of net investment income; and
- (p) distribution per security out of realized profits on portfolio securities sold.

Additional financial disclosure

- 28.** (1) The annual comparative financial statements of a collective investment scheme shall set out -
- (a) details of the amounts of all fees and expenses, if any, that have been charged to the collective investment scheme during each financial year reported upon in the financial statements; and
 - (b) the net asset value per security of the collective investment scheme as at the end of the last completed financial year and as at the end of each of the four preceding completed financial years, or such fewer number of financial years as the collective investment scheme has been in existence.
- (2) The annual comparative financial statements and interim financial statements of a collective investment scheme shall set out -
- (a) the management expense ratio of each class of securities of the collective investment scheme for each of the last four completed financial years of the collective investment scheme or such fewer number of financial years as the collective investment scheme has been in existence. If the period covered is for less than twelve months, the ratio shall be presented on an annualized basis and the fact stated that the ratio shown is annualized; and
 - (b) a brief description of the method of calculating the management expense ratio.

Approval of financial statements

- 29.** (1) If a collective investment scheme is organized as a corporation, the board of directors of the collective investment scheme shall -
- (a) approve the annual comparative financial statements of the collective investment scheme; and
 - (b) authorize two directors of the collective investment scheme to sign the annual comparative financial statements to evidence that approval.
- (2) If a collective investment scheme is organized as a trust, the trustee of the collective investment scheme, or the manager if so authorized by the constating documents of the collective investment scheme, shall -
- (a) approve the annual comparative financial statements of the collective investment scheme; and
 - (b) authorize two appropriate persons to sign the annual comparative financial statements to evidence that approval.

(3) If a collective investment scheme is organized other than as a corporation or a trust, the annual comparative financial statements of the collective investment scheme shall be -

(a) approved in accordance with the constating documents of the collective investment scheme; and

(b) signed by two persons authorized to sign on behalf of the collective investment scheme to evidence that approval.

PART XV RECORDS

Maintenance of records **30.** A collective investment scheme shall maintain, or cause to be maintained, true, complete and accurate records of -

(a) the names and latest known addresses of each registered holder of securities of the collective investment scheme;

(b) the number and class of securities held by each registered holder of securities of the collective investment scheme; and

(c) the date and details of each distribution and redemption of securities of the collective investment scheme.

Availability of records **31.** A collective investment scheme shall-

(a) make, or cause to be made, available for inspection, free of charge, the records referred to in this Part during normal business hours at its principal or head office, by a registered or beneficial holder of securities of the collective investment scheme; and

(b) upon the written request of a registered or beneficial holder of securities of the collective investment scheme, provide copies of the records referred to in this Part at reasonable costs to such holder;

if such holder has agreed in writing that the information contained in the records will not be used by him for any purpose other than a matter relating to the administration of the collective investment scheme.

PART XVI COMMUNICATION

Delivery of offering materials **32.** The manager shall provide each prospective investor who expresses an interest in purchasing a security of a collective investment scheme, at no charge, with the following -

(a) a copy of the prospectus, including any amended prospectus, for which a receipt has been issued by the Commission; and

(b) in the case of a collective investment scheme that is a reporting issuer:

(i) a copy of the latest annual comparative financial statements of the collective investment scheme filed with the Commission; and

(ii) a copy of the latest interim financial statements of the collective investment scheme filed with the Commission, if any; and

(c) in the case of a collective investment scheme that is not a reporting issuer, an audited statement of the net assets of the collective investment scheme as at the date of formation of the collective investment scheme.

Inspection

33. The manager shall make available copies of all organizational documents of the collective investment scheme as more particularly described in Form No. 1 to this By-Law for inspection, free of charge, during normal business hours at its principal or head office, by prospective investors or registered or beneficial holders of securities of a collective investment scheme.

Sales communication

34. (1) No sales communication shall contain a misrepresentation.

(2) A written sales communication shall include a statement, printed in type of the same size as the rest of the text in the sales communication, that -

(a) refers the prospective investor to the prospectus of the collective investment scheme for which a receipt has been issued by the Commission and recommends the prospective investor to read the prospectus before making a decision to purchase securities of the collective investment scheme;

(b) if investments in securities of the collective investment scheme -

(i) are not guaranteed, and that values of the investments change frequently and past performance may not be repeated; or

(ii) are guaranteed, the nature of the guarantee provided, and that values of the investments changes frequently and past performance may not be repeated; and

(c) in certain circumstances the right of a holder of securities in a collective investment scheme to redeem securities held in a collective investment scheme may be suspended.

(3) A sales communication shall not compare the performance of a collective investment scheme with the performance of a benchmark or another collective investment scheme unless -

(a) it clearly identifies the periods for which performance data is calculated;

(b) in the case of a comparison with another collective investment scheme, the other collective investment scheme being used for comparison is under common management and has similar fundamental investment objectives with the collective investment scheme to which the sales communication pertains;

(c) it includes all facts that, if disclosed, would affect materially the conclusions reasonably drawn or implied by the comparison;

(d) the data being compared are for the same period or periods;

(e) it explains clearly any factors necessary to make the comparison fair and not misleading; and

(f) in the case of a comparison with a benchmark, the benchmark existed and was widely recognized and available during the comparison period.

(4) The performance data of a collective investment scheme shall be calculated in accordance with standards published from time to time by the Association for Investment Management and Research (AIMR).

(5) A sales communication that relates to a money market fund may provide standard performance data only if -

(a) the standard performance data has been calculated for the most recent seven day period for which it is practicable to calculate; and

(b) the seven day period does not start more than 45 days before the date of the appearance, use or publication of the sales communication.

(6) A sales communication that relates to a collective investment scheme other than a money market fund may provide standard performance data only if -

(a) the standard performance data has been calculated for the five, three and one year periods and the period since the inception of the collective investment scheme if the collective investment scheme has been offering its securities for more than one and less than five years; and

(b) the periods referred to in paragraph (a) end on the last day of the calendar month ending immediately prior to the month in which the sales communication is made or dated.

**SCHEDULE 1
TO THE COLLECTIVE INVESTMENT SCHEME BY-LAW**

FORM NO. 1

PROSPECTUS DISCLOSURE REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES

INSTRUCTIONS

In addition to any other requirements contained in the Act or any by-law, including the Prospectus By-Law a prospectus filed with the Commission for the distribution of securities of a collective investment scheme shall include the disclosure required by this form.

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| Investment Objectives | <p>1. (1) State the fundamental investment objectives of the collective investment scheme, including information that describes the principal features of the collective investment scheme that distinguish it from other collective investment schemes.</p> <p>(2) If the collective investment scheme primarily invests, or intends to primarily invest, in a particular geographic location, economic sector, or particular types of issuers, include a statement of that fact immediately following the description of the fundamental investment objectives.</p> |
| Investment Strategies | <p>2. State the principal investment strategies that the collective investment scheme intends to use to achieve its fundamental investment objectives. The disclosure shall include, but shall not be limited to, the process such as the investment approach, philosophy, style or technique by which the investment adviser of the collective investment scheme selects or intends to select securities for the portfolio of the collective investment scheme.</p> |
| Investment Restrictions | <p>3. State all investment restrictions that the collective investment scheme has adopted including those beyond any restrictions imposed by the Act or any by-law.</p> |
| Risk Factors | <p>4. Include a discussion of risks and other investment considerations that are specific to an investment in the particular collective investment scheme and would be considered as material risks by a prospective investor in making an investment decision.</p> |
| Fees and Expenses | <p>5. (1) Include a summary of the fees and expenses payable by a collective investment scheme and by the holders of securities in the collective investment scheme directly.</p> <p>(2) State the management expense ratio of the collective investment scheme for each of the last four completed financial years of the collective investment scheme.</p> <p>(3) State the methodology used by the manager to calculate the management expense ratio including all the assumptions used.</p> |
| Net Asset Value | <p>6. State -</p> <p style="padding-left: 40px;">(a) the methodology used by the manager to calculate the net asset value per security of the collective investment scheme including all</p> |

the assumptions used;

(b) the frequency of valuation; and

(c) the circumstances, if any, under which there would not be a valuation.

Performance Data

7. (1) Include performance data of the collective investment scheme calculated in accordance with, and for the time periods set out in, the Collective Investment Scheme By-Law.

(2) Immediately following the presentation of the performance data, include the following -

(a) a warning statement that how the collective investment scheme has performed in the past does not necessarily indicate how it will perform in the future;

(b) the assumptions used in the calculation of the performance data; and

(c) any other information that, if disclosed, would affect materially the conclusions reasonably drawn or implied by the performance data.

Affiliated Entities

8. (1) Disclose details of any relationships or associations the collective investment scheme or the manager of the collective investment scheme has with any person that may give rise to a potential conflict of interest.

(2) For purposes of the disclosure required by subsection (1), a relationship is deemed to be one that has a potential conflict of interest if the person beneficially owns, directly or indirectly, more than 10% of the assets of the collective investment scheme, or more than 10% of the voting securities of the manager of the collective investment scheme.

Organizational Documents

9. (1) Include a list and key particulars of the material organizational documents of the collective investment scheme.

(2) A material organizational document of a collective investment scheme is a contract or agreement that can reasonably be regarded as material to a prospective investor, and shall include, but shall not be limited to, the following -

(a) in the case of a collective investment scheme that is organized as a trust, the declaration of trust or trust agreement;

(b) in the case of a collective investment scheme that is organized as a corporation, the corporate constating documents;

(c) in the case of a collective investment scheme that is organized other than as a trust or a corporation, its constating documents; and

(c) any agreement with the manager, investment adviser, custodian or the principal distributor of the collective investment scheme.

(3) The key particulars of a material organizational document include the following -

(a) the date of the contract;

(b) the parties to the contract;

(c) a general description of the nature of the contract; and

(d) the termination provisions.